

SEPTEMBER 10, 2009

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EPL – LABOR & EMPLOYMENT

Ninth Circuit – Nevada – August 13, 2009. Federal Appeals Court Tackles Standards Under Sarbanes Oxley. The Ninth Circuit has determined that employees need only call attention to what they believed was fraud in order sue for wrongful termination under the federal Whistleblower statute. Two former in-house counsel claimed their employer fired them for reporting possible shareholder fraud in connection with a merger. The court not only allowed the case to proceed to trial, but also ruled that the former employees could use confidential information in their lawsuit.

Van Asdale v. International Game Technology, --- F.3d ----, 2009 WL 2461906 (C.A.9 (Nev.)).

New Hampshire – August 7, 2009. Corporate Policy Regarding Employees Does Not Give Rise to a Duty to Public-at-Large. Even though an employer adopts an internal corporate policy to deal with situations involving an impaired employee, this does not give rise to a duty to the general public according to the New Hampshire Supreme Court. Citing public policy reasons recognizing that alcohol and substance abuse is a serious societal problem causing significant human suffering and economic loss, the court found the public to be better served by having the problem addressed with corporate policies such as the one at issue here. Thus the court refrained from imposing a greater liability upon the employer for enacting its policy addressing employee impairment.

Everitt v. General Elec. Co., --- A.2d ----, 2009 WL 2412368 (N.H.)

California – August 21, 2009. No Compensation Under FLSA for Commuting in Employer's Vehicle. Even though an employer places conditions on the use of its vehicle and requires an employee to commute to work in the vehicle, this is not enough to render it compensable work. Likewise, pre-commuting activities in preparing, routing and prioritizing jobs do not fall within the ambit of compensable work. While these activities are related to an employee's principal activities, the court found them to be *de minimis*. However, the court did allow the employee to proceed on his claim for compensation for his duties after work in transmitting information back to the employer via a modem provided by the employer at his home.

Rutti v. Lojack Corp., Inc., 2009 WL 2568661 (C.A.9 (Cal.))