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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAY RHEAD,
Plaintiff,

No. 2:09-cv-00705 MCE-GGH

v.

MEMORANDUM AND ORDER

RYDER INTEGRATED LOGISTICS,
INC., a Delaware Corporation
doing business in California;
DOES 1 through 30, inclusive,
Defendant.

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Plaintiff Ray Rhead ("Plaintiff") seeks damages as a result of injuries he sustained during and after his employment with Defendant Ryder Integrated Logistics, Inc. ("Defendant"). Plaintiff alleges he was subjected to work in a hostile and uncomfortable working environment stemming from an inter-office affair between two employees. He further claims to have been ultimately terminated by Defendant for complaining about the affair.

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1 Plaintiff's Complaint was filed in Sacramento Superior Court
2 in January 2009. (ECF No. 1.) Defendant removed the action to
3 this Court, as complete diversity of citizenship exists between
4 the parties, and the amount in controversy exceeds the
5 statutorily required amount. Although no motion to dismiss was
6 ever filed, Defendant has now moved for Summary Judgment (ECF
7 No. 22) against Plaintiff, arguing that (1) Plaintiff cannot
8 establish a prima facie case for retaliation in violation of
9 California's Fair Employment and Housing Act ("FEHA"), (2) a
10 claim for wrongful termination for public policy reasons cannot
11 be sustained by a claim of a statutory violation, and
12 (3) Plaintiff is not entitled to argue that an implied covenant
13 of good faith and fair dealing applies to his employment because
14 such a covenant cannot alter terms of an at-will employment
15 relationship. For the reasons stated below, Defendant's Motion
16 will be denied.¹

17
18 **BACKGROUND²**
19

20 Defendant is a Delaware corporation with its primary place
21 of business in Florida and a facility in Stockton, California,
22 and provides transportation and shipping services out of this
23 location.

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25 ¹ Because oral argument will not be of material assistance,
26 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 230(g).

27 ² The factual assertions in this section are based on the
28 allegations in Plaintiffs' Complaint (ECF No. 1) unless otherwise
specified.

1 On or about July 2004, Plaintiff was hired by Defendant as a
2 temporary driver. By November 2005, Plaintiff worked for
3 Defendant full-time.³ During a discussion about his full-time
4 employee status, Plaintiff and his supervisors, including
5 Ms. Bradshaw, discussed the policy for requesting days off.
6 Plaintiff was under the impression that time off requests would
7 be honored as long as they were made two weeks in advance.

8 During the course of his employment, Plaintiff's supervisor,
9 Stephanie Bradshaw, allegedly engaged in an inter-office affair
10 with a married co-worker. Ms. Bradshaw was also married, and the
11 two conducted the affair during work hours and on Defendant's
12 premises. Plaintiff complained directly to Logistics Manager
13 B.J. Kline, and made it "expressly clear that he found the
14 inappropriate sexual behavior" between Ms. Bradshaw and the other
15 co-worker highly offensive. Plaintiff also made his disapproving
16 feelings well known within Defendant's Stockton facility. At
17 some point in late 2006, Ms. Bradshaw was promoted and placed in
18 charge of daily operations and driver scheduling.

19 Plaintiff requested a vacation day for June 20, 2007. When
20 Plaintiff originally broached the request to Ms. Bradshaw, she
21 stated that "it would be difficult for her to grant him his day
22 off request and that he should re-submit the request two weeks
23 prior to the date requested."

24
25 ³ Defendant argues Plaintiff was aware he signed an
26 agreement at the time of hiring stating that he was an at-will
27 employee whose employment could be terminated at the discretion
28 of either party. (Def. Mot. at 10.) While Plaintiff does not
state that he was an at-will employee in the Complaint, he does
not refute Defendant's assertions in his Opposition (ECF No. 33).
For purposes of this motion only, the Court will treat
Plaintiff's employment status as at-will.

1 Plaintiff did so, but ultimately did not receive the day off.
2 Upon learning this, Plaintiff informed Defendant, through Ms.
3 Bradshaw, that he would not be showing up to work on June 20,
4 2007, despite his clear understanding that he had not been
5 granted the day off. Two days later, Defendant terminated
6 Plaintiff's employment.

7 Defendant's Employee Point System ("EPS") provides that
8 prior to an employee being terminated for attendance issues, he
9 or she must receive a verbal and written warning, and a
10 suspension within the six months prior to termination. Plaintiff
11 was neither written up nor suspended according to the terms in
12 the EPS, which, according to Plaintiff, would have been the
13 appropriate discipline in light of his failure to appear for work
14 on the scheduled day. Despite these express provisions,
15 Plaintiff believes that Defendant terminated him in retaliation
16 for "openly opposing [Ms. Bradshaw's] sexually inappropriate
17 behavior" in the workplace.

18 Defendant denies terminating Plaintiff's employment based on
19 retaliation for his complaints and opinions about Ms. Bradshaw's
20 affair, and insists the company had granted many of Plaintiff's
21 other requests for days off long after he had complained about
22 Ms. Bradshaw's affair. (See Def. Mot. at 10-11.) Defendant
23 contends Ms. Bradshaw simply did not grant Plaintiff June 20th
24 off because two other, more senior drivers already had requested
25 the day, and six other drivers were already going to be out on
26 June 20. (Id.) Ultimately, Defendant argues that Plaintiff was
27 terminated solely because he failed to report to work despite
28 explicit instructions from his manager to do so.

1 See T.W. Elec. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626,
2 630-631 (9th Cir. 1987), citing Matsushita Elec. Indus. Co., Ltd.
3 v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).
4

5 **ANALYSIS**

6 **A. Retaliation**

7
8 FEHA was enacted to prohibit employment discrimination based
9 on sex, race, religion, physical disability, or other protected
10 class. Cal. Gov't Code § 12920. California cases have
11 established that preventing sexual harassment in the workplace is
12 a legitimate goal under FEHA, one that includes protection
13 against the creation of a work environment that is hostile or
14 "abusive on the basis of sex," even if "plaintiff [himself] never
15 is subjected to sexual advances." Miller v. Dept. of
16 Corrections, 36 Cal. 4th 446, 461-2 (2005). Such a claim may
17 stand when a "sexual relationship impresses the workplace with
18 such a cast" that conveys a demeaning and sexist environment
19 among employees. Id. at 469.

20 FEHA protects employees against retaliation for reporting
21 discriminatory behavior. Specifically, § 12940(h) states that no
22 employer may discriminate against an employee for opposing "any
23 practices forbidden under this part or because the person has
24 filed a complaint, testified or assisted in any proceeding under
25 this part."

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1 To prove retaliation under FEHA, a plaintiff must be able to
2 demonstrate the following: (1) he engaged in protected activity;
3 (2) the defendant subjected him to an adverse employment action;
4 and (3) a causal link existed between the protected activity and
5 the employer's adverse action. See Miller, 36 Cal.4th at 472.

6 An employee cannot establish protected activity unless one
7 can show that there is an ongoing unlawful discriminatory
8 practice taking place in the workplace. Yanowitz v. L'Oreal USA,
9 36 Cal. 4th 1028, 1046-1047 (2005). But it is "well established
10 that a retaliation claim may be brought by an employee who has
11 complained of or opposed conduct that the employee reasonably
12 believes to be discriminatory, even when a court later determines
13 the conduct was not actually prohibited" by FEHA. Id. at 1043.
14 The California Supreme Court's Miller decision also construes
15 such activity as protected. See 36 Cal. 4th at 474 (complaining
16 of a sexually charged environment "may constitute sexual
17 harassment in violation of FEHA." (emphasis supplied)). Further,
18 any question of Plaintiff's subjective, good faith belief
19 "involves questions of credibility and ordinarily cannot be
20 resolved on summary judgment." Id. at 476.

21 Plaintiff contends that he was fired in retaliation for
22 complaining to management and openly criticizing Ms. Bradshaw's
23 affair. In his opposition to Defendant's motion, Plaintiff
24 argues that he reasonably believed Ms. Bradshaw's relationship
25 (and sexual activity in the workplace) was both unlawful and
26 highly offensive.

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1 Plaintiff's ability to prove retaliation hinges on his ability to
2 demonstrate that his complaints to management about the affair
3 constitute protected activity under FEHA.

4 The veracity of any reasonable belief Plaintiff had about
5 his conduct and the conduct of Ms. Bradshaw and Defendant cannot
6 be determined on summary judgment. Viewing the evidence in the
7 light most favorable to Plaintiff, the Court finds there are
8 triable issues of fact as to whether Plaintiff was retaliated
9 against for openly opposing Ms. Bradshaw's affair. Therefore,
10 Defendant's Motion for Summary Judgment on Plaintiff's
11 retaliation claim must be denied.

12

13 **B. Wrongful Termination**

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15 A wrongful termination case can be brought against an at-
16 will employer for public policy reasons if the discharged
17 employee can demonstrate that they were terminated for reporting
18 a statutory violation that served the public's benefit. Green v.
19 Ralee Engineering Co., 19 Cal. 4th 66, 76 (1998). The policy
20 must be "public in that it affects society at large, rather than
21 the individual, must have been articulated at the time of
22 discharge, and must be fundamental and substantial." Id.
23 (internal citations omitted).

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1 Violations of statutorily-authorized regulations can be used
2 as evidence of a public policy violation in "retaliatory
3 discharge actions." Id. at 80. The difficulty in assessing
4 these types of cases "lies in determining" the line between
5 "claims that genuinely involve matters of public policy, and
6 those that concern merely ordinary disputes between employer and
7 employee." Phillips v. St. Mary Reg. Med. Ctr., 96 Cal. App. 4th
8 218, 226 (4th DCA 2002).

9 Plaintiff argues that he was wrongly terminated because he
10 complained about Ms. Bradshaw's affair. According to Plaintiff,
11 this retaliatory behavior violated public policy since the
12 conducts violated § 12940. Defendant's motion argues both that
13 (1) Plaintiff's prima facie case fails to allege that his
14 discharge violates public policy, and (2) the language of
15 Plaintiff's complaint states that the public policy violation is
16 actually a recitation of the code, which cannot itself establish
17 that he was engaged in protected activity as required under FEHA.

18 Defendant's position is misguided. Case law demonstrates
19 that eliminating conduct which constitutes a statutory violation
20 may indeed inure to the public's benefit. See supra. An
21 inference can reasonably be drawn from the evidence before the
22 Court that Plaintiff reported Ms. Bradshaw's affair, not just
23 because he found her conduct offensive, but also because the
24 affair was negatively permeating the entire workplace. This
25 raises a triable issue of fact as to whether Plaintiff's actions
26 served the public benefit.

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1 Since the Court cannot weigh conflicting evidence at this stage
2 of the case, Defendant's request that Plaintiff's Wrongful
3 Termination claim be adjudicated in its favor must also be
4 denied.

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6 **C. Breach of Implied Covenant of Good Faith and Fair**
7 **Dealing**

8 California, through statute and common law, recognizes that
9 an at-will employment scheme may be terminated by either party
10 without cause. Guz v. Bechtel Nat., Inc., 24 Cal. 4th 317, 335
11 (2000). Several limitations of the scope of the at-will doctrine
12 have been recognized, including the acknowledgment that an
13 employment relationship is "fundamentally contractual," giving
14 the parties freedom to agree to limitations on termination
15 rights. Id. at 336 (internal citations omitted). Such an
16 agreement need not be express, but "may be implied in fact,
17 arising from the parties' conduct evidencing their mutual intent
18 to create such enforceable limitations." Id. (emphasis
19 supplied). Where such evidence may exist, the totality of the
20 circumstances must be examined to determine whether the conduct
21 or agreement created an implied-in-fact contract "limiting the
22 employer's termination rights." Id. at 337.

23 Plaintiff and Defendant had an express at-will employment
24 contract, and the EPS attendance plan was part of Defendant's
25 work policies and regulations. Plaintiff argues that he was
26 entitled to certain protections and due process under Defendant's
27 EPS plan, given the verbal assurances he received that to receive
28 days off he only had to provide two weeks' notice.

1 According to Plaintiff, because the "relationship between
2 employer and employee is fundamentally contractual," an implied
3 covenant of good faith and fair dealing also existed as an
4 inherent part of his employment, which "implies a promise that
5 each party will refrain from doing anything to injure the other's
6 right to receive the benefit of the agreement." (Compl. ¶ 33.)
7 Defendant, in turn, argues that because Plaintiff was an at-will
8 employee under contract, the covenant of good faith and fair
9 dealing cannot be used to vary the at-will employment contract's
10 express terms.

11 While Plaintiff may have been an at-will employee, there is
12 triable evidence that both the EPS system and Defendant's verbal
13 agreement to a days-off policy altered the terms of Plaintiff's
14 at-will relationship, and created de facto conditions for
15 termination. In particular, the EPS's standards for due process
16 before termination for attendance reasons may suggest the at-will
17 employment agreement was contingent on Defendant honoring the
18 program's specified terms. For these reasons, Defendant's Motion
19 for Summary Judgment as to this cause of action is denied.

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1 **CONCLUSION**

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3 Based on the foregoing, Defendant's Motion for Summary
4 Judgment is DENIED. The amended dates of the Pretrial Scheduling
5 Order stand (ECF Nos. 16, 17). The parties are to file a Joint
6 Status Report within thirty (30) days of this Order being
7 electronically filed.

8 IT IS SO ORDERED.

9 Dated: December 2, 2010

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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