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## Individuals Are Not Liable for Retaliation under California Law, But Employers Remain Liable

On March 3, 2008, the California Supreme Court ruled that only employers may be held liable for retaliation under California law, but non-employer supervisors and other workers are not personally liable for retaliation.

In *Jones v. The Lodge at Torrey Pines Partnership*, the plaintiff sued his employer, The Lodge at Torrey Pines Partnership, and his supervisor, Jean Weiss, for sexual orientation harassment, sexual orientation discrimination and retaliation. The only issue the Supreme Court addressed was whether Weiss could be held personally liable for retaliation.

Although several appellate courts had ruled that individuals could be personally liable for retaliation, California's highest court disagreed. Consistent with its previous ruling that individuals cannot be personally liable for *discrimination*, the California Supreme Court determined that individuals cannot be liable for *retaliation* under the California Fair Employment and Housing Act. The Court confirmed, however, that individuals can be liable for harassment.

In the dissenting Justices' view, the High Court's opinion encourages supervisors to retaliate: "[the majority's] holding *incentivizes* supervisors who harass (and thus face the risk of personal liability . . .) to also retaliate against employees who oppose the harassment in an effort to dissuade their victims from reporting the conduct – under the majority's view, the supervisor risks no additional liability for retaliating and might avoid liability for harassment as well, if he or she successfully 'discourages' the employee from pursuing a claim."

**So what does this mean for employers in California?** Employers need to make sure their supervisors and other employees are aware that California law continues to prohibit harassment, discrimination, and retaliation in the workplace. Moreover, employers should take affirmative steps to ensure that supervisors and co-workers do not retaliate against those who report discrimination or complain about harassment in the workplace. Ultimately, only the employer may bear the legal responsibility for the retaliatory conduct, and the tens or hundreds of thousands of dollars in resulting damages.

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