

An Employer's Oral Statement Disclosing Private Facts About An Employee Is Sufficient To State A Cause of Action

To establish a cause of action for common-law invasion of privacy by public disclosure of private facts, the plaintiff must show that a private fact was publicly disclosed, that the disclosure would be offensive and objectionable to a reasonable person, and that the private fact was not newsworthy. In addition, the Court of Appeal has previously stated "the right of privacy can only be violated by printings, writings, pictures, or other permanent publications or reproductions, and not by word of mouth. Melvin v. Reid, 112 Cal. App. 285, 290, 297 P. 91, 93 (1931).

The California Court of Appeal was recently asked to decide whether a trial court erred in granting defendant's summary judgment motion and finding that an employee had no viable cause of action under the common-law right to privacy. Specifically, the issue was whether such an invasion of privacy cause of action must be based upon a written publication. In Ignat v. Yum! Brands, Inc., G046343, 2013 WL 1095520 (Cal. Ct. App. Mar. 18, 2013), the California Court of Appeal held that disclosure in writing is not required to maintain a cause of action for public disclosure of private facts.

Ignat was employed by Yum Brand, Inc. ("Yum") in its real estate title department from 2005 to 2008. Ignat suffered from bipolar disorder, which necessitated missing days at work. In mid 2008, Ignat learned that, during her leave of absence, her immediate supervisor had told everyone in the department that Ignat was bipolar. As a result, Ignat alleged, her co-workers avoided and shunned her. In September 2008, Ignat was subsequently terminated.

Ignat sued Yum for invasion of privacy by public disclosure of private facts. Ignat, however, did not produce written documentation supporting supervisor's action. Yum moved for summary judgment arguing, among other things, that Ignat's supervisor did not disclose Ignat's disorder in writing. The trial court granted the motion on the ground the right of privacy can be violated only by a writing.

The California Court of Appeal reversed. The Court noted that the rule requiring a written publication as an element of a public disclosure of private facts in California originated in dictum. The Court found that limiting liability for public disclosure of private facts to those recorded in a writing is contrary to the tort's purpose, is an outmoded rule, and is not a firm foundation for a ruling dismissing a cause of action. The Court further noted that most California privacy law cases focus on the nature of the privacy and not on the means of communication.

For Further Information, Please Contact:
Nicholas P. Connon, Managing Partner; Tel: +1.626.638.1757
Email: nconnon@connonwood.com