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Termination For Fear Of Complaint Is Unlawful Retaliation

In its opinion in *Lujan v. Shala Minagar*, filed on December 9, 2004 (Appeal No. B170438), the California Court of Appeal ruled that an employer is liable for retaliation in violation of California Labor Code section 6310 when it terminates an employee out of fear that the employee may, in the future, file a workplace safety complaint with a governmental agency, even though the employee never filed a complaint with the agency.

In *Lujan v. Shala Minagar*, a facialist working at a beauty salon made a complaint of workplace safety to Cal-OSHA, which resulted in an inspection of the salon. The day after the inspection, the owner of the salon terminated the facialist and another person who worked as a hair stylist at the salon. The California Labor Commission initiated suit against the salon owner for violation of Labor Code Section 6310. That Section generally prohibits an employer from terminating or in any manner discriminating against an employee who made a complaint regarding employee safety to a governmental agency charged with enforcing workplace safety laws and regulations. At trial, both the facialist who made the complaint and the hair stylist testified that the hair stylist played no part in contacting Cal-OSHA. The hair stylist also testified that a manager told her she had been *terminated because the owner believed she had assisted in the Cal-OSHA complaint*. The owner testified that the hair stylist was fired because she had been an incompetent and troublesome employee *and because the owner was afraid that the hair stylist would be the next person to report her*. The trial court found that the Cal-OSHA complaint was a substantial factor in the decision to terminate the hair stylist, but found that the employer did not violate the law because the hair stylist did not actually file a complaint with a governmental agency and thus was not protected by the statute.

In reversing the trial court, the Court of Appeal considered that the intent of the statute was "to encourage workplace safety complaints and to punish employers who retaliate against employees as a result." The Court stated its belief that "firing workers who are suspected of planning to file workplace safety complaints can effectively discourage the filing of those complaints" thus, defeating the purpose of the statute. The Court therefore held that Labor Code Section 6310 applies to employers who retaliate against employees *whom they believe intend to file* workplace safety complaints.

Employers are well cautioned to take all workplace safety complaints seriously, whether they are made to the employer or to an agency, and more importantly, not to base any employment decision on a belief that the employee has reported *or may report* workplace safety concerns to a state or federal agency.

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For more information about this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

Los Angeles	San Diego	San Francisco
Charles F. Barker (213) 617.4168	David B. Chidlaw (619) 338.6614	Douglas J. Farmer (415) 774.2906
Elicia N. Bernstein (213) 617.5582	John D. Collins (619) 338.6613	Lara V. Hutner (415) 774.2903
Geoffrey D. DeBoskey (213) 617.5547	Julie A. Dunne (619) 338.6510	Otis McGee, Jr. (415) 774.3249
David J. Fishman (213) 617.4118	Guy N. Halgren (619) 338.6605	Michael Scarborough (415) 774.2963
Jason R. Gasper (213) 617.5499	Samantha D. Hardy (619) 338.6640	
Adena Hadar (213) 617.4128	Stacey E. James (619) 338.6581	Del Mar Heights
Douglas R. Hart (213) 617.5497	Rafael Nendel-Flores (619) 338.6619	Richard M. Freeman (858) 720.8909
Derek R. Havel (213) 617.5424	W. David Osborne (619) 338.6589	Matthew McConnell (858) 720.8928
Kelly L. Hensley (213) 617.5441	A. Andrew Peterson (619) 338.6624	Carole M. Ross (858) 720.8925
Melissa Hughes (213) 616.5464	Kim Snyder (619) 338.6506	
Tracey A. Kennedy (213) 617.4249	Mary P. Snyder (619) 338.6503	Santa Barbara
Melissa P. Lopez (213) 617.4290	William V. Whelan (619) 338.6588	Jeffrey Dinkin (805) 879.1828
Richard L. Lotts (213) 617.4119	Tara L. Wilcox (619) 338.6608	Deborah Martin (805) 879.1838
Daniel J. McQueen (213) 617.4270		
Kristine A. Moon (213) 617.5523	Orange County	Washington, D.C.
Jocelyn Riedl (213) 617.5592	Heather Clark (714) 424.2820	Mark E. Nagle (202) 218.0014
Richard J. Simmons (213) 617.5518	Greg S. Labate (714) 424.2823	Julia H. Perkins (202) 772.5316
Dianne Baquet Smith (213) 617.4265	Mary E. Lynch (714) 424.2826	Mary E. Pivec (202) 772.5310
Beth S. Sonnenklar (213) 617.4187	Ryan D. McCortney (714) 424.2830	
Brandyn Stedfield (213) 617.5514		
Natalie C. Trask (213) 617.4229		
Jennifer B. Zargarof (213) 617.4243		

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP				
LOS ANGELES 213 · 620 · 1780	CENTURY CITY 310 · 228 · 3700	SAN FRANCISCO 415 · 434 · 9100	ORANGE COUNTY 714 · 513 · 5100	
DEL MAR HEIGHTS 858 · 720 · 8900	SAN DIEGO 619 · 338 · 6500	SANTA BARBARA 805 · 568 · 1151	NEW YORK 212 · 332 · 3800	WASHINGTON, D.C. 202 · 218 · 0000
www.sheppardmullin.com				

For additional information about Sheppard Mullin, please contact us at 888.588.SMRH
 Client Relations Department
 333 S. Hope Street, 48th Floor
 Los Angeles, CA 90071