

gay-rights measures overruled

State law governs issue of job bias, court says

By Robert D. Davila
Bee Staff Writer

A state appeals court in Los Angeles has invalidated ordinances in Sacramento, Davis and 10 other California cities that protect gays and lesbians from job discrimination.

The 2nd District Court of Appeal ruled this week that ordinances outlawing employment discrimination are pre-empted by the state Fair Employment and Housing Act. The court ruled in a case arising under a Los Angeles law that banned job discrimination on the basis of sexual orientation.

The Fair Employment and Housing Act protects employment rights for classes of workers on the basis of race, ethnicity, gender, religion and other criteria — but not sexual orientation.

Los Angeles attorney Thomas F. Coleman, who brought suit under the ordinance struck down Wednesday, said most cities enacted ordinances protecting job rights for gays and lesbians specifically to fill the gap left by the state law.

"What this ruling means is that gays and lesbians remain second-class citizens when it comes to protections for basic civil rights," Coleman said Thursday.

The appeals court also ruled that job discrimination against gays and lesbians does violate provisions of the state labor code signed into law last year by Gov. Pete Wilson. But unlike the Fair Employment and Housing Act, the labor code does not allow a plaintiff to win compensatory damages or attorney's fees.

"Without that, it's going to be hard to get lawyers to take these cases for gays and lesbians," Coleman said.

In Sacramento, deputy city attorney Diane B. Balter said she had not seen the ruling.

But she questioned whether the decision would apply to local provisions banning housing discrimination against gays and lesbians — or to a separate Sacramento ordinance that bans job and housing discrimination against people infected with the AIDS virus.

"We would have to review the case to determine whether any portions of our ordinances are invalid," Balter said.

Eric Vega, executive director of the Sacramento Human Rights/Fair Housing Commission, expressed surprise that the appeals court would strip local jurisdictions of authority to enact civil rights laws.

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Local laws called useful

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"Having local ordinances is very important because it's often the best place to handle these issues, rather than having to go to the state level," Vega said.

In Davis, officials could not be reached for comment Thursday evening at City Hall or the city's Human Relations Commission.

The ruling applies directly to the Los Angeles ordinance banning job discrimination against gays and lesbians. In a footnote, however, the appeals court observed that other California cities have enacted similar laws.

Besides Sacramento, Davis and Los Angeles, cities that have banned job discrimination on the basis of sexual orientation include Berkeley, Hayward, Laguna Beach, Long Beach, Oakland, San Diego, San Francisco, Santa Monica and West Hollywood.

Appellate court decisions are binding on all lower courts statewide unless contradicted by another state appeals court or overturned by the California Supreme Court.

SACRAMENTO BEE

Court Preempts L.A.'s Job Bias Rule on Gays

■ **Civil rights:** Appellate panel upholds state codes barring discrimination and says they supersede local ordinance. But some lawyers say California law is not strong enough.

By BETTINA BOXALL
TIMES STAFF WRITER

In a ruling that contained good and bad news for gay rights advocates, an appeals court has invalidated a 14-year-old Los Angeles ordinance barring job discrimination against gays and lesbians.

The ruling casts a legal shadow over similar laws in a number of California cities.

A state appeals panel, in an opinion received Thursday by attorneys, concluded that laws dealing with job discrimination are the province of the state rather than local governments, and that the Los Angeles ordinance was therefore preempted.

At the same time, however, the 2nd Appellate District's ruling reaffirmed that the state labor code prohibits job discrimination against gay men and women, even those who are not open about their homosexuality.

"Parts of it are quite good and parts of it are quite bad," gay rights attorney Jon Davidson said of the ruling, adding that he was concerned that the opinion undercut local authority. "Local jurisdictions have been deprived of any power to respond to local needs or local concerns by passing employment anti-discrimination laws," Davidson said.

State protections also lack some provisions contained in the Los Angeles ordinance and those adopted by other cities. Under the Los Angeles law, victims who win their cases can be awarded attorney fees—but not under state law.

"It puts victims of sexual orientation discrimination at further disadvantage," said attorney Thomas F. Coleman, who filed the appeal on behalf of a Los Angeles man who claimed that he had been harassed at a freight firm where he worked.

Los Angeles Times

FRIDAY

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Los Angeles City Councilman and mayoral candidate Joel Wachs, who authored the 1979 municipal ordinance, said the city should make every effort to uphold it.

"We set a different climate in Los Angeles with this law," Wachs said. "I'm going to insist that the city go forward in fighting to uphold this. Our law goes much further than the state's. We covered a lot of areas that were not covered by the labor code. It's critical that all of that be maintained."

Attorneys in other cities with similar anti-discrimination laws—from San Francisco to San Diego—had not heard of the decision and were uncertain of its effect on their communities.

"Based on what I'm hearing—and I haven't read the case yet—alarm does not seem to be in order," said Phil Kohn, city attorney for Laguna Beach. "That's if all the court is saying is that your remedy is state rather than local law. There are a lot worse things that could have happened."

In the Bay Area, attorney Michael P. Adams reacted with concern. "This is going to take away one of the strongest weapons for gays and lesbians facing discrimination," said Adams, a member of the Bay Area Lawyers for Individual Freedom, a regional gay and lesbian Bar association.

"It doesn't leave them without any defenses, because there is now a state law, but it is a blow nonetheless," Adams said. He was referring to a law passed last year that amended the labor code to clarify that it prohibited discrimination on the basis of sexual orientation.

The appellate court ruling came in the case of Jim Delaney, who sued Superior Fast Freight in 1990, claiming that he had been harassed and discriminated against for years because his fellow workers thought that he was gay. Delaney, a bisexual, never disclosed his sexual orientation, Coleman said.

A Los Angeles Superior Court judge dismissed the case in 1990, prompting Delaney's appeal. In the appellate decision, the panel reversed the dismissal and ordered the case remanded for further proceedings.

Paul Raymond Causey, Superior's attorney, said the company, which denies Delaney's allegations, will appeal the decision.

Staff writer Marc Lacey contributed to this article.

Supreme Court Likely to Decide Law on Gay Bias

By Dick Goldberg
Daily Journal Staff Writer

A case that began with a death threat appears headed to the California Supreme Court to test the legality of state and city laws prohibiting job discrimination against gays and lesbians.

Both sides vowed to appeal a 2nd District Court of Appeal ruling invalidating a Los Angeles city ordinance protecting employees from sexual orientation discrimination, while broadening a state law to protect employees from discrimination on the basis of *undisclosed or suspected* homosexual orientation. *Delaney v. Superior Fast Freight*, 93 Daily Journal D.A.R. 3834.

In a published opinion, the panel ruled last Thursday that a 1979 city ordinance was pre-empted by the Fair Employment Practices Act and Section 1102.1 of the Labor Code.

"Discrimination in employment is of statewide concern," wrote Associate Justice Donald N. Gates. "The Legislature has enacted general legislation and expressly stated that its intent is to exclude local regulation from the field."

Presiding Justice Roger W. Boren and Associate Justice Morio L. Fukuto concurred.

Harassment Triggers Threats

The ruling was a blow to city attorneys in Los Angeles, San Francisco and San Diego who filed amicus briefs in support of the plaintiff, Jim Delaney, a former billing clerk at Superior Fast Freight. He was fired after making death threats to a supervisor because of alleged "harassment based on his perceived sexual orientation."

"It may be that state laws are sufficient to protect the employment rights of gays and lesbians, but for our part we want the California Supreme Court to review it," said Assistant District Attorney David C. Moon of San Francisco.

Of interest to lawyers is the fact that the state Labor Code does not allow for attorney fees to the prevailing party, but most city ordinances do, according to plaintiff's counsel Thomas F. Coleman.

In reversing a summary judgment awarded to the defendant by Judge Diane Wayne in Los Angeles Superior Court, the court said Delaney should be allowed to proceed under provisions of the state Labor Code and seek emotional distress damages despite having recovered money under a workers' compensation claim.

Los Angeles Daily Journal

Monday, March 29, 1993

Defendant's attorney Paul Raymond Causey said he will appeal the portion of the opinion that extends state law protection for alleged discrimination based only on a perception of homosexuality.

Causey, a partner in the Los Angeles firm McLaughlin & Irvin, said he will also challenge the court's ruling that Delaney may seek damages for intentional infliction of emotional distress, despite the fact Delaney signed a waiver when he was awarded \$17,500 in workers' compensation damages.

Delaney, who worked as a billing clerk, was summarily discharged after making death threats in 1989 to a supervisor and two fellow workers and repeating the threats to Dr. Sonya Friedman, a psychologist, on her radio call-in show.

However, an arbitration panel ruled that Delaney could not be discharged because he never received a written warning not to make death threats against other employees, according to the court record. Delaney, however, elected to sue the company for damages rather than seek reinstatement.

Coleman, a sole practitioner in Los Angeles, said he will petition the 2nd District for a rehearing to "set the record straight" concerning the death threats. The statements made to a company official and, later, repeated on the radio were actually "cries for help," Coleman stated.

"The man had been taunted and harassed by co-workers for eight years because of his perceived sexual orientation," Coleman said. "He had complained to the company numerous times and nothing was ever done about it. All he got was unwanted overtime and bad assignments. That should be made clear in the record."

First Test of Section

Delaney, who is bisexual, had worked for Superior for more than 18 years, Coleman said, but had never revealed his sexual orientation to anyone. "This is the first case under the new Labor Code [Section 1102.1,] which prohibits discrimination based on a *perceived* sexual orientation," he noted.

Defendant's counsel Causey disagrees. He said the Labor Code is designed to protect homosexual activists and does not adequately deal with people's perceptions. He said he will ask the Supreme Court to declare Section 1102.1 "unconstitutionally vague."

Finally, the panel said Delaney raised a question of fact concerning his claim for intentional infliction of emotional distress, based on "injuries to his psyche and continuing trauma."

Although Delaney signed a standard release form when his workers' compensation claim was upheld, the appeal court said it "may reasonably be understood as releasing only those claims which traditionally fall within the scope of the workers' compensation system."