Client Alert

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CALIFORNIA SUPREME COURT EXPANDS DEFINITION OF "HOSTILE WORK ENVIRONMENT"

On July 18, 2005, the California Supreme Court held that an employee may establish an actionable claim of sexual harassment under the Fair Employment and Housing Act if (1) there has been widespread sexual favoritism and (2) it was sufficiently severe or pervasive enough to alter the victim's conditions of employment and create a hostile work environment (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446).

The essential facts and evidence resulting in the Court's decision are as follows:

Over a period of approximately five years, the female plaintiffs in this case, who were correctional officers at various women's prisons, were consistently denied promotions and training that could have led to promotional opportunities. Instead, because of the active intervention of warden Lewis Kuykendall, the promotions and other job opportunities were given to three other female employees with whom he was having consensual sexual relations.

There was evidence that, on a number of occasions, the plaintiffs were more qualified than the female employees with whom warden Kuykendall was sexually involved. There was also evidence that, on a number of occasions, the plaintiffs were retaliated against by both Kuykendall and his paramours for complaining about his sexual favoritism. The plaintiffs ultimately filed suit alleging that Kuykendall's conduct constituted sexual harassment (i.e., created a hostile work environment) in violation of California's Fair Employment and Housing Act [Government Code sections 12900 et seq]).

Ultimately concluding that there was sufficient evidence for the plaintiffs' cases to proceed to trial, the Court concluded:

> . . . although an **isolated instance** of favoritism on the part of a supervisor toward a female employee, with whom the supervisor is conducting a consensual sexual affair, ordinarily would **not** constitute sexual harassment, when such sexual favoritism in a

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> workplace is **sufficiently widespread**, it may create an actionable **hostile work environment** in which the demeaning message is conveyed to female employees that they are viewed by management as "sexual playthings" or that the way required for women to get ahead in the workplace is by engaging in sexual conduct with their supervisors or the management. (*Miller v. Department of Corrections, supra,* 36 Cal.4th at p. 451; emphasis added.)

In the present case, the Court concluded that plaintiffs had presented sufficient evidence to show that there had been "widespread" sexual favoritism and that Kuykendall's conduct was sufficiently "severe or pervasive" to have an adverse impact on plaintiffs' employment and to otherwise create a hostile work environment.

If you have any questions concerning the foregoing decision, please do not hesitate to call me.

— Dwaine L. Chambers, General Counsel

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