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Office Talk

Linda Dardarian is a partner at the Oakland law firm of Goldstein, Demchak, Baller, Borgen & Dardarian, which represents employees in a wide variety of employment-related matters. She first joined the firm as an associate in 1991 and has been a partner there since 1998. Previously, she worked as an associate at Carroll, Burdick & McDonough and at Duane, Lyman & Seltzer. She received her law degree in 1987 from Boalt Hall School of Law.

Wilcox was interviewed by Leslie Gordon.

Q: What first drew you to employment law?

A: I got into this field because when I was in law school, I was interested in making a difference for people who didn't have access to all the power. I wanted to help people who traditionally were left behind. When I was in law school, I worked for the state of California's Fair Employment and Housing Commission, and that's what really got me interested in representing plaintiffs in employment discrimination cases.

Q: How has your practice changed over the years?

A: When I first started with the firm, we were just doing employment discrimination cases. Now we do wage-and-hour class and collective actions under both the state labor code and the federal Fair Labor Standards Act. We also started diversifying into other areas in the mid-1990s, which was great for me because I had an interest in environmental law. We started doing Clean Water Act enforcement cases and Proposition 65 enforcement cases because we didn't want to have all our eggs in one basket. I was also interested in disability law so I started handling cases in that area.

Our practice has also changed in that we handle a lot more cases at any one time now than we did years ago. I think part of that is because it seems as if cases now get resolved more quickly. There's often much more focus on early mediation in these cases, and it's not as labor-intensive to negotiate and mediate and resolve a case as it is to litigate. The mutual interest to come to a resolution earlier in a case has allowed us to take on more cases at any given time. Although we always are litigating cases, we happen to have a number of cases that are going through mediation or a settlement process directly between the plaintiffs and the defendants.

Q: If more cases are getting resolved through mediation or settlement negotiations, how do younger lawyers get trial experience with fewer cases actually going to trial?

A: That's a good question. I think a lot of students recognize that as they're coming out of law school, which may be why many new lawyers are heading into public practice rather than private firms. They're going to the DA's office or the public defender's office or the U.S. attorney's office so they can get trial experience before they go into private firms.

It's rare for employment class actions to go to trial, but they do. We just had one that was tried last year in eastern Texas – a race discrimination class action against an oil manufacturing company called Lufkin Industries. The judge in the case had ordered us to go into mediation and we tried really hard to resolve the case. But the defendant just didn't want to settle so we ended up going to trial and got a court judgment in our favor. Some of our associates went down to Texas to help out on that case. The associates were really excited about that.

Q: What do you see as the next wave of employment litigation?

A: There are two extremely important issues to be decided in employment law. One of them is before the U.S. Supreme Court and the other is before the California Supreme Court. I think the way that those cases come down will have a big impact on the popularity of the claims that are at the heart of these cases.

The federal matter is the *Alvarez* case, which was just argued [in early October] before the U.S. Supreme Court. The issue there is whether employees can be compensated for the waiting time that's incidental to their principal work-related activity. For example, if an employee spends time putting on protective gear at the start of a shift and taking off that gear at the end of their shift, is that time compensable? That's a big issue.

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The big issue before the California Supreme Court is the *Ralph's* case, which focuses on whether it's appropriate for an employer to take deductions from an employee's wages for various things that are not specifically authorized under the law. One of the specific issues here is whether it's okay for store managers, who are exempt, to have deductions taken from their bonuses that reflect the lack of profitability of the stores.

The more common situation probably involves non-exempt employees who are getting wage deductions taken out by employers for things like canceled accounts and mistakes that employees make while doing their jobs. We just handled a case in Los Angeles Superior Court against Countrywide Home Loans in behalf of salespeople who worked in a call center, where they were reading scripts to potential customers over the

phone. If a manager was listening in to the phone call and heard the salesperson make a mistake when reading the script, the caller was subject to a wage deduction for making that mistake. Or if they wrote up a loan package for a customer and then transferred it to a branch, and then for some reason at the branch office the loan didn't close, the salesperson back at the call center was subject to a wage deduction for that.

Countrywide had moved for summary judgment, claiming that all of these wage deductions were proper under California law, which the judge rejected. He didn't actually say the practices are illegal, but what he did say, in response to the summary judgment motion, was that Countrywide had not shown that the practices are legal. We ended up settling the case shortly before trial and therefore didn't get a final ruling on legality of the deductions. But those types of claims may be more common, depending on how the *Ralph's* decision comes down from the court.

Q: Do you see any legislative developments coming down the pike that are likely to be important to your practice?

A: There's a lot of controversy over the minimum wage and whether that should be raised both at the state and federal level. In California, there are some proposed revisions to the meal period law that Gov. Schwarzenegger has proposed but that haven't been acted on yet. My view right now is that anything that comes out on the legislative front, at least at the federal level, tends to be more bad for us than good. I just don't expect a lot of good to come out of Congress. And whatever good comes out of the state Legislature is being vetoed by our governor. Right now, I'd be happy to keep the status quo.

One good thing that did come out of Congress last year had to do with plaintiffs who recover damages and attorneys' fees under civil rights laws and wage-and-hour laws. The legislation clarified that the portion of the award that's attributable to attorneys' fees is no longer subject to income taxes. Previously, plaintiffs were having to pay income taxes on their attorneys' fee awards even though the money wasn't going to them. Under the new law, those fee awards are still considered income but are fully deductible. That's been the one pro-plaintiff measure to come out of Congress in the last several years since passage of the Americans with Disabilities Act and the 1991 Civil Rights Act. It would be nice if Congress would amend Title VII to prohibit discrimination on the basis of sexual orientation. But I don't foresee that happening anytime soon.

Q: If you weren't practicing as an employment lawyer, what do you think you'd be doing instead?

A: I'd focus more on the other parts of my practice. I'd continue to do ADA access cases and environmental cases. But if I couldn't do any of those things, then I don't know. I'd probably go rescue cats or something.

It's nice to have a practice where you do good work and make a difference on behalf of a lot of people and do it in a nice, collegial environment. I'm very fortunate that I ended up where I have. I work with wonderful attorneys and paralegals and other staff. That's not just in my office. I also work with wonderful co-counsel and, for the most part, opposing counsel as well. They're very decent and terrific people to work with.

Q: As a plaintiffs' lawyer, what kind of message would you like to give defense attorneys who practice employment law?

A: That it's better for your clients to work on resolving issues than just fighting – better in terms of how much it's going to cost them.

Q: Do you think California is a good state or a difficult state in terms of practicing as a plaintiffs' lawyer in this field?

A: It's a great state for plaintiffs' lawyers. And I think the word is out because there are a lot more people doing this kind of work now than there were 10 years ago. The judges are great and the law is more favorable. Particularly in the area of class-action work, we've got the California Supreme Court's *Sav-on* decision from last year, which basically said that California has a public policy encouraging the use of class actions, particularly in cases that involve important public rights such as civil rights or employment cases. The comparable federal laws don't incorporate that same sort of basic public policy element.

Also, the state law in California involving attorneys' fees for prevailing plaintiffs is better than the federal law. California has declared its independence from the federal fees law in a number of ways that are beneficial to plaintiffs. The U.S. Supreme Court has said that it no longer acknowledges that attorneys who take important civil rights cases or other types of public interest cases on a contingent risk basis should recover something extra in exchange for taking on the risk of handling an important case with no guarantee of being paid at the end if they win. And the only time we get paid in such cases is if we win.

California, on the other hand, says it is appropriate to give contingent risk enhancements. The California Supreme Court, in last year's Graham case, reaffirmed the right for plaintiffs, under certain circumstances, to be awarded attorneys' fees when they're the catalyst for important changes. In fact, there are a number of ways in which California's fees law is more realistic for plaintiffs' attorneys than the federal law. I don't want to say it provides a windfall because it doesn't. I don't want some defendant to take my words and say, "You see? We need to change the fees law in California."

Q: What do you see as your biggest challenge as a plaintiffs' lawyer?

A: There's always some new challenge. Just a few months ago, the federal Class Action Fairness Act was seen as something that would throw a big wrench in plaintiff class action practices, particularly when it comes to filing in state court. But we get new challenges all the time, and I think because the plaintiffs' bar is so collegial, we try to work together to find ways to rise above those new challenges.

Whether it be new procedural hurdles coming down from Congress, new regulations interpreting the Fair Labor Standards Act or Arnold Schwarzenegger coming up with new ways to try to scale back workers' rights in California, there are a lot of incredibly talented and dedicated people doing this kind of work on the plaintiffs' side. We tend to work together to try to come up with solutions to whatever hurdles are erected in our way. We're motivated to do it because we're not just doing it for ourselves. We're doing it on behalf of people who are being mistreated. That's a big motivator to keep going no matter how hard things get. ❖