President's Message

What's Hot in the New Millennium?

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I AM PLEASED TO REPORT that our new Mentorship Program is off and running. You can read about it on page 14 of this issue. As I have shared with you, a major goal of this program is to expose lawyers, both new attorneys as well as experienced, veteran lawyers to areas of practice otherwise unfamiliar to them.

The purpose is to provide insight (delivered in meetings with a mentor) and resources to the lawyer about an area of practice, enabling him or her to decide whether this practice area would be a useful or gratifying area of law to add to an existing law practice, or perhaps provide to the lawyer who is dissatisfied, discouraged or disillusioned with his or her present practice a fresh, new start and an opportunity to discover a passion for the practice of law, a concept unfamiliar to too many practitioners.

The theme for this month's *Valley Lawyer* turns the focus to labor and employment law. To say that this area of law is *hot* is a gross understatement.

What then makes labor and employment law practice so enticing, so desirable, so hot in the new millennium? Well, for one thing, our persistent ailing economy, business downsizing, a declining or (at best) flat job market, and increased government enforcement has resulted in a dramatic increase in employment lawsuits. In a strong economy (a now-unfamiliar concept), employees find new jobs quickly and are less inclined to file employment-related claims. However, discharged and unemployed workers facing financial ruin are more motivated to pursue litigation.

Moreover, litigation rises in an economic downturn as government regulators step up enforcement, and organizations are more apt to file lawsuits to collect on money owed. Not surprisingly, a recent litigation trends survey found that labor and employment disputes are predicted to account for a significant number of those lawsuits.

Whether choosing to represent labor (employee) or management (employer), the labor and employment lawyer has the benefit of an ever-changing landscape of laws and regulations, providing plaintiff counsel a wide spectrum of potential causes of action to pursue for a disgruntled employee, while affording management counsel a never-ending supply of issues and policies to navigate on the employers' behalf, not to mention drafting frequent and often comprehensive updates to the clients' employment policies and procedures manual.

Given the growing regulatory component associated with labor and employment law, it is not at all surprising that both the disgruntled employee and the overwhelmed employer seek counsels' advice, consultation and in the case of disputes, litigation services. Indeed, this area of law is wide in scope and breadth. Issues involve the interpretation and evaluation of a wide variety of laws and regulations, an exhaustive list which include: Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Fair Labor Standards Act, the WARN Act, Labor-Management Reporting and Disclosure Act of 1959, the Migrant and Seasonal Agricultural Worker Protection Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, and many other federal and state laws.

In the context of discharged employees, an event which gives rise to most employment law litigation matters, and prior to 1988, it was commonplace (and somewhat lucrative for plaintiff and counsel), particularly for an employee without a written contract (most), to bring a tort action under the doctrine of "breach of the implied covenant of good faith and fair dealing," which represented an extension of insurance law to the employment arena. Thereafter, and following the California Supreme Court's landmark holding in *Foley v. Interactive Data*, that tort remedy was no longer available in the employment context.

Hence, we saw a rapid and significant reliance by plaintiffs and counsel of the various claims under the umbrella of discrimination as the wrongful cause for termination, i.e., age, race, religion, sex and physical

disability to name a few. Added to the multitude of discrimination claims are alleged public policy violations, including retaliation (including whistleblower and *qui tam* claims).

Such litigation, while often leading to large settlements and verdicts (those deemed having merit) are expensive both to prosecute and defend, time-intensive and can exact a significant toll on the discharged employee, the employer's staff and in particular, plaintiff's former colleagues who are often called to testify. Such testifying colleagues are frequently emotionally torn between rendering testimony that would be favorable to their friend, versus the desire to keep their job.

Finally, the attorney often finds him or herself counseling the client, be it the discharged employee or employer. As I had the opportunity to represent both sides throughout the years of practice, I can attest to the need to counsel, sooth—and above all—provide objectivity to the fired, humiliated employee who most often believes that he or she gave their work duties "their all," and were wrongfully terminated. Sometimes the attorney views the claim as having merit, but oftentimes must tell the prospective client that though now unemployed, they have no sustainable claim.

On the other hand, and as a prelude to the necessity of providing a defense in a lawsuit, the management lawyer often assumes a role of counseling the client in a preventative sense; avoid claims brought by employees by understanding the law, observe wage and hour guidelines and train upper level management to understand and appreciate the pitfalls of conduct that could be construed as harassment, abuse and hostile to the work environment.

Not covered in this discussion are other aspects to this vast body of practice, including labor relations law (union disputes) and worker's compensation law. All in all, the practice of labor and employment law offers the practitioner a broad and challenging practice.

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