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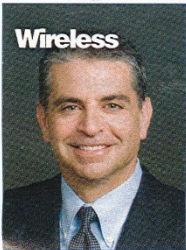
Legal



Micaela Banach, a partner at Kirby Noonan Lance & Hoge LLP, says employers must act immediately when told of harassment claims.

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Wireless



Joe Conduro, CEO of PatientSafe Solutions Inc., says his company is poised to expand its technology into the Asia-Pacific region.

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The Lists:
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Del Mar Deal Adds to Co.'s Prime Properties

PROPERTY: Kilroy Grows, 2nd Largest Office Landlord

■ By LOU HIRSH

Kilroy Realty Corp. recently raised more than \$260 million in a secondary public stock offering, and San Diego County ranks high on the list of places where it is looking to bolster a West Coast commercial portfolio that tops \$4.7 billion.

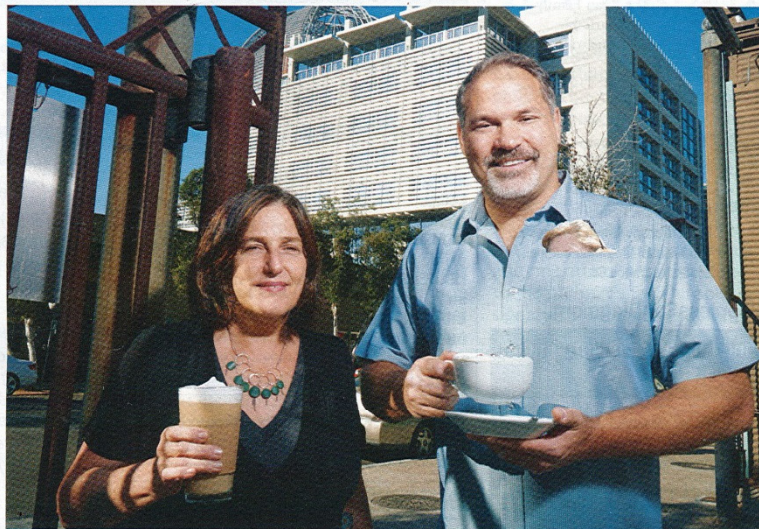
Los Angeles-based Kilroy (NYSE: KRC) was already San Diego's second-largest office landlord, with more than 5 million

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Photo courtesy of Cassidy Turley

Kilroy Realty Corp. recently bought The Heights at Del Mar office campus in San Diego for \$126.3 million, in what brokers said was the local region's third-largest commercial real estate deal of 2013.



Deborah Helm and Tom Fitzpatrick of The Mission restaurant in East Village are among those in that neighborhood who are optimistic that the new San Diego Central Library, also pictured below, will be a catalyst for business and positive growth.

Stephen Whalen

Urban Renewal

ECONOMY: Some See New Library as Catalyst For Area's Development

■ By BRAD GRAVES

Thomas Fitzpatrick looks toward the new San Diego Central Library a block from his East Village restaurant, **The Mission**, and sees more than the lively and cheerful architecture emanating from the \$185 million building. The restaurant co-owner has been seeing groups of 10 to 14 library employees visiting in recent weeks.

Fitzpatrick and his partners — like other area business owners — were looking forward to more of that following the Sept. 30 opening of the city's new state-of-the-art library a block east of Petco Park. While Fitzpatrick's business operates at capacity on weekends, the breakfast and lunch



Courtesy of San Diego Public Library Foundation

eatery could use a boost on weekdays, he said, adding that if demand grows, The Mission could talk to its landlord about expanding its patio.

So it is that business owners on the

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Former Qualcomm Exec Accused of Insider Trading

LAW: He Pleads Not Guilty; Probe Raised FCPA Concerns

■ By MIKE ALLEN

Federal probes that uncovered evidence of an alleged insider stock trading scheme leading to the indictment last week of a former top **Qualcomm Inc.** executive also included an investigation into the company itself, according to the San Diego company's securities filings.

On Sept. 23, the U.S. Attorney's Office brought charges against Qualcomm's former president of global business operations, **Jing Wang**; his brother **Bing Wang**; and Jing Wang's stock broker, **Gary Yin**.

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Verenium Deal Shows Big Interest in Biotech

BIOTECH: Buy Beefs Up BASF's Enzyme Expertise

■ By MEGHANA KESHAVAN

BASF SE's purchase of San Diego-based **Verenium Corp.** represents a strategic play in the global race to acquire biotechnology assets in a quickly changing chemical industry.

German multinational BASF, the largest chemical company in the world, paid \$51.2 million in cash for Verenium in a deal valued at \$62 million when outstanding debts are taken into account. At \$4 per share, Verenium was acquired for a nearly 60 percent premium; its shares were previously trading at \$2.51 and have since shot up to \$3.99 as of Sept. 25.

BASF (XETRA: BASF SE) said in a regulatory filing that it plans to continue operating Verenium's laboratories in Torrey Pines, where

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Millennium's New C-Team Is an A-Team

MEDICINE: Execs Should Improve Company's Image

■ By MEGHANA KESHAVAN

Millennium Laboratories Inc. is making inroads, with the appointment of a new trio of C-level executives, toward righting a ship shaken by an ongoing federal grand jury investigation.

The fast-growing urine analysis company recently brought on a new chief financial officer, chief information officer and chief operating officer as its organizational shakeup continues. It also appointed a new CEO, veteran health care executive **Brock Hardaway**, in May.

The private clinical diagnostics company,

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A SAN DIEGO BUSINESS JOURNAL SPECIAL REPORT

EMPLOYMENT LAW



Micaela Banach, a partner at Kirby Noonan Lance & Hoge LLP, said employees and employers are more aware of the issues surrounding sexual harassment today. She said what was tolerable 20 or 30 years ago is certainly no longer acceptable.

Melissa Jacobs

Zero Tolerance

LAW: Employers Would Do Well to Take Heed of City's Sexual Harassment Scandal

■ By TOM YORK

Bob Filner's resignation as San Diego mayor after less than a year in office over allegations of sexual harassment can teach all employers to be prepared and act swiftly.

To guard against such scandal and legal woes, employers should have poli-

cies and procedures in place to minimize exposure in the event that an employee files a sexual harassment claim.

The results for those who lack such policies — or who don't follow them — can be very costly, as the city of San Diego is finding.

Employers that are put on notice about complaints must act immediately to correct the situation and ensure that it doesn't continue, said Micaela Banach, a partner at Kirby Noonan Lance & Hoge LLP.

"If they don't, they can be on the hook

for serious damages," Banach said.

She said that while harassment cases tend to come in "waves," the number of cases overall tends to be steadily diminishing based on anecdotal experience during her decade of practice.

"Employees and employers are much more aware of the issues surrounding sexual harassment, so you see much less of it," she said. "Everyone is much more cognizant of their behavior at work, knowing that it's no longer acceptable behavior to tell dirty jokes or send inappropriate emails."

One reason for the decline in such cases is that there are far more women in the workplace, she said.

"What was tolerable 20 to 30 years ago is certainly no longer tolerable today," she said.

Exhaust Administrative Remedies

The U.S. Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing can assess fines if they find evidence of harassment, though the state's

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RELATED STORIES

14 Employment Lawyers Discuss Future Trends Affecting Business

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THE LISTS

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Employment:

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DFEH will more likely provide special letters that allow claimants to proceed with lawsuits.

"They often give employees what's called a 'right to sue letter,'" Banach said, adding that a lawsuit can't be filed without one and that those complaints must go through the investigative process before a lawsuit can be filed. "You have to exhaust your administrative remedies."

In many cases, however, the agency will issue the letter without investigating. And employee can file a complaint online at the DFEH's website and receive a right to sue letter "almost immediately," she said.

Retaliation Is Unlawful, But Happens

Despite the increase in the female workforce, many women who feel they are being harassed are reluctant to take action for fear of retaliation.

"Many employees are afraid to file a complaint or say anything," Banach said.

Such fear is often justified. Even though retaliation against a person alleging sexual harassment is illegal, "it still happens," Banach said. "You still see cases where they step up and say something and they get fired, or they don't get the promotions, or they are disrespected."

'City Hall Is an Exaggeration'

While the situation involving former Mayor Filner provides a cautionary tale for all employers, it also contains some less common aspects in that Filner was simultaneously involved in a legal matter and a political scandal.

"What happened at City Hall is an exaggeration of what can happen in the private workplace because of the political



Photo courtesy of Carothers DiSante & Freudenberg LLP
Dave Carothers, managing partner in the local office of Carothers DiSante & Freudenberg LLP, believes the term harassment is often used too loosely in the workplace.

ramifications that were involved," said Dave Carothers, managing partner in the local office of Carothers DiSante & Freudenberg LLP.

Several of the complaints against Filner would not constitute sexual harassment under the law, Carothers said.

That's because several of the women were not city employees, but rather colleagues or professional equals. These complaints do not have lawsuits associated with them, but rather served to call attention to further allegations of inappropriate conduct.

The two statutes that govern sexual harassment — defining who it covers

and who may sue for it — apply only to employers, Carothers said. Therefore, a professional colleague at another company or social acquaintance cannot sue for sexual harassment under those laws.

One scenario that may present a gray area is when an independent contractor of the employer is involved. California has a statute that allows independent contractors to be covered by employment discrimination laws.

No-tolerance Policy a Must

Carothers believes the term harassment is often used too loosely in the workplace.

The term has special meaning in the legal world that doesn't always include unwanted advances for sex or related sexual favors. Under state and federal statutes, harassment can include such things as a supervisor offering a promotion for sex or constantly commenting about a worker's dress or appearance, as well as a supervisor firing or demoting an employee for not responding to such advances.

"Under the legal definition, certain things have to be proven in front of a fact finder or jury," Carothers said. Usually, it involves a supervisor and employee, and whether or not the employer allows a "hostile environment" to exist.

Every employer must have a sexual harassment policy in place and must tell managers that they will not tolerate harassment, Carothers said. Also, businesses must give employees a way to file a complaint if they feel they are being harassed.

Many larger businesses have hired vendors to operate toll-free telephone services that take complaints and forward them to management, Carothers said, noting that small companies are just as

much at risk as larger companies.

Managers can Be Held Liable

Most sexual harassment complaints in the workplace involve a manager and an employee working under that manager.

Tightening the laws about sexual harassment over the years has helped bring the issue to the fore.

Supervisors have become much more aware of the potential cost of harassment, Carothers said, because they can be held individually liable if complaints lodged against them by subordinates are successful in court. Even a manager's personal assets, such as home equity, can be at risk.

"This has created a lot of anguish in the workplace," he said, and "can cause sleepless nights."

The anguish can be even greater because the employer doesn't have to pay to defend the manager.

California law requires all businesses, however, to train their managers once a year in a classroom setting on their obligations in the workplace, Carothers said.

"The goal is to make supervisors more aware of their conduct and avoid harassment situations," he said.

UPCOMING SPECIAL REPORTS

Oct. 21 Defense and Military Economic Report

Oct. 28 Corporate Philanthropy

Please email Stephanie R. Glidden at srglidden@sdbj.com with any questions or ideas regarding the upcoming special reports.