



WEEKLY LAW RESUME™

Issue By: Steven D. Werth

February 10, 2011

Statute of Limitations Bars a Viable Sexual Harassment Claim

Irene Trovato v. Beckman Coulter, Inc., et al.

Court of Appeal, Fourth District, Division Three (January 27, 2011)

In this case, the Court of Appeal upheld the trial court's decision granting summary judgment in favor of an employer and an employee-supervisor on the ground that the one-year statute of limitations had run against a former employee's claim of sexual harassment and retaliation. While it was clear to the Appellate Court that there was a triable issue of material fact as to whether the former employee was sexually harassed, the Court concluded that the statute of limitations had run on her claims. The last act of harassment or retaliation occurred in January, 2007, and the administrative complaint was not filed until May, 2008, three months after the applicable statute ran.

The plaintiff, Irene Trovato ("Trovato"), began working for Beckman Coulter, Inc. ("Beckman") as a sales representative in January, 2006. Michael Allyn ("Allyn") was Trovato's direct supervisor for part of her employment at Beckman. Trovato submitted a letter of resignation on May 14, 2007 with an effective date of May 25, 2007.

On May 8, 2008, Trovato filed an administrative complaint against Beckman with California's Department of Fair Employment and Housing ("DFEH"). Trovato sued Beckman and Allyn on May 22, 2008. Trovato's complaint asserted causes of action for harassment in violation of Government Code § 12940(j), and retaliation in violation of Government Code § 12940(h).

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Before filing a lawsuit for harassment or retaliation, a party must file an administrative complaint with the DFEH. The administrative complaint must be filed within one year of the date on which the unlawful practice occurred pursuant to Government Code § 12960(d). The statute of limitations starts to run from the time of the conduct constituting sexual harassment. According to the undisputed evidence, the last act of harassment by Allyn against Trovato, and the last act of retaliation by Beckman and Allyn against Trovato, occurred on or about January 31, 2007, when Allyn gave Trovato her 2006 performance review. Therefore, Trovato's administrative complaint had to be filed within one year from January 31, 2007. However, Trovato's administrative complaint was filed with the DFEH on May 8, 2008, more than three months too late.

To establish the triggering of the statute of limitations on January 31, 2007, Beckman and Allyn offered into evidence Trovato's deposition testimony that there was not "any subsequent incident of alleged sexual harassment involving Mr. Allyn" after the performance review on that date. They also offered Trovato's deposition testimony that she could not recall any incidents of retaliation after November, 2006. In support of her opposition to the motion for summary judgment, Trovato submitted a declaration, dated July 30, 2009, in which she stated: "From January 2007 through May 22, 2007, Allyn is not my manager at Beckman, but he is still harassing me." However, Trovato did not identify any acts of harassment or retaliation occurring after January 31, 2007.

The Court found that the conclusory statements in Trovato's declaration were not sufficient to raise a triable issue of material fact on the statute of limitations issue, and she could not defeat the granting of summary judgment by contradicting her sworn deposition testimony on material points in a later-filed declaration. The Court found that Trovato did not offer any admissible evidence that, after January 31, 2007, Allyn harassed her or that she suffered any adverse employment actions, much less that such conduct was causally linked to her reporting of Allyn's sexual harassment in the Summer of 2006.

Trovato also argued that the "continuing violation doctrine" applied and saved her case. The continuing violation doctrine "allows liability for unlawful employer conduct occurring outside

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the statute of limitations if it is sufficiently connected to unlawful conduct within the limitations period."

Beckman and Allyn argued that the continuing violation doctrine did not apply because no act of harassment or retaliation occurred during the limitations period, i.e., between February 1, 2007 and January 31, 2008. The Court agreed, indicating that Trovato had not identified any conduct occurring within the limitations period that was similar in kind to the conduct that fell outside the period.

COMMENT

While a party may be able to show triable issues of material fact with regard to sexual harassment and retaliation, the party must file an administrative complaint with the DFEH within one year of the date on which the unlawful practice occurred or their case will not go forward. The statute of limitations starts to run from the time of the conduct constituting the harassing conduct. A party cannot contradict sworn deposition testimony on material points in a later-filed declaration in an effort to raise a triable issue of material fact on the statute of limitations issue. Further, the "continuing violation doctrine" only applies if the conduct occurring within the limitations period is similar in kind to the conduct that falls outside the period.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/G042940.PDF](http://www.courtinfo.ca.gov/opinions/documents/G042940.pdf)

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