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California Supreme Court Rejects Personal Liability for Retaliation

On March 3, 2008, the California Supreme Court filed its opinion in *Scott Jones v. The Lodge at Torrey Pines Partnership* (Case No. S151022) and addressed the issue, for the first time, of whether the California Fair Employment and Housing Act (FEHA) makes individuals personally liable for retaliation. In *Jones*, the Court resolved this issue, by a 4-3 vote, by extending the rule announced in *Reno v. Baird* (1998) 18 Cal.4th 640 that although an employer may be held liable under the FEHA (California Government Code section 12900 et seq.), non-employer individuals are not personally liable for that discrimination. In light of the *Jones* decision issued today, the employer, but not non-employer individuals may be held liable for certain unlawful acts of retaliation.

Unlawful employment practices under FEHA include: (1) discrimination; (2) harassment; and (3) retaliation. It has long been the rule that employees are not personally liable for acts of discrimination. (See, *Reno v. Baird* (1998) 18 Cal.4th 640; *Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 96.) Conversely, personal liability extends to any harassment prohibited by Government Code section 12940(j)(3). (See, *McLung v. Employment Development Department* (2004) 34 Cal.4th 467, 471.) The Supreme Court accepted review of the decision given the numerous California and Federal cases in conflict on the issue.

In *Jones*, the Court found that claims of retaliation were more like acts of discrimination than harassment. In this lengthy decision, the court concluded that no personal liability exists, as a matter of law, for unlawful acts of retaliation.

Todd A. Roberts is the Chairman of the RMKB Employment Department and is the Chair of the Labor & Employment Section of the Association of Defense Counsel of Northern California and Nevada. He is also an active member and in the leadership of the Federation of Defense & Corporate Counsel. Mr. Roberts wrote a letter brief to the Supreme Court on behalf of the ADC urging the court to accept review of the *Jones* case. A copy of the decision may be obtained from Mr. Roberts' assistant, Roxana Riedell by email at riedell@rmkb.com.

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