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## Unsubstantiated Concerns Ruled Pregnancy Discrimination - A Cautionary Tale

The California Court of Appeal recently affirmed a decision by the Fair Employment and Housing Commission ("FEHC") finding that an employer discriminated against a pregnant employee in violation of the Fair Employment and Housing Act. In SASCO Electric v. FEHC, an extremely experienced female who served as a second captain of a yacht was terminated shortly after she informed her employer that she was pregnant. Her employer was admittedly disappointed by the news because he believed that "mothers do not want to work in the boating business." Moreover, he believed the employee's plan to work as long as possible during her pregnancy was "cavalier." Further, he had liability concerns (e.g., her exposure to chemicals and possibly falling on the boat which could lead to a miscarriage). These fears lead the employer to terminate her employment under the guise of a layoff.

The court held that the employer's paternalistic assumptions took away the woman's right to decide when during her pregnancy she should stop working and when she should return to work after her child's birth. In addition, it held that the "reduction-in-force" reason for her termination was a pretext because when additional help was needed, the employer did not attempt to recall the plaintiff and instead hired less experienced individuals. Accordingly, the court affirmed the award to plaintiff of back pay, even for the period of time the plaintiff's doctor would have restricted her work because the employer would have had an obligation to provide a reasonable accommodation (e.g., temporarily transferring her to a less strenuous or hazardous position). The court also affirmed the award of \$85,000 for emotional distress damages and the FEHC's decision to impose an administrative fine as there was clear and convincing evidence of oppression and malice.

The SASCO Electric case serves as a good reminder to employers to tread carefully when dealing with pregnancy issues. Employers must not impose their own views onto expecting employees and instead should work with them to explore reasonable accommodations in order to avoid allegations of discrimination.