CALIFORNIA EMPLOYMENT LAW UPDATE - JULY 2022

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The Essentials

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HIGHLIGHTS OF GRANDE V. EISENHOWER MEDICAL CENTER

In *Grande v. Eisenhower Medical Center*, the California Supreme Court allowed an employee who sued and settled its case against a staffing agency to move forward with a second lawsuit against the staffing agency's client (a hospital) because *(i)* the settlement agreement with the staffing agency did not explicitly release the hospital; *(ii)* an agency relationship did not exist between the hospital and the staffing agency such that the hospital would come under the terms of the settlement agreement; and *(iii)* the hospital was not in privity with the staffing agency such that principles of claim preclusion would apply.

FIRST LAWSUIT AGAINST FLEXCARE

FlexCare LLC (FlexCare) is a staffing agency that supplies temporary employees to various entities throughout the State of California. One of its clients was Eisenhower Medical Center (Eisenhower). FlexCare and Eisenhower had a staffing agreement under which FlexCare would hold “exclusive and total legal responsibility as the employer” and would maintain an obligation to ensure compliance with wage and hour laws. FlexCare also agreed to indemnify Eisenhower for certain obligations concerning this staffing arrangement. In 2012, FlexCare assigned Lynn Grande, a nurse, to work at Eisenhower.

A putative class action was later filed against FlexCare alleging Labor Code violations at facilities for which it supplied temporary workers. However, Eisenhower was not a named defendant in this lawsuit. The parties entered into a settlement against the “Released Parties,” that included both FlexCare and its agents, but did not mention Eisenhower by name.

SECOND LAWSUIT AGAINST EISENHOWER

After consummation of the FlexCare settlement, Grande filed a putative class action against Eisenhower based on alleged wage and hour violations related to all nonexempt employees of the hospital placed by any staffing agency (not just FlexCare). Eisenhower asserted the affirmative defense of claim preclusion, arguing that all rights related to the alleged violations had been extinguished by the settlement with FlexCare. FlexCare filed a complaint in intervention, agreeing that the claim should be precluded and that Eisenhower was entitled to the benefit of the release under FlexCare's settlement. The lower court held a bench trial on the release and claim preclusion. The court held that the release could not reasonably be construed to extend to Eisenhower and that Eisenhower was not in privity with the staffing agency, extinguishing any defense of claim preclusion. Eisenhower

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filed a petition for writ of mandate. The Court of Appeal denied the petition for writ of mandate concluding that claim preclusion was inappropriate because Eisenhower was not in privity with FlexCare.

THE CALIFORNIA SUPREME COURT'S DECISION

On review, the California Supreme Court first considered whether an agency relationship existed between Eisenhower and FlexCare. FlexCare's settlement released the parties and their *agents*. The Court affirmed the trial court's finding that FlexCare's settlement did not extend to Eisenhower. In addition to Eisenhower not being named in the release, there was no finding of agency. Agency requires a significant level of control, which the Court determined is not inherently established in a potential joint employment relationship between a staffing agency and its clients. Because there was no level of control sufficient to create an agency relationship, Eisenhower was not covered by FlexCare's release.

The Court also found that Eisenhower was not entitled to judgment in its favor under claim preclusion, noting that the affirmative defense would require Eisenhower, which was not a party in the original suit, to have been in privity with FlexCare. Privity “requir[es] the sharing of 'an identity or community of interest,' with 'adequate representation' of that interest in the first suit, and circumstances such that the nonparty 'should reasonably have expected to be bound' by the first suit.” *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813, 826 (2015). A nonparty alleging to be in privity must have an interest so similar to the party's interest that the party acted as the nonparty's virtual representative in the initial lawsuit. Id. at 826.

Here, had Eisenhower been a party to the first lawsuit, it might have attempted to shift responsibility to FlexCare, which FlexCare would not have supported. Their interests were therefore not so inherently aligned as to establish privity. Additionally, Eisenhower would not have been bound by an adverse judgment in the first suit, which concerned all employees of FlexCare placed at any location within California.

Eisenhower also argued that it was entitled to claim preclusion because the staffing agency agreed to indemnify Eisenhower. However, FlexCare was not sued in the first action in its capacity as the indemnitor. Eisenhower also attempted to argue that this second suit was entirely derivative of the first and that claim preclusion should apply for that reason. However, the Court held that joint and several liability does not create privity or make a claim derivative. Furthermore, the factual overlap between the two lawsuits also did not automatically establish derivative liability.

FUTURE IMPACT

Clarify Settlements and Releases. Defendants should clearly identify who is released in their settlement agreements. Staffing companies cannot assume that their clients are agents for purposes of including their clients in a settlement. Clients of staffing companies cannot assume that indemnification will preclude subsequent lawsuits on the same or similar causes of action.

LOCAL MINIMUM WAGE UPDATES

As of 1 July 2022 multiple California jurisdictions raised their local minimum wage. Please see below for the new minimum wage rates and links to relevant sites:

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Alameda	US*$15.75*
Berkeley	US*$16.99*
Emeryville	US*$17.68*
Foster City	US*$15.75*
Fremont	US*$16.00*
Long Beach	US*$16.73 for employees of hotels* US*$16.55 for Concessionaire Workers at the Long Beach Airport and Long Beach Convention Center*
Los Angeles (City)	US*$18.86 for employees of hotels with 150 or more rooms* US*$16.04 for all others* **Upcoming:** *Effective 13 August 2022, the minimum wage for eligible Healthcare Workers will increase to US$25 per hour*
Los Angeles (County Unincorporated Areas)	US*$15.96*
Malibu	US*$15.96*
Milpitas	US*$16.40*
Pasadena	US*$16.11*
San Francisco	US*$16.99*
Santa Monica	US*$18.17 for employees of hotels* US*$15.96 for all others*
West Hollywood	US*$18.35 for employees of hotels* US*$16.50 for Large Businesses (50 or more employees)* US*$16.00 for Small Businesses (49 or fewer employees)*

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