

LABOR AND EMPLOYMENT LAW UPDATE FOR OCTOBER 2016 LEAGUE OF CALIFORNIA CITIES CONFERENCE



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OVERVIEW FOR 2016 EMPLOYMENT LAW UPDATE

- **Reasonable Accommodation**
- **First Amendment**
- **Fair Labor Standards Act**
- **New Legislation on Training for Elected Officials**

Reasonable Accommodation Court Decision

Castro-Ramirez v. Dependable Highway

246 Cal.App.4th 180 (216)



- **2nd District Court of Appeal opens door for cause of action under FEHA for failure to accommodate based on an employee's association with a disabled person.**
- **This decision notes the differences between the definition of “association with a disabled person” under FEHA and ADA.**

Castro-Ramirez v. Dependable Highway

246 Cal.App.4th 180 (2016)



- **Basic Facts From Decision**
- **Plaintiff was a truck driver for defendant and had been granted an accommodation to work the day shift so he could attend to his son's medical treatment and daily dialysis.**
- **After three years, new supervisor for plaintiff changes his schedule and places him on later shift and terminates plaintiff when he refuses to work later shift.**

Castro-Ramirez v. Dependable Highway

246 Cal.App.4th 180 (2016)

- **Plaintiff's files complaint and asserts multiple causes action under the FEHA including:**
 - ✿ failure to provide reasonable accommodation
 - ✿ failure to engage in good faith interactive process
 - ✿ associational disability discrimination as well as wrongful termination
- **Trial Court grants defendants motion for summary judgment**



Castro-Ramirez v. Dependable Highway

246 Cal.App.4th 180 (2016)

- ***Both existing state and federal laws prohibit discrimination against an employee because of association with a person with a protected characteristic.***
- ***2nd District Court of Appeal, points out difference between disabled person under FEHA and ADA***



Castro-Ramirez v. Dependable Highway

246 Cal.App.4th 180 (2016)

- ***Court of Appeal interpreted FEHA to include in the definition of a “disabled person” a person associated with a disability.***
- ***The Court reasoned the FEHA could impose a separate cause of action for failure to provide a reasonable accommodation to an employee who associates with a disabled person.***



First Amendment Court Decision

Hefferman v. City of Patterson 136 S. Ct. 1412 (2016)

- Plaintiff was a police detective who was appointed to his position by the Mayor.
- Chief of Police was also appointed by the Mayor.
- During the Mayor's reelection campaign, Plaintiff was observed at the headquarters' of the revival candidate carrying a campaign sign and talking to the campaign manager.

Hefferman v. City of Patterson 136 S. Ct. 1412 (2016)

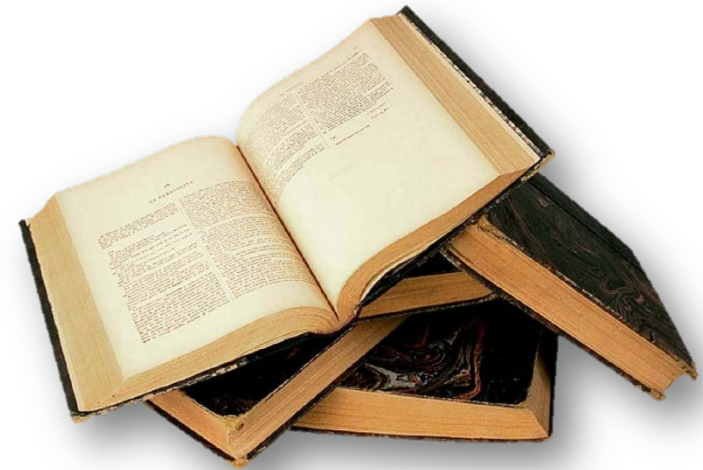
- Plaintiff was demoted from police detective to police officer for his “overt involvement” in the rival candidate’s campaign.
- In reality, Plaintiff was at the rival’s campaign headquarters at the request of his elderly mother to replace her campaign sign and was not supporting the revival’s campaign.

***Hefferman v. City of Patterson* 136 S. Ct. 1412 (2016)**

- Plaintiff sued for violation of his First Amendment rights with a 42 USC Sec 1983 claim.
- District Court determined that Plaintiff did not engage in protected activity and ruled in favor of the City.
- Court of Appeal affirmed holding that “a free speech retaliation claim is only actionable” where the adverse job action is the result of exercising First Amendment rights.

***Hefferman v. City of Patterson* 136 S. Ct. 1412 (2016)**

- In overruling the decision, the US S Ct reasoned that the employer's motivation for the adverse action is the determining factor for retaliation claims.
- If the employer's reason for the adverse action is motivated to prevent employees from engaging in protected activity, the decision is actionable under the First Amendment.



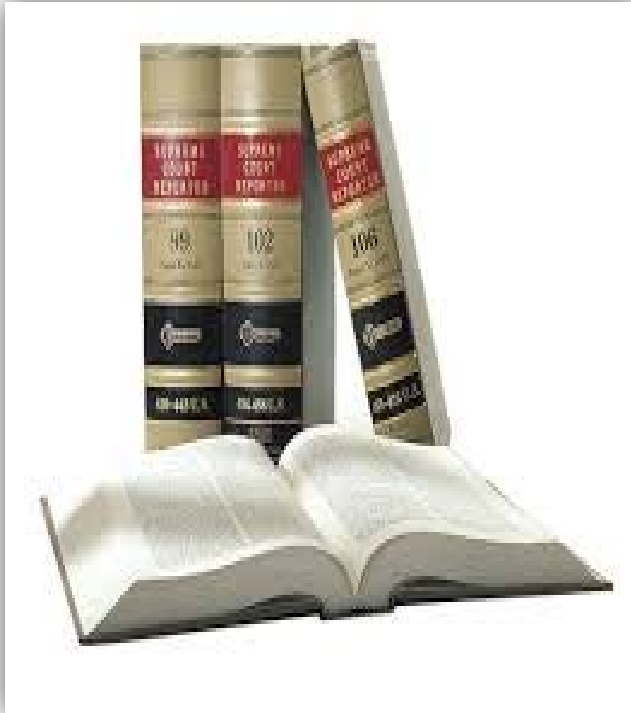
Fair Labor Standards Act Decision

Flores v. City of San Gabriel 824 F. 3d 890 (9th Circuit 2016)

- **Multiple principles of the FLSA covered in this decision**
 - Dollars from a Cafeteria Plan factor in the regular rate of pay for overtime
 - What determines whether a Two Year or Three Statute of Limitation Applies
 - When do Liquidated damages apply

Flores v. City of San Gabriel

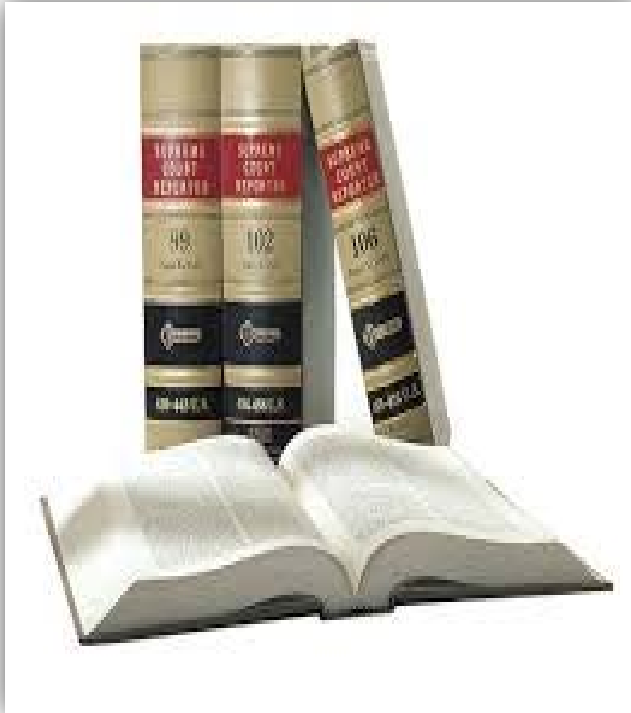
Regular Rate of Pay



- City offered through its cafeteria plan a number of choices on how to the flexible benefit dollars after selections were made for dental and vision:
 - ✱ Apply to medical premiums and unused portions taken per pay period as taxable income.
 - ✱ With proof of other insurance, employees could opt out and receive a certain amount paid out per pay period as taxable income.

Flores v. City of San Gabriel

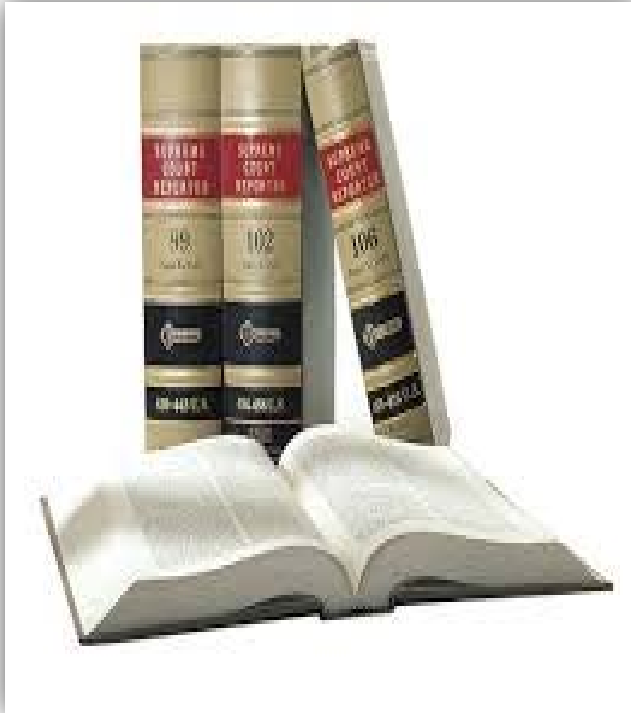
Regular Rate of Pay



- 15 Officers sued contending that failure to include the cash payments in their regular rate of pay for overtime violated the FLSA.
- City's primary defense was that payments were not for hours worked under Section 207 (e)(2):
 - ✱ This section provides several exclusions including for "other similar payments to an employee which are not made as compensation as compensation for his hours of employment."

Flores v. City of San Gabriel

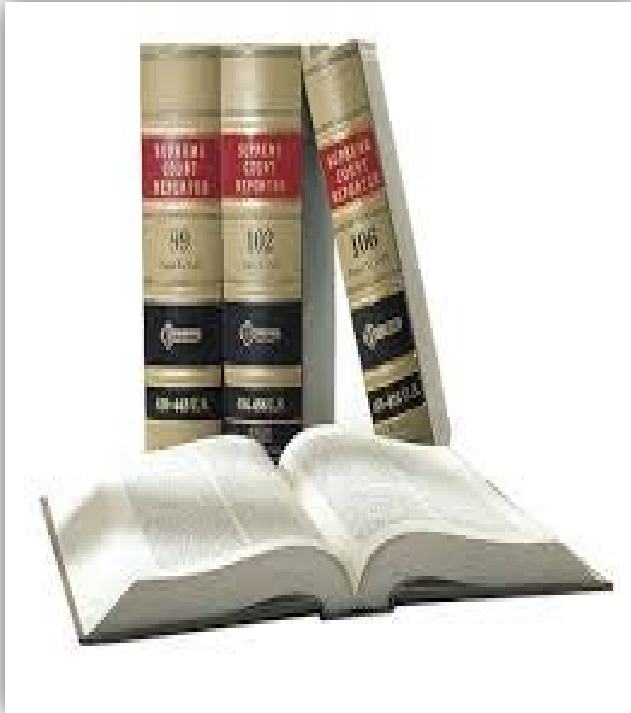
Regular Rate of Pay



- The District Court disagreed noting that the payments were subject to taxes and thus should have been included in the regular rate of pay.
- Court of Appeal noted that the DOL regulations stated that since it would not be feasible to list all payments made by an employer, the payment must be similar in nature to the ones listed in 207(e)(2) (vacation, holiday, travel expenses).
- Flexible benefits are not similar and thus included for OT purposes.

Flores v. City of San Gabriel

Regular Rate of Pay



- Court of Appeal went further and noted the City's cafeteria plan was not a "bona fide" plan.
- The Court of Appeal reasoned that if the purpose of the plan was for medical benefits, the plan failed the test when 40% or more was paid out in cash and not for medical premiums.
- The result: all payments made under the plan are included in the regular rate of pay.

Flores v. City of San Gabriel

Statute of Limitations



- SOL is two years unless the violation is willful and then SOL is 3 years.
- US Supreme Court has defined willful as “the employer knew of the violation” or “showed reckless disregard for the matter” of whether the conduct violated the FLSA
- Despite noting that this was a case of first impression, Court of Appeal held violation was willful.

Flores v. City of San Gabriel

Liquidated Damages



- Employees entitled to double the recovery as liquidated damages unless employer can show that it acted in good faith and had reasonable grounds to believe it complied with the FLSA.
- The Court of Appeal rejected arguments that HR and Payroll Departments worked together.

Flores v. City of San Gabriel

Liquidated Damage



- Court of Appeal essentially stated that in order to meet the good faith and reasonable grounds test the employer needs to show what steps were taken to determine the particular payment satisfied the FLSA
- The Court of Appeal was also not persuaded by the showing that the City complied with the FLSA in other payments.

New Laws Effective In 2016

AB 1661 – Govt. Code



- Mandates sexual harassment prevention and education training for all elected officials.
- Effective September 29, 2016.
- Required for elected officials who receive any kind of compensation, salary or stipend.
- 2 hours of training required
 - ✱ Within Six months of office
 - ✱ Every 2 years

AB 1661 – Govt. Code



Content of Training

- Information and practical guidance on stated and federal law concerning the prohibition against, the prevention and correction of, sexual harassment and the remedies available to victims of sexual harassment.
- Presented by trainers or educators with knowledge of these areas.

Questions?