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March 2021 Case Review

Brennon B v. Superior Court – State Court Holds Public School District is not "Business Establishment" Subject to Liability under Unruh Civil Rights Act.

FACTS: Student brought an action against public school district alleging disability discrimination under the Unruh Civil Rights Act. The trial court sustained the district's demurrer on the grounds that the school district was not a "business establishment" subject to the Act. Student petitioned for writ of mandate.

HOLDING: Petition denied. The Court examined the legislative history of the Unruh Act and California Supreme Court decisions, finding that that public accommodation laws remain directed at private, rather than state conduct. The Court reasoned that public school districts act as the state's agent in delivering constitutionally mandated, free primary and secondary education to the state's school age children, as a public servant not as a commercial enterprise. Thus, the court held that public school districts were not business establishments under the Unruh Act and denied the petition seeking to overturn the trial court's order.

This is the first published California appellate opinion holding that public school districts are not subject to the Unruh Civil Rights Act. We await whether the California Supreme court will review the case, but it should be noted that the First Appellate District's analysis is extensive and well-reasoned, and should be relied upon to have Unruh claims dismissed against our public school district clients.

D.D. by and through Ingram v. Los Angeles USD – ADA Claim Does Not Require Administrative Exhaustion Where it Does Not Arise From Special Education Services.

FACTS: Student brought an action against school district alleging denial of equal access to public education in violation of Americans with Disabilities Act (ADA). Student's complaint included allegations that he was subject to bullying due to his disabilities, excluded from participation in school activities, and sought but was refused reasonable accommodations of a one-on-one behavioral aide. The trial court dismissed for failure to exhaust administrative remedies under Individuals with Disabilities Education Act (IDEA).

HOLDING: Reversed. The Ninth Circuit distinguished between a claim alleging a violation of the equal access requirements of the ADA from a FAPE challenge to the adequacy of special education services. The court held that a claim under the ADA that is separate and irrespective of the IDEA's FAPE obligation is not subject to the IDEA's administrative exhaustion requirement. In this case, the court found that the student had a cognizable claim under the ADA because his complaint addressed his exclusion from the classroom and school program rather than his specific learning needs. The court held that this demonstrated the independence of the student's ADA claim from IDEA, and the ADA claim was dismissed in error.

Shirvanyan v. LA Community College District – Employee's Failure to Engage in Interactive Process Employment Claim Requires Evidence of Reasonable Accommodation.

FACTS: Plaintiff began working for the Los Angeles Community College District ("District") as a kitchen assistant in 2007. In 2014, Plaintiff was diagnosed with carpal tunnel. On December 18, 2015, Plaintiff injured her shoulder when opening the door of a heavy industrial dishwasher. Plaintiff made a workers' compensation claim and was diagnosed with a torn rotator cuff. Plaintiff never returned to work after leaving the day of her shoulder injury. Plaintiff sued alleging that the District had violated FEHA by failing to engage in the interactive process and provide reasonable accommodation. At trial, the jury found in favor of Plaintiff. The District argued that Plaintiff failed to prove that there was an available reasonable accommodation that could have been made at the times that Plaintiff alleged that Defendant failed to engage in the interactive process. The trial court rejected this argument, reasoning that the availability of a reasonable accommodation is not an element of an interactive process claim.

HOLDING: Reversed. To succeed on a cause of action for failure to engage in an interactive process, "an employee must identify a reasonable accommodation that would have been available at the time the interactive process should have occurred." Thus, substantial evidence does not support the jury's verdict to the extent that they were based on Defendant's handling of Plaintiff's shoulder injury. Because the verdict was ambiguous as to whether the jury found for plaintiff based in any part on the defendant's response to her wrist injury, the case is remanded for a retrial.

Vazquez v. Jan-Pro Franchising International, Inc. – Dynamex Independent Contractor Holding Applies Retroactively.

FACTS: Janitors who purchased unit franchises from master franchisors filed putative class action alleging that janitorial cleaning business that entered into franchise agreements with master franchisors used its multi-leveled franchise model to misclassify them as independent contractors, rather than employees. The Northern District of California entered summary judgment in favor of the business, and the janitors appealed. The 9th Circuit certified the question of whether *Dynamex Operations West, Inc. v. Superior Court* (2018) applies retroactively to the California Supreme Court.

HOLDING: The CA Supreme court held that *Dynamex* applied retroactively, reasoning that the three elements of the ABC test were already prominent factors that were used to classify independent contractors. Therefore, *Dynamex* and its ABC test applies to cases not yet final as of the date the decision in *Dynamex* became final.

New Livable California v. Association of Bay Area Governments – Plaintiff Does Not Have to Allege Prejudice to Assert Claim that JPA Meeting May Violate Brown Act.

FACTS: Plaintiffs filed a complaint for declaratory and injunctive relief and petition for writ of mandate against the joint power authority for nine Bay Area counties ("Association"). Plaintiff alleged a violation of the Brown Act's vote reporting requirements for an Association board meeting convened to discuss a regional housing and transportation development proposal. Plaintiff claimed prejudice by the board's failure to publicly report the votes or abstentions of each member present. The trial court sustained Defendant's demurrer on the ground that the Association's demurrer failed to allege prejudice.

HOLDING: Reversed. A Plaintiff does not have to allege prejudice to state causes of action under section 54960 and 54960.1 of the Brown Act for declaratory and injunctive relief and mandamus. The Court, however, stated that their ruling is limited to demurrer and expressed no opinion on the issue of whether Plaintiffs will be required to show prejudice before the trial court can declare any board action null and void under section 54960.1.

Ko v. Maxim Healthcare Services – Extension of *Dillon v. Legg* NIED to Accommodate Technology.

FACTS: Parents of two-year-old child with severe disabilities filed suit against in-home caregiver and caregiver's employer, asserting causes of action negligent infliction of emotional distress (NIED) and related claims, after they observed caregiver assaulting child in real time on cell phone from live stream video recorded on "nanny cam." The trial court granted Defendants' demurrer to the Plaintiff's cause of action for NIED because the parents were not physically "present" at time of injury.

HOLDING: Reversed. The Court of Appeal held that a family's real time, virtual presence through a live stream nanny cam was sufficient to satisfy the requirement of contemporaneous sensory awareness of an injury-producing event, required for NIED causes of action.