

Supervisors Are Employees Too ... To The Tune Of \$6.6 Million

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What termination of a single employee can justify a \$6.6 jury award? (The punitive award was reduced by the lower court from \$15.9 million. The employee also received \$2.2 million in non-punitive damages). According to the Ninth Circuit Court of Appeals, the federal appeals court for western states including California, the following elements justify a lower court jury's award in this amount:

- Discharge found to be in retaliation for suing for overtime pay, reporting violations to OSHA and Department of Transition, and inciting other employees to file lawsuits.
- Where the decision was made by a high level executive who was at the top of a 7,000-employee district (a "managing agent" under California law).
- The decision was aimed to protect company "culture" because the decision maker felt that supervisors such as the plaintiff has a higher level of responsibility to the company. Seemingly the jury found this to entail greater corporate responsibility.

The appeals court's decision can be found [here](#). This case entailed some unique aspects of California law, and of course every situation is unique, but it does underscore not only that supervisors have employment rights, but that the stakes are higher when terminating supervisors. Their wages and therefore potential damages are higher, but in addition their termination usually gets into higher approval levels for which juries will attribute greater company responsibility. Virtually any termination should include at least a base touch with counsel. A potential whistleblower and/or retaliation scenario involving a supervisor are facts that call for the utmost care and consultation prior to the decision.

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