



# EMPLOYMENT SUB-LAW

## NEWSFLASH



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### Court of Appeal Applies Alter Ego Doctrine in Employment Discrimination Case

*Leek v. Cooper*

(Apr. 15, 2011, C061510) \_\_ Cal.App.4th \_\_ [2011 WL 1452103] [Third Dist.]

The Third District Court of Appeal has ruled a corporate shareholder cannot be held personally liable for employment discrimination unless the employee has sufficient facts to establish the shareholder is an “alter ego” of the corporation.

In *Leek v. Cooper* (California Appellate Court, Third District, C061510), employees of a corporate-owned car dealership sued the corporation and its sole shareholder alleging causes of action for age discrimination and violation of the California Family Rights Act. The trial court granted the shareholder’s motion for summary judgment on the ground that only the corporation as the employer could be held liable for discrimination and an alter ego theory was not alleged in the complaint. The court also granted the shareholder’s motion for attorney fees and costs pursuant to Government Code section 12965(b).

On appeal, the plaintiffs argued the shareholder was an employer under the statutes based on the degree of control the shareholder exercised over the employee. They also claimed the shareholder was liable for the wrongdoing of the corporate employer under an alter ego theory and attempted to amend their complaint to assert an alter ego theory. The Appellate Court held the corporate shareholder’s control over the employees was not the proper test to determine whether he was the actual employer.

The proper method for determining whether the sole shareholder of the corporate employer is liable for wrongdoing is by the application of the alter ego theory. Since the plaintiffs failed to adequately plead an alter ego theory, including the traditional elements of unity of interest and an inequitable result, the shareholder was under no duty to negate the alter ego claim in association with the summary judgment motion. The award of fees and costs was reversed as the Court did not find the action to be unreasonable, frivolous, meritless or vexatious.