

## California Workplace Law Blog

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### **California Court Of Appeal Rules Refusal To Cooperate With Company Investigation or Giving False Information To Company Investigator Is Not Protected By FEHA**

A California court of appeal has recently ruled that an employee is not protected by the Fair Employment and Housing Act (“FEHA”) for refusing to participate in or cooperate with a Company investigation into misconduct. [McGrory v. Applied Signal Tech., Inc., \(Cal Ct. App. No. H036597, 1/24/2013\)](#). In McGrory, California’s Sixth Appellate District rejected an employee’s claim that his employer committed unlawful retaliation by terminating the employee based on the employee’s uncooperative and deceptive behavior during a Company investigation into allegations of sex discrimination. The Court held that giving untruthful information in an investigation or failing to cooperate does not constitute “protected conduct” under the FEHA. Employers are not prohibited under the FEHA from taking action against employees on the basis of such conduct.

The Court reasoned that a company investigation does not meet the definition of a “proceeding” which is protected by the FEHA. Protected proceedings are those which are conducted by California agencies such as the Department of Fair Employment and Housing. The Court relied on analogous federal authority under Title VII to support its decision, as no California state authority addressed the issue. The Court also held that an employer’s honest communication to coworkers about the basis for the termination was not defamatory, as it met the standard for a privileged statement of opinion on a topic of mutual interest.

The Court acknowledged the limitation that uncooperative or deceptive conduct might be protected if it is in opposition to an unlawful practice. Absent such opposition, however, McGrory is a good case for employers dealing with belligerent employee witnesses. Employers are advised to consult with legal counsel to determine whether an employee’s conduct under such circumstances is protected and also to review how such a case would be viewed by the federal National Labor Relations Board under the National Labor Relations Act.

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