



Government Code § 996.4 Trumps Labor Code § 2802

04.23.2012 | By **Veronica M. Gray**

In *Thornton vs. California Unemployment Insurance Appeals Board* (PDF), Thornton contended that she was statutorily entitled to reimbursement from the California Unemployment Insurance Board (Board) for the attorneys' fees and other expenses she incurred in connection with the District Attorney's and the Attorney General's investigations of the circumstances of her hiring as an Administrative Law Judge for the Board.

Thornton claimed that: (1) the investigations were civil action[s] or proceeding[s] within the meaning of Government Code §§ 995 and 996.4; (2) the investigations concerned actions taken in the course and scope of her employment within the meaning of those sections; and (3) she necessarily incurred the attorneys' fees and expenses in direct consequence of the discharge of . . . her duties within the meaning of Labor Code § 2802(a).

The Court of Appeals disagreed and concluded:

(1) a public employer's obligation under Government Code § 995 to defend an employee, and the employee's related right under Government Code § 996.4 to recover the costs of defense if the employer fails or refuses to provide a defense upon request, are limited to the defense of civil judicial proceedings against the employee. The obligation to defend, and the right to recover the costs of defense if the employer fails or refuses to provide a defense upon request, do not extend to preliminary investigations that do not result in civil judicial proceedings against the employee.; and

(2) Government Code § 996.4 prevails over Labor Code § 2802 to defeat Thornton's reimbursement claim even if Labor Code § 2802 required employers to reimburse employees for investigation costs.