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California Workers' Compensation Statute Held Not to Support a Common Law Tort Claim

By Eugene Ryu and Amanda Fu

California Labor Code section 132a, the anti-retaliation provision of the state workers' compensation statute, has commonly been used to support a tort claim for wrongful termination in violation of public policy. Plaintiffs often argue at the demurrer stage that the California Supreme Court's decision in *City of Moorpark*, 18 Cal. 4th 1143 (1998), provides the basis for such relief. *City of Moorpark*, however, never actually addressed the specific issue of whether Labor Code section 132a could properly form the basis for such a tort claim. A recent decision by a California Court of Appeal, *Dutra v. Mercy Medical Center Mt. Shasta*, No. C067169 (Sept. 26, 2012), focused on that inquiry and determined that a plaintiff cannot avail herself of section 132a as the basis of a tort action for wrongful termination. The Court of Appeal's decision permits an employer to attack the complaint at its initial stages and close off an avenue commonly used by plaintiffs to maintain civil actions for wrongful termination claims related to workers' compensation actions.

Background

The plaintiff worked for Mercy Medical Center Mt. Shasta as a housekeeper. She injured her back at work on January 31, 2008, and filed a workers' compensation claim.

The medical center terminated the plaintiff's employment on March 19, 2008, on the following grounds: (1) gossiping at work while on-duty after having already been counseled for that behavior; (2) check fraud; and (3) falsifying her timecard and leaving work without clocking out (abandoning her post). The plaintiff alleged that the medical center wrongfully terminated her in violation of public policy for terminating her employment after she filed a workers' compensation claim.

The trial court granted the medical center's motion to dismiss the plaintiff's wrongful termination claim on the ground that such a claim is under the exclusive jurisdiction of California's Workers' Compensation Appeals Board (WCAB) under Labor Code section 132a.

California Labor Code Section 132a

Labor Code section 132a makes it a misdemeanor for an employer to discriminate in any way, including discharge or threat of discharge, against an employee who has filed or is thinking about filing a workers' compensation claim or an employee who has received a workers' compensation award. The employee who has been discriminated against is entitled to a penalty (not to exceed

\$10,000), reinstatement, and reimbursement for lost wages and work benefits. This is dramatically less than potential tort relief for wrongful termination in violation of public policy. Per the statute, the Workers' Compensation Appeals Board has jurisdiction over 132a violations. Once an employee has filed a petition for the remedies provided by the statute, the WCAB has the full authority to try and determine all related matters, with the exception of the employer's misdemeanor charge.

The Court of Appeal's Ruling

On appeal, the plaintiff argued that the trial court could hear her claim for wrongful termination in violation of public policy based on a violation of Labor Code section 132a. The plaintiff relied upon *City of Moorpark* in support of her argument. In *City of Moorpark*, the plaintiff sued her former employer for disability discrimination in violation of California's Fair Employment and Housing Act (FEHA), and wrongful termination in violation of public policy. The city demurred to the plaintiff's causes of actions on the ground that Labor Code section 132a provided the plaintiff's exclusive remedy since her disability was work-related. The court held that the provisions of the FEHA, and its decisions interpreting those provisions, supported its finding that Labor Code section 132a is not exclusive, and found that there was nothing in the FEHA suggesting that work-related physical or mental disabilities were excluded from the FEHA's protections. *City of Moorpark*, 18 Cal. 4th at 1157.

On the issue of wrongful termination, the *City of Moorpark* court used a previously articulated four-part test to determine if disability discrimination could form the basis of a common law wrongful discharge claim. The policy "must be: (1) delineated in either constitutional or statutory provisions; (2) 'public' in the sense that it 'inures to the benefit of the public' rather than serving merely the interests of the individual; (3) well established at the time of the discharge; and (4) substantial and fundamental." *Id.* (quoting *Stevenson v. Superior Court*, 16 Cal. 4th 880, 894 (1998)) On the basis of that analysis, the court held that the plaintiff could use her disability discrimination allegation as the basis of her common law wrongful discharge claim.

The Court of Appeal Both Distinguished and Followed *City of Moorpark*

City of Moorpark never specifically addressed the issue of whether an alleged violation of Labor Code section 132a could form the basis of a common law cause of action for wrongful termination in violation of public policy. After performing an analysis of Labor Code section 132a using the four-part test referenced above, the Court of Appeal declined to expand the California Supreme Court's ruling in *City of Moorpark*:

Section 132a includes limitations on its scope and remedy that prevent it from being the basis of a common law cause of action. The statute establishes a specific procedure and forum for addressing a violation. It also limits the remedies that are available once a violation is established. Allowing plaintiff to pursue a tort cause of action based on a violation of section 132a would impermissibly give her broader remedies and procedures than that provided by the statute. Thus, the statute cannot serve as the basis for a tort claim of wrongful termination in violation of public policy, and the trial court correctly granted [the employer's] motion to dismiss the action.

The plaintiff also attempted to argue that she was not subject to the workers' compensation exclusivity rule because her wrongful termination fell outside the compensation bargain of a typical employment relationship. The Court of Appeal dismissed this point as irrelevant and stated that "in accordance" with *City of Moorpark*, section 132a was not the plaintiff's "exclusive remedy for redressing her wrong." The plaintiff had the opportunity to amend her complaint to seek alternative remedies, but her choice not to amend her complaint "foreclosed all possible remedies except the WCAB."

The Court of Appeal's decision addressed a gray area on the availability of section 132a as the basis of a claim for wrongful termination in violation of public policy. Employers can now defeat tort claims at the initial pleading stage that are solely based on Labor Code section 132a. While plaintiffs may seek other remedies for alleged discrimination related to the filing of a workers' compensation claim, *Dutra* cuts off access to tort claims for wrongful termination predicated on Labor Code section 132a that may have resulted in much greater relief than plaintiffs would otherwise have been granted through the WCAB.

[Eugene Ryu](#) is a Shareholder, and [Amanda Fu](#) is an Associate, in Littler Mendelson's San Francisco office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Mr. Ryu at eryu@littler.com, or Ms. Fu at afu@littler.com.