



October 3, 2011

Contact:
Douglas H. Hoang
Attorney at Law
213.417.5123
dhoang@mpplaw.com

Beware of What You Say: "Me Too" Evidence Allowed in Sex Harassment Lawsuit

Just when you thought it was safe to make comments out of earshot of a potential plaintiff, a California Court of Appeal in the case of *Pantoja v. Anton* reversed a judgment in favor of the employer and ordered a new trial because the trial court should have admitted "me too" evidence of alleged racial and gender bias.

In *Pantoja*, the plaintiff sought to introduce evidence of harassing and discriminatory conduct by the alleged harasser, even though some of the conduct was not in plaintiff's presence or even during her employment. The trial court excluded any such "me too" evidence unless it occurred "while Pantoja was an employee and that she perceived or was affected by them." After trial, the jury found in favor of the employer.

In reversing the judgment, the Court of Appeal ruled that the trial court's exclusion of the "me too" evidence was improper and prejudicial. The Court of Appeal found that "the evidence was admissible to prove [the alleged harasser's] intent or motive even if the conduct did not take place in Pantoja's presence and unknown to her." Specifically, it was found that the "me too" evidence was admissible to show the alleged harasser's intent and to counter his claim that he had profane tirades directed at situations as opposed to individuals such as Pantoja. Further, the Court of Appeal found such evidence admissible to contradict the alleged harasser's policy not to tolerate sexual harassment.

Based on the breadth of this decision, employers should be aware of the possible implications of allowing uncorrected conduct which may be considered harassing or discriminatory.