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Top 75

Labor and Employment Attorneys

The *Daily Journal*'s first special issue devoted to Labor & Employment was published three years ago with a cover that read: "Waiting for Brinker." That headline was an acknowledgement that the development of employment law had grown stagnant despite being a practice that consumes vast court time and resources. Even in California, the nation's hotbed for cutting edge (businesses might say edge cutting) employment litigation, the development of the law wasn't progressing.

2012 changed all of that.

In February, California's 1st District Court of Appeal issued a strongly worded opinion in *Duran v. U.S. Bank National Association* that gave crucial guidance on certification of class actions in wage and hour misclassification litigation. Two months later, on April 12, the California Supreme Court issued its long-awaited and seminal ruling in *Brinker v. Superior Court* that provided guidance on the issue of meal and rest breaks. On April 30, the California Supreme Court was at it again. This time, in *Kirby v. Immoos Fire Protection Inc.*, the justices said violations of meal and rest breaks do not provide a basis for statutory attorney fees to the prevailing party.

For the lawyers on the Daily Journal's list of top practitioners in California everything has changed and nothing has changed. Employment has been and will remain one of the busiest areas of the law – despite the recent rulings, most experts believe. What's different is the lawyers now have some new tools with which to work their craft.

— The Editors

COURTESY PHOTO

Christopher P. Wesierski

Wesierski & Zurek LLP

Irvine

Specialty: wrongful termination, sexual harassment, class actions, wage and hour

When it comes to sexual harassment cases, Wesierski said he has faith in juries to keep an open mind.

"I think that defendants sometimes worry about them more than they need to," he said. "Jurors are 12 people who listen to what you have to say and have common sense. If someone is trying to allege that they are harassed — but also is harassing — a jury is going to turn them away."

Such was the case, he said, when following voir dire and before opening statements, the plaintiff in one of the cases he was defending refused to return to trial. *Alworth v. Electronic Times*, 30-2009-00125720 (O.C. Super. Ct.).

"The plaintiff was claiming that my client had sent her emails that were inappropriate — jokes and pictures," he said. "But she had also done the same thing."

The turning point came while the attorneys were questioning the prospective jurors and their responses revealed that they might be coming down on the defense side, Wesierski said.

"I think she didn't want to go through the cross-examinations," he added. "My client was ecstatic. It saved money and anguish."

Another of Wesierski's cases involved a dispute in which a veterinarian claimed she was fired because she refused to have sex with Wesierski's client, a fellow veterinarian who owned the emergency animal care clinic where she worked. *Van Volkenburgh v. Katcherian*, 30-2010-00384217 (O.C. Super. Ct.).

Wesierski was able to convince the jury otherwise. While the plaintiff had demanded $4.4 million, the jury instead returned a defense verdict.

One thing Wesierski has observed about juries in sexual harassment cases: The females tend to be more skeptical than the males.

"Females tend to be tougher," he said. "If a plaintiff breaks down and cries, females may be able to see through it if it's a charade."office.

— Pat BroderickK