

# #MeTooLawyers -- MCLE hosted by ALRP

## **Sexual Harassment Experienced by Lawyers**

Tuesday, March 20, 5:30-7:30 p.m.

Presenters: Heidi Machen, Esq., Machen Law, San Francisco

&

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# Focus Group: Eva Chu v. Acme Law Firm

- Mini-opening: (2005-2012) and Burden of Proof.
- Causes of Action:
  - 1. Acme Law Firm Discriminated against Plaintiff b/c of her gender by failing to promote her and/or by terminating her employment;
  - 2. Acme Law Firm Retaliated against her by failing to promote her b/c she complained abt. Gender bias at the firm;
  - 3. Failed to take all rsbl steps to prevent gender discrim.
  - 4. Retaliated by terminating empmt b/c complaint about gender bias or b/c filed lawsuit.



# Plaintiff's Case

Eva Chu v. Acme Law Firm

## **Men were promoted ahead of women.**

Chu generated more \$ than junior partners of similar tenure who were promoted and allowed to serve on board.

## **Ideas coming from women were quickly dismissed; women were invisible/excluded.**

Not seated at the table – literally.

Al Gore dinner and all men ski trip: “women kill the buzz.”

## **Women who experienced sexual harassment received little support.**

- Ms. Chu complained about Partner Ajit Nazre, mngmt encouraged her to “marry him” or at least have one-on-one lunch to discuss & Nazre was promoted;
- After she ended their relationship, he excluded her from imp. emails, mtgs.
- Co.’s reprimand of him was to deduct \$22K from his paycheck but no strong desire to reprimand him until multiple allegations were confirmed involving other women;
- His office moved to her corridor & in same division: problem? Solution: move Chu.

# Plaintiff's case, continued

## ➤ Testimony:

### ➤ HR expert

- Contradictory perf evals saying Chu was “too bold” and “too quiet”
- Approp. Conversations, e.g. porn star tours at Playboy Mansion?
- Will also talk about appropriate versus inappropriate gifts:
- Valentines Day gift of “Book of Longing” poetry from Senior Partner;
- One-on-one dinner invite from same Senior Partner. . .

### ➤ Co-workers

- Men: “women kill the buzz”
- Women: some will back up Ms. Chu's version of events. When one woman complained of a partner answering hotel room in bathrobe. .

# Plaintiff's case, concluded

- Defense may argue that it has more women than its competitors, but. . .
  - Defense may argue that Chu had every advantage, but. . .
  - Look at the timing, look at the decision-making look at the retaliation.
    - Timing of advancement of female co-worker;
    - Advocacy of women only when it was convenient.
- Simply no excuse for discriminatory violations of the law.  
Worth: \$16 million.

# Defendant's Case

- Chu was given every advantage:
  - \$567,000 year pay was higher than some more senior men;
  - Manson, Chairman attorney, was her mentor;
  - Allowed to move freely between transactions and litigation dept.
- Relationship with Nazre was consensual, no sex harassment claim.
- Termination had nothing to do with her complaints or that she filed a lawsuit but rather with her own inability to move forward w/ the firm. (look to perf reviews, inability to work well with others, “entitled,” “not a team player”)

# Defendant's case, continued...

- Acme Law compares well in its industry:
  - Large ratio of women in leadership, including managing partners from whom you will hear.
  - High pay scale for women – more than half a million a year for Junior Partner Chu.
  - Emails show Chu expected to be fired and she accepted her severance package valued at \$400,000 even though she didn't get the full amount because she got a better paid job w/in one year.
  - Was Chu really motivated by a search for justice?
    - Husband Buddy Fletcher filed for bankruptcy in 2012.

# Questions Pre-Verdict Announcement

- Poll for verdict. What facts most impt. to you?
- 1. Why no Sexual Harassment claim?
- 2. Is Eva Chu a sympathetic Plaintiff? Why or why not?
- 3. What abt. Acme's argmt that its #'s are better than most?
- 4. Was P outnumbered by circling of wagons?
- 5. Was P's race a factor?
- 6. Contrasting neg perf evals as "too bold" and "too quiet?"



# Post Verdict Questions

- Defense Verdict
  - 10-2 in favor of Acme on first 3 claims;
  - 9-3 in favor of Acme on 4<sup>th</sup> claim of retaliation.
- Surprised by outcome?
- How could Chu have been more convincing?
- Was the world simply “not ready?” Did jury expect Chu to just “suck it up,” at her high level?
- Did consensual romantic relationship hurt her credibility? Is this just a double standard?

# Articles . . .

- Current Events Really do Shape How Law is Made.
- Some developments over the years:
  - 1994 Case that started it all: Baker & McKenzie rainmaker sued by inept secretary who won \$ 7.1 Million verdict. Right around time Sexual Harassment policies being implemented.
  - 2016. Farmers Insurance: \$4.1 Mil. Pay inequity settlement plus injunctive changes and Calif legislation.
  - 2017-18. **Big Law**: Sedwick, Steptoe, Ogletree.
  - ABA asks “Why Are Women Leaving the Law?”

# Black Letter – Recent Updates

## Pay Equity Legislation



California and San Francisco

### I. California Fair Pay Act 2015

- A. Sen. Hannah Beth Jackson – inspired by Farmers Insurance case
- B. Req's co's pay EE's equally for "substantially similar" work  
e.g. "housekeeper" v. "janitor"

### II. CA Pay Inquiry Ban (AB 168) (focus on seemingly neutral policies that may perpetuate salary disparity)

- A. Effective Jan. 1, 2018
- B. Prohibited from relying on or asking for prior salary history  
(only allowed if voluntary and not prompted)
- C. If publically avail, okay, but can't be sole reason for setting salary.
- D. If asked, must provide pay scale for position.

# San Francisco Pay Equity

- Effective July 1, 2018
- Prohibits ER's reg'd to do biz in SF from inquiring abt. salary history from people applying for job within city.
- ER's may not consider salary history in hiring or salary decisions (but, if voluntarily disclosed, ER may consider).
- Cannot release salary history of current or former EE to prospective ER w/out written consent.
- Posting reqmt. and small monetary penalties.

# Focus on Harrassmt/Retaliation

- Calif. FEHA's expansive protections against harassment and retaliation include contractors and, also unpaid interns and volunteers (2015 law).
- DFEH harassment guide issued May 2, 2017
  - Components for effective program;
  - How to conduct fair investigation;
  - Maintaining impartiality & testing credibility during investigation;
  - Setting proper burden of proof.
- Calif. DOL has increased authority in retaliation:
  - Effective Jan. 1, 2018.
  - Unilateral investigation w/out complaints.
  - Petition for injunction; issue citations; obt. atty fees.

# Preview: Calif. Legislative Agenda

- Sexual Harassment – several proposed bills, and more to come:
  - Extend the SOL on all FEHA emp't harassmt and discrim cases from 1 to 3 years (AB 1870, Reyes).
  - Limit use of forced arbitration in harassment cases (AB 3081, Gonzalez).
  - Prevent secret settlements in harassmt cases (SB 820, Leyva).
  - Req record retention for 10 yrs in instances of sex harassmt (AB 1867, Reyes).