Lukov v. Schindler Elevator Corp., No. 12-17695 (February 24, 2015): In an unpublished decision, the Ninth Circuit recently overturned summary judgment granted to an employer on the plaintiff’s retaliation claims. William Lukov worked as an elevator mechanic for Schindler Elevator Corporation. While employed by Schindler, Lukov reported a safety issue with a department store’s elevator to the California Division of Occupational Safety and Health (DOSH). Several months after he complained, Schindler laid off Lukov off as part of a reduction in force. Lukov sued for retaliation in violation of California Labor Code sections 1102.5 and 6310. Labor Code section 6310 prohibits an employer from discharging an employee who has “made any oral or written complaint to [DOSH].” Labor Code section 1102.5 protects employees from retaliation for disclosing a violation of statute or law to a governmental agency.

In granting summary judgment to Schindler, the district court held that Lukov had not engaged in any protective activity under Labor Code section 6310 because Lukov had not stepped outside of his role as an elevator mechanic in reporting a potentially dangerous situation to DOSH. The district court also held that Lukov had not engaged in protected activity under Labor Code section 1102.5 because he never acted adversely to his employer.

The Ninth Circuit held that the district court erred in holding that Lukov did not engage in protected activity. The Ninth Circuit pointed to the 2014 amendment to Labor Code section 1102.5, which expanded the protections of the statute to employees who disclose violations of statute or law as part of their job duties.

The Ninth Circuit also held that the district court erred in granting summary judgment under Labor Code sections 6310 and 1102.5 because Lukov had come forward with sufficient evidence that he reasonably believed the problem with the department store’s elevator violated safety regulations. The Ninth Circuit determined that both statutes protect employees who make complaints based on their reasonable belief, and therefore, because Lukov had sufficient evidence to show he “reasonably believed” there was a safety issue, his actions could be viewed as protected activity under the two statutes.

According to a shareholder in the San Francisco office of Ogletree Deakins, and an associate in the San Francisco office of Ogletree Deakins, who litigated a very similar case recently, “there are various specific industries in which there are statutory protections for job-related conduct. In practice, employers should bear in mind that an employee may be engaging in protected activity by simply performing his or her assigned job duties. For example, California’s Health and Safety Code...
section 1278.5 prohibits employers from discriminating against employees who participate in an investigation related to the quality of care, and employers should be mindful of this section when counseling employees on their participation in peer review proceedings."