

State News

California

Fired UC Researcher Claims Retaliation For Reporting Prisoner Privacy Violations

SACRAMENTO, Calif.—A former University of California employee Sept. 18 filed a wrongful discharge action against the institution alleging she and her husband were fired in retaliation after the employee reported and refused to engage in work she claims violated the medical privacy rights of prisoners at California's San Quentin State Prison (*Keyzer v. Regents of the University of California*, Cal. Super. Ct., No. RG09474888, filed 9/18/09).

In a complaint filed in California Superior Court, Alameda County, Janet Keyzer, a registered nurse and doctoral candidate, claims the personnel actions violated California's whistleblower protections in Government Code Section 8547.10 and Labor Code Section 1102.5(b). The regulations bar employers from retaliating against workers who report violations of the law to their superiors, regulators, or law enforcement agencies.

Keyzer was terminated from her position at the UC Davis Office of Research after she reported improprieties and refused to engage in work she contends involved research methods that violated federal and California law governing use of federal research grant funds, university standards, and human subject privacy and anti-discrimination practices.

The complaint alleges Keyzer's husband, with whom Keyzer worked as a forensic technician on the federally funded Community Oriented Pain Management Exchange (COPE) research study, was terminated from his position on June 1, 2007, in an effort to intimidate Keyzer from making further disclosures concerning the alleged wrongdoing.

The lawsuit states Keyzer, who was employed by the university for nine years, subsequently was fired effective Nov. 30, 2007.

"Plaintiff engaged in protective activity when she complained to her supervisor and the IRB (Institutional Review Board) about the COPE project violating the medical privacy rights of disabled prisoners without their knowledge or consent," the complaint alleges. "Plaintiff further engaged in protected activity by refusing to participate in illegal activities."

Untimely Review of Complaint Alleged. The action also contends the university's Whistleblower Protection Policy Section failed to conclude Keyzer's complaint within 120 days after it was filed as required under university rules.

In so doing, the defendants violated Keyzer's right of due process articulated in the California Supreme Court decision in *Miklosy v. Regents of University of California*, 44 Cal.4th 876 (2008), fn. 4.

According to Keyzer's suit, the ruling requires the university to "provide a viable mechanism for fairly evaluating whistleblower retaliation complaints" that is not "so perfunctory or arbitrary as to violate the due process guarantee of the state and federal Constitutions."

The suit also alleges the university's policy for evaluating whistleblower retaliation complaints facially violates due process rights of UC employees because it does not provide a viable review mechanism that is afforded other state employees.

"Although California state employees are required to exhaust their administrative remedies before the State Personnel Board (SPB), once they have done so they still have access to an impartial judicial forum in which they are provided the right to a hearing before an impartial decision maker," Keyzer's suit states.

The university's review of Keyzer's complaint was perfunctory, fraught with inconsistencies, and biased in its favor, the suit alleges.

UC did not respond to BNA's request for comment on the action.

Legislation Would Ease Access to Courts. California legislation (S.B. 219) that would overturn *Miklosy's* interpretation of Government Code section 8547.10 as it applies to UC employees is pending before Gov. Arnold Schwarzenegger (R).

The majority in *Miklosy* held that when the university reaches a decision on a whistleblower retaliation complaint with its 120-day time limit for acting upon it, the aggrieved employee cannot seek judicial relief in the courts.

S.B. 219 would allow university employees to resort to the courts in such instances.

It also would allow whistleblowers to bring wrongful discharge actions in the courts if university officials fail to dispose of retaliation complaints within time limits set by the university or have not satisfactorily addressed the complaint within 18 months.

A spokesman for Schwarzenegger told BNA Sept. 30 the governor has not taken a position on the measure.

By FREDERICK L. PILOT

Keyzer's complaint is available at <http://op.bna.com/hl.nsf/r?Open=rkun-7wesj3>.

Information on S.B. 219 is available by searching on the bill number at <http://www.leginfo.ca.gov/bilinfo.html>.

In Brief

CIRM, Germany to Collaborate on Stem Cells

SAN FRANCISCO—California's stem cell agency Sept. 17 signed its sixth international cooperation