

court ruled in favor Steadfast. Forecast appeals.

HOLDING: Affirmed. The language of the insurance policy controls. Here, the policy endorsements regarding SIRs specifically defined and identified the named insured (not an additional insured) as the entity required to satisfy the SIR as a precondition to coverage. Who may satisfy an SIR depends on a policy's express terms.

EMPLOYMENT LAW

• **Barbosa v. Impco Technologies, Inc.**

FACTS: Barbosa worked for IMPCO as a carburetor assembler. He was a "cell leader" who supervised other carburetor assemblers. Two employees in his cell complained to Barbosa that they were missing two hours of overtime. Based on this conversation, Barbosa believed that he, too, was missing two hours of overtime. Barbosa spoke to the payroll and was advised that the time cards did not reflect unpaid overtime. Payroll believed the time clock was off and told Barbosa to have his supervisor approve the overtime. He did. After Barbosa and the employees received overtime pay, the payroll administrator compared the time cards with the gate entry report and discovered that Barbosa and the others could not have worked the overtime claimed. Barbosa said he must have been mistaken and offered to repay the overtime wages; he was terminated for falsifying time records. He sued IMPCO. The trial court granted IMPCO's motion for nonsuit.

HOLDING: Reversed and remanded for jury determination of Barbosa's good faith and employer's reason for his termination. The Court held that the public policy in favor of the employer's duty to pay overtime wages protects an employee from termination for making a good faith but mistaken claim to overtime.

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CONSTRUCTION DEFECT

• **Suarez v. Pacific Northstar Mechanical**

FACTS: Pacific Northstar Mechanical was the HVAC subcontractor working at a multi-employer construction site. One of its employees was slightly injured by a preexisting, non-obvious hazard (an ungrounded light fixture) that was **not** created in the course of Pacific's work. The employee told his foreman about the incident; the foreman did **not** report it to the general contractor. Shortly thereafter, Suarez (an employee of the general contractor) was seriously injured by the same hazard.

Suarez sued Pacific. Pacific filed a motion for summary judgment on the ground that it owed no duty of care to Suarez, as it did not own or control the property, did not create the dangerous condition, and was not hired to inspect or work on the ungrounded light fixture. The trial court granted summary judgment for Pacific on Suarez's cause of action for negligence. Suarez appealed.

HOLDING: Reversed. The court held that although no common law or contractual duty existed, Pacific owed a statutory duty of care under Labor Code Section 6400.

This case created a new duty of care that requires each employer at a multiemployer

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worksite to report (to the general contractor) all non-obvious hazards about which the employer learns because its employees were exposed to the hazard *even if the employer did not create the hazard*.

TORTS

• Cabral v. Ralphs Grocery Company

FACTS: On February 27, 2004, Cabral's pickup truck collided with a big rig driven by Hen Horn (an employee of Ralphs), which was stopped on the side of the freeway in an emergency parking area. Cabral died in the collision and his widow sued Ralphs for wrongful death. Ralphs cross-complained for property damage to the big rig. The jury returned a verdict for Plaintiff on her complaint and for Ralphs on its cross-complaint.

Ralphs appealed, contending that, as a matter of law, Horn owed no duty to Cabral to avoid stopping in the emergency parking area.

HOLDING: Reversed. There is no duty on the part of Ralphs (and its driver, Hen Horn) to ensure that Cabral's vehicle, upon leaving the roadway, would have a "safe landing." As a matter of law, a reasonable person would not conclude that Horn's act of stopping on the side of the freeway, sixteen (16) feet away from the edge of lane four, in the dirt area, would subject motorists using the freeway to an unreasonable risk of harm.

EMPLOYMENT/HARASSMENT

• Haberman v. Cengage

FACTS: Alicia Haberman was employed by Cengage as a text book sales representative. After she was placed in a "performance improvement program" following consecutive years of failing to

meet her sales goals, Haberman sued Cengage, her former supervisor (Reed), and Cengage's national manager (Bredenberg) for sexual harassment under FEHA and other causes of action.

The trial court granted summary judgment for defendants, finding that the alleged acts of harassment did not rise to the level of establishing a hostile work environment as a matter of law. Haberman appealed.

HOLDING: Affirmed. The hostile work environment form of sexual harassment is actionable only when the harassment is pervasive or severe. There is no recovery for harassment that is occasional, isolated, sporadic, or trivial. Here, the conduct alleged by Haberman occurred over an extended period and consisted of a few isolated comments and mild innuendos. Plaintiff did not show a concerted pattern of harassment of a repeated, routine or generalized nature. As a matter of law, the conduct alleged by plaintiff did not constitute a hostile work environment.

CONSTRUCTION DEFECT

• Forecast Home, Inc. v. Steadfast Insurance Co.

FACTS: Forecast is a housing developer. It required its subcontractors to obtain policies of insurance that included Additional Insured Endorsements naming Forecast as an additional insured under the policy. Forecast did not require any specific language regarding the insurances policies' self-insured retention (SIR) provisions.

Several subcontractors obtained the required insurance coverage from Steadfast. Steadfast denied Forecast's tender of defense on the ground that the subcontractor had not paid the policy's SIR. Steadfast argued that, under the terms of the policy, only the named insured (not Forecast) could satisfy the SIR and trigger coverage. Forecast filed a declaratory relief action against Steadfast. The trial