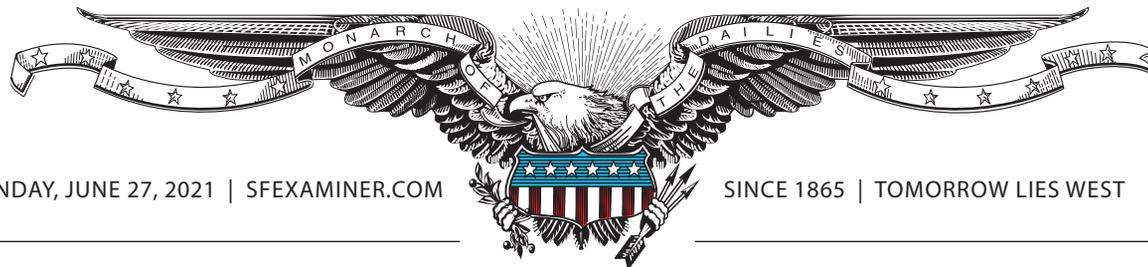


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SINCE 1865 | TOMORROW LIES WEST

Without Jurors, The Light of Democracy Dims Remarkably

By Christopher B. Dolan



This week's question comes from Frank T. in the Mission District: *I got a jury summons in the mail. Why do I keep getting them? I don't want to sit on a jury and take time away from work. My husband and I had a real hard time during COVID and taking time off work right now would be difficult.*

Frank, I know this is a sentiment shared by many right now. The right to trial by a jury of one's peers is enshrined in the Bill of Rights that was formed at the time of the birth of our Nation. When The Colonies were under British rule, citizens had no right to have members of their community decide their fate. Justice had become politicized, and it was administered pursuant to British law, and as a manner of repression, as the colonists were considered British subjects. British law was often unjust and unfair to the Colonists and failed to recognize the realities of living in the New World. This was one of the many injustices that spurned the birth of our Democracy. Trial by jury was, and largely remains, an

American institution with most countries not offering jury trials to their citizens.

The right to trial by jury was established under and through the Seventh Amendment to the Bill of Rights. As such it was one of the original rights for which a war was fought, blood was spent, and

lives were sacrificed. The right to trial by jury is also guaranteed by Section 16, of Article One, of the California Constitution.

What was once considered a fundamental right and honor is now perceived by many as an annoying and disruptive inconvenience. Not to minimize the impact that you feel jury service has upon



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your personal circumstances, too many of us now take for granted our democratic freedoms, rights and responsibilities. Jury service is an apolitical right and in today's environment where the courts have become more politicized, the fact that a jury pool is drawn from a broad cross-section of our community is perhaps one of the most apolitical aspects of our Democracy.

As your name, Frank, suggests that your pronoun is male, and you reference your spouse with the pronoun he, I deduce that you are in a same sex marriage. (If my assumption is incorrect, please forgive me.) I want to put this into some perspective: imagine if you or your husband were accused of a crime, were the victim of a hate crime, or been deprived a civil right based upon your sexual orientation. If you lived in another state, not as progressive as California, the judge might be an elected or appointed official who is homophobic, or against gay marriage, and she/he would be the sole decisionmaker on your case. That prejudice could very well affect the outcome of your case and be demoralizing. Likewise, were no members of the LGBTQ community to heed the call to jury service, you would not receive a jury of your peers.

No one knows the case you have been summoned for as of now. Jurors are randomly selected from DMV records, voting rolls and other public sources of information and, until the day you show up at the courthouse, there is no way to know what type of trial, or what type of issue, is involved. In San Francisco, if you

are summoned to 400 McCallister Street chances are that it is a civil trial involving disputes between two parties, two businesses, or an individual seeking justice against much more powerful interests such as corporations and/or the government. If you are summoned to 850 Bryant Street, it is most likely a criminal case.

Since COVID began, I have tried two cases to verdict, one in September against a police department and officer where there was a claim of unlawful and excessive use of force resulting in a shooting and one against an insurance company for injuries suffered in a collision. I selected juries, presented the facts, and received verdicts in favor of my clients who otherwise would never have received justice. Had jurors not shown up, my clients would never have had their chance to receive fair and impartial justice. We would never have been able to stand up to the police and, quite possibly, given the judge and venue in another state, we would not even have had a chance, much less won.

The right to trial by jury is already threatened by big monied interests that don't want trial lawyers like me to balance the power dynamics. Organizations which I am proud to be a member of, such as the American Association of Justice, and the Consumer Attorneys of California, fight diligently and spend millions of dollars annually, contributed by members such as myself who believe in this right, to help elect pro-justice, pro-civil rights and pro-7th Amendment legislators to help preserve the right to trial by jury.

Many jurors, originally reluctant, after serving their jury service are glad they did it. They feel proud of being a group of twelve (or six in Federal Court) who participated. I hope you take the call to service and have a meaningful experience. Lastly, just because you are called for jury duty doesn't mean you will serve. Many times, jurors are not needed as a case gets resolved or settled. Even if you are called into court, most jurors do not get selected, as often more jurors are called then end up being needed.

I hope this helps you see things in a different light. Without Jurors, the light of democracy dims remarkably.

action or proceeding was granted a preferential trial date before 2022, or if it was filed between January 1, 2022, and January 1, 2026.

Christopher B. Dolan is the owner of Dolan Law Firm, PC. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different, and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights.

End of Year Holiday Parties Have a Unique Potential for Harassment

By Christopher B. Dolan and Emile Davis



This week's question comes from Matthew H. from San Francisco

My workplace is hosting a Holiday party and they are telling us to keep it work related and professional, if we decide to attend. I don't plan on getting crazy, but can they tell us how to act outside of our work schedule? It seems a bit much.

Each year, the Dolan Law Firm receives multiple phone calls from people who have been the victim of harassment or discrimination at company sponsored holiday parties. The Holiday season is, once again, upon us, if everyone thinks ahead, many of the potential pitfalls can be averted and everyone can enjoy the party.

End of year Holiday parties have a unique potential for sexual harassment. Several factors combine to make sexual harassment a particular danger at these types of functions. Holiday parties often take place at a location away from the worksite. This factor alone can lead to the relaxing of the behaviors people tend to understand as "workplace appropriate." The fact that people are interacting in much more social environment than usual can also add to the tendency for people to stray from workplace norms. This is often exacerbated by the often-accepted use of alcohol at these events. This combination can be recipe for bad things to happen.

The good news is that employers can take steps to minimize the dangers of harassment. One thing an employer can do is include a copy of the workplace discrimination and harassment

policies within any email or invitation, or a simple reminder that the policies in place at the worksite are applicable to the holiday party as well. Reminders that, although co-workers will be interacting socially, they must treat each other with the respect they have for one another in the workplace, can set clear guidelines for what is appropriate behavior. Archaic traditions that attempt to legitimize and trivialize harassment, such as kissing under the mistletoe, need to be left in the past.

If the employer is hosting the bar, a limitation on the number of drinks can keep people from overindulging. No good has ever come from a person overdrinking at a holiday party.

Making sure, prior to the event, that everyone has a safe way to get home is also a big help. It can save an employee from getting a DUI. And, importantly, it can ensure that an intoxicated worker is not coerced to accept a ride home from somebody who makes them uncomfortable or who has ill intent.

If the employer participates in a gift exchange or "Secret Santa" game at the holiday party, a clear understanding of what types of gifts are acceptable is imperative. Sexualized gifts may seem funny to some, but can be offensive and traumatic to others given their particular history. Joke gifts can be fun and funny, but can also cross the line into scary intentional harassment. For example, Dolan Law Firm proudly represented an African-American woman who was singled out to receive a particular gift at a holiday party- she was purposely presented a purse embroidered like a confederate flag which contained pictures

of the owner of the company dressed as Donald Trump in front of a sign indicating that the south would rise again.

Another area of concern at holiday parties is religious discrimination and harassment. Not everyone celebrates Christmas. People of other faiths should not feel pressure to be involved in a religious based holiday, or to explain why they are not. We can all celebrate the end of the year, and most religions have some sort of a mid-winter holiday or day of remembrance.

When employers make the expectations clear and plans for the well-being of all the employees, it allows everyone to enjoy the Holiday party.

Each employee can also help. Everyone should have a pre-planned manner to travel home safely. Don't encourage overindulgence in alcohol. Think about how the gift you are giving may be received. Act with dignity and respect toward your co-workers. Enjoy the party.

Hopefully, this year Dolan Law Firm does not receive one of those calls.

Christopher B. Dolan is the owner of Dolan Law Firm, PC. Emile Davis is a Managing Attorney in our Oakland Office. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different, and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights.



Workers with Long COVID May Be Entitled to ADA and FEHA Job Protections

By Christopher B. Dolan and Mari Bandoma Callado

Sandra F. from Castro Valley writes: *I work at a grocery store and contracted COVID-19 in July. I have since tested negative and have been told by my medical provider that I am outside the contagious window for spreading the virus. Unfortunately, some of my symptoms have not gone away, and have been told that I have "Long COVID". I still have fatigue, shortness of breath, lightheadedness or dizziness when I stand, headaches, loss of taste and smell, and brain fog. My job requires me to stand and walk a lot but I am having a hard time doing that for long periods of time before feeling overly tired, having shortness of breath, or getting dizzy. I am worried that I will fall or hurt myself. I would like to ask my employer for accommodation but I am not sure how. Will I get in trouble for asking for a chair or a different position while I am recovering?*

Thank you Sandra for reaching out. We are sorry to hear that you are still experiencing COVID-19 symptoms. As you mentioned, for some people, the symptoms from contracting COVID-19 do not go away and some studies indicate that 10% of COVID-19 patients may become long haulers.

Is Long COVID Classified as a Disability Under the ADA or FEHA?

The Americans with Disabilities Act (ADA) and California's Fair Employment and Housing Act (FEHA) are laws that protect California workers from disability discrimination in the workplace. The ADA has classified Long COVID as a disability "if the person's condition or any of its symptoms is a 'physical or mental' impairment that 'substantially limits' one or more major life activities." Under the FEHA, Long COVID is also classified as a disability but the FEHA requires only that a mental and physical disability "limit" a major life activity (not a substantial limit, but a limit).

In other words, having Long COVID does not automatically mean that a person has a "disability" under the ADA or the FEHA. Unfortunately, there is no bright-line test for determining whether someone is disabled for purposes of the ADA or the FEHA. It is necessary to make an individualized assessment to determine whether someone's Long COVID condition or any of their symptoms (substantially) limits a major life activity. Major life activities include but are not limited to caring for oneself, eating, performing manual tasks, walking, standing, communicating and working. You described your symptoms as something that limits your ability to work, walking and standing. It is likely that you would be considered as

person with a disability under the ADA or the FEHA, entitling you to reasonable accommodations.

What are Reasonable Accommodations? Both the FEHA and the ADA require most California employers to give employees with disabilities "reasonable accommodations". Employers who are covered by the ADA or the FEHA are required to provide reasonable accommodations unless the accommodation would be too difficult for your employer to provide, or doing so would endanger the health and safety of others, or change your job in a significant way.

An accommodation is reasonable when changes are made so that the employee with a disability can perform the essential functions of the job. This can be changing job duties or work schedules, providing leave for medical care, device, or technology. Essentially, these are changes that would allow employees to do their job safely and well.

How to Request Reasonable Accommodations: The first thing you should do is to inform your employer that you have Long COVID in writing. Note that your employer may request medical records directly related to disability and need for accommodation to determine whether you are a person with a disability.

Once you inform your employer, they must not discriminate against you and begin engaging in a good-faith interactive process to explore potential reasonable accommodations to help you perform your job effectively and safely.

Your employer can provide many different reasonable accommodations. It is very important that you maintain communications with your employer so you can explore together the accommodations that are right for you and your job. For example, you could get access to a chair so you can sit down when you feel dizzy while performing your job or you could be temporarily reassigned to a different position or be given different tasks that would allow you to sit down more frequently. You could also request a leave of absence under the Family and Medical Leave Act or the California Family Rights Act, which would entitle you to up to twelve weeks of unpaid job-protected leave.

Retaliation is Prohibited: Retaliation is anything that changes the terms and conditions of your employment. Examples of retaliatory conduct include but are

not limited to the following:

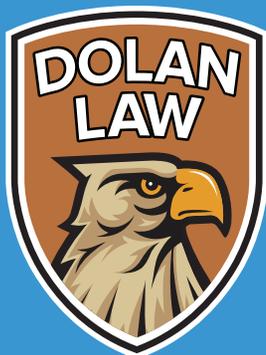
- Increased harassment or verbal abuse for opposing unlawful conduct;
- Changing schedules to an undesirable shift;
- Assigning undesirable job duties;
- Demotion or denial of promotion;
- Relocation to an undesirable location;
- Reduction in hours or pay;
- Change in compensation plans or programs;
- Denial of training or opportunity for advancement;
- Discipline such as warnings, suspension or probation for trumped-up charges; and
- Termination.

An employer must not retaliate against an employee for requesting accommodations. As such, you should not "get in trouble" for requesting accommodations for your medical condition.

If you feel that you have been discriminated against because of your disability and/or medical condition, or retaliated against for standing up for your rights and/or requesting accommodations, contact the employment attorneys at the Dolan Law Firm.

Christopher B. Dolan is the owner of the Dolan Law Firm, PC. Mari Bandoma Callado is a Senior Associate Attorney based in our Oakland CA office. We serve clients throughout the San Francisco Bay Area and California from our offices in San Francisco, Oakland and Los Angeles. Email questions and topics for future articles to: help@dolanlawfirm.com. Each situation is different and this column does not constitute legal advice. We recommend that you consult with an experienced trial attorney to fully understand your rights.

The COVID-19 (Coronavirus) outbreak is an ongoing, rapidly developing situation and the local, state, and federal responses are changing regularly. The Dolan Law Firm takes efforts to keep the information on this page updated, however, to guarantee up to date information it is necessary to confirm with publicly-available federal, state and local health organization guidance and government mandates.



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