Business Judgment Rule & Employment Discrimination Veronese v. Lucasfilm

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In most situations, an employer in California can terminate an employee for almost any reason, so long as it is not discriminatory, assuming the employee is at-will.

In *Veronese v. Lucasfilm LTD* (12/10/2012) a job applicant who was hired for a position informed her new employer that she was pregnant two days after receiving the job offer and before her expected start date.

When discussions between the parties related to her pregnancy and other issues resulted in her not taking the job, she sued claiming, among other, pregnancy discrimination. The trial concluded in favor of the applicant.

The issue on appeal concerned the jury instructions provided at trial, particularly that no instruction was given regarding the business judgment rule. The employer requested an instruction that the employee/applicant could be terminated based upon a business decision, which the trial court did not allow. The First District Court of Appeal held that failure to do so was prejudicial error and reversed the decision.

The Court reflected on the business judgment rule, as expressed in prior opinions, noting that "a plaintiff in a discrimination case must show discrimination, not just that the employer's decision was wrong, mistaken, or unwise. (*Reeves v. MV Transportation, Inc.* (2010) 186 Cal.App.4th 666, 673-674.)"

Moreover, the Court stated:

"The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. . . . 'While an employer's judgment or course of action may seem poor or erroneous to outsiders, the relevant question is . . . whether the given reason was a pretext for illegal discrimination. The employer's stated legitimate reason . . . does not have to be a reason that the judge or jurors would act on or approve.' (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 344; accord, *Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1005.)"

It's interesting to note that the decision was reached even though the Court acknowledged that prior California cases articulating the business judgment rule with respect to employment matters were all decided as summary judgments, and not "in connection with a jury instruction in a FEHA case."

Even so, the Court reversed, upholding the business judgment rule as a possible defense for employers defending employment claims. Of course, application of the rule would be contingent to the facts on a specific case, and we must note that relying upon business judgment, without a clearly documented decision, is risky and not favored.

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