Morgan Lewis 150 YEARS

2023 RECAP: CALIFORNIA EMPLOYMENT LAW YEAR IN REVIEW

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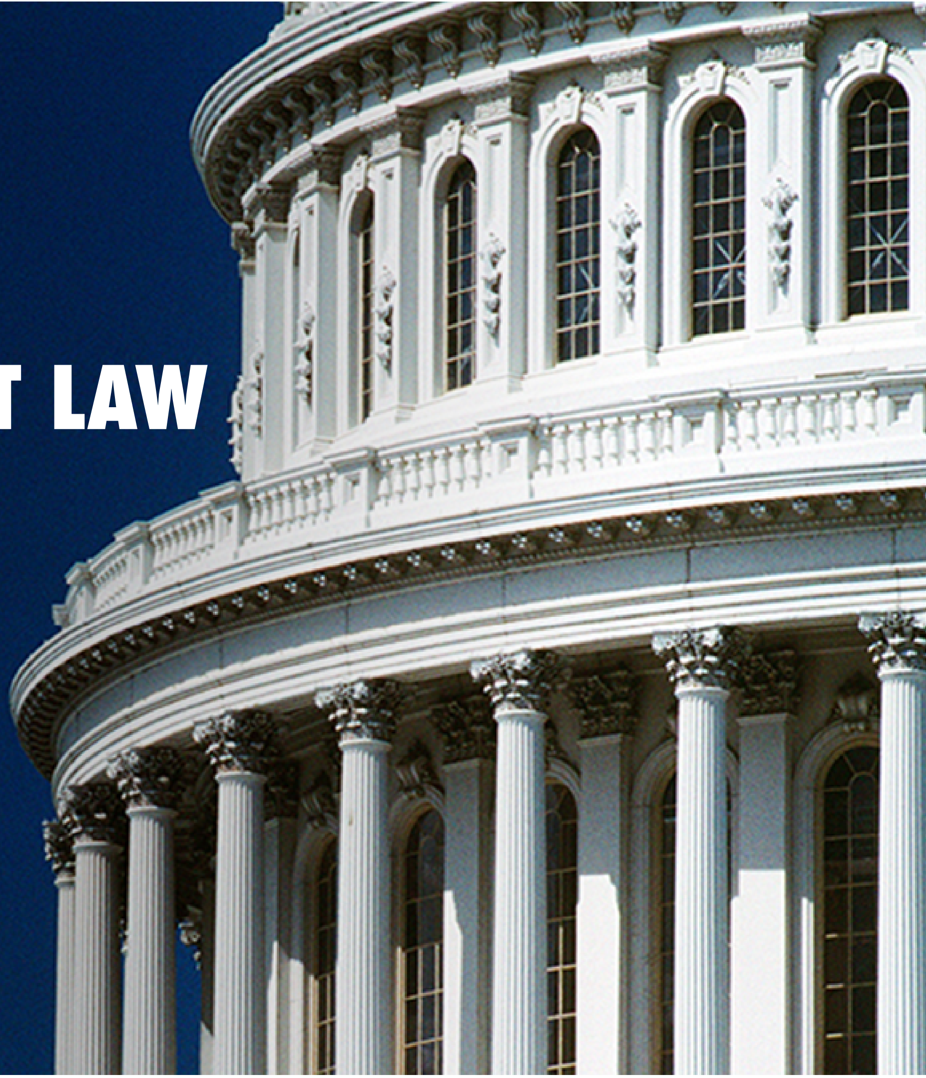
February 6, 2024



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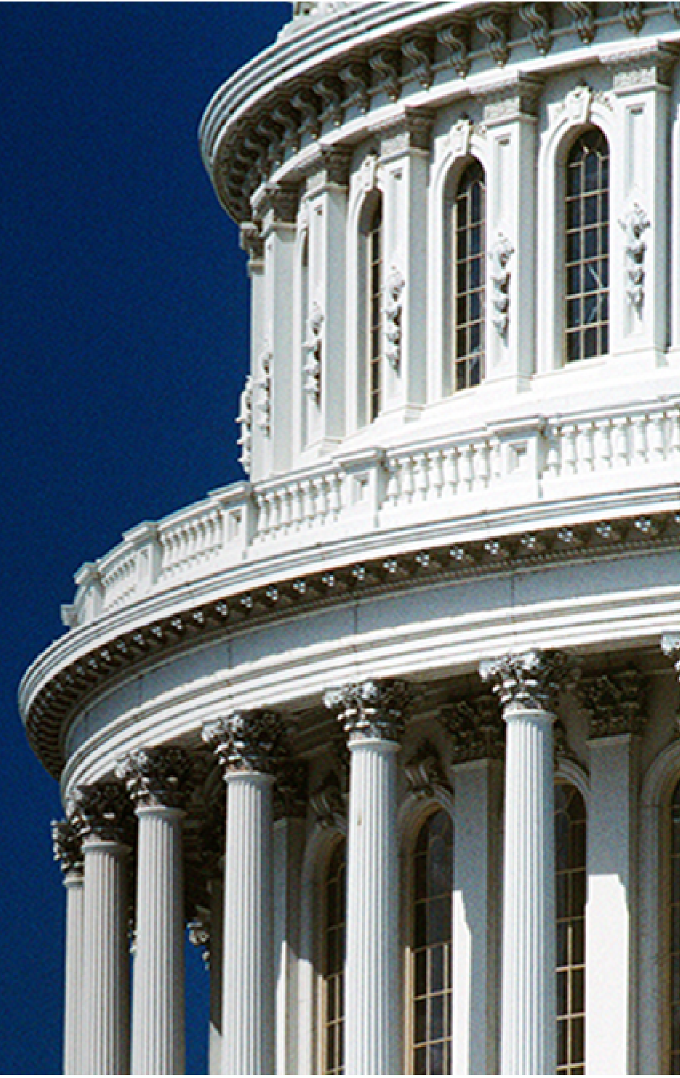
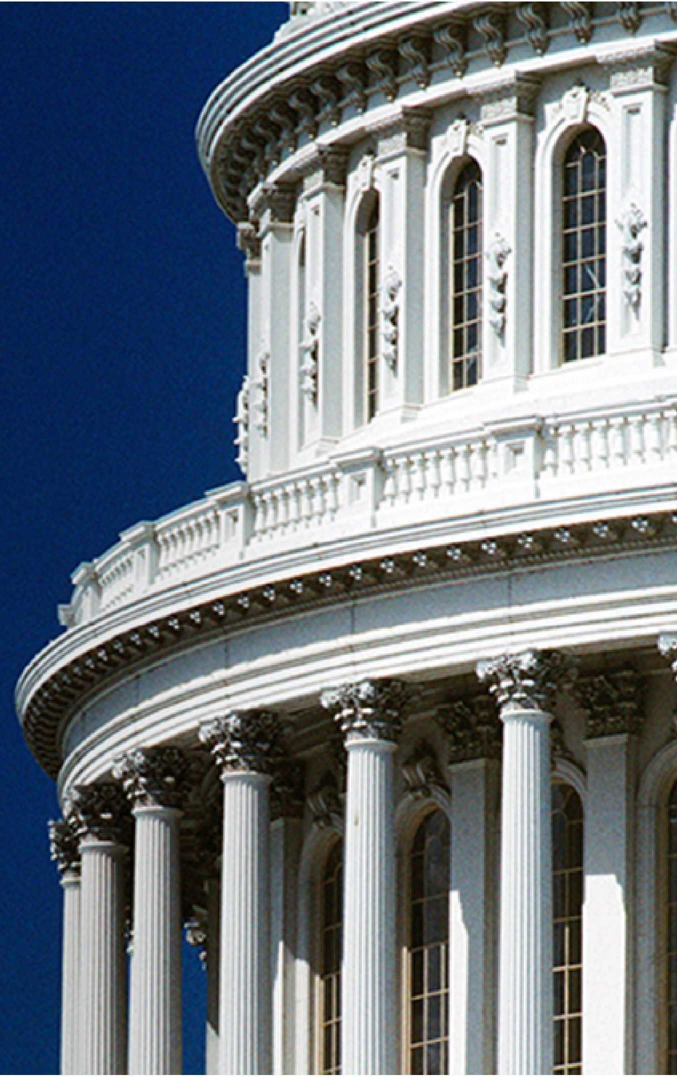
Agenda:

Wage & Hour/PAGA
Discrimination, Harassment, and Retaliation
Noncompete Agreements
Policy Updates
Independent Contractor/Joint Employer
Arbitration Agreements
Industry-Specific Laws



Wage & Hour/PAGA



Estrada v. Royalty Carpet Mills, Case No. S274340 – Manageability of PAGA Actions

- **Question on Review:** Do trial courts have inherent authority to ensure that claims under the Private Attorneys General Act (PAGA) will be manageable at trial, and to strike or narrow such claims if they cannot be managed?
- **Defendant/Appellant Arguments:** Yes, courts have inherent authority for two reasons:
  1. The California Constitution grants courts authority to manage all cases before them, and
  2. The court's authority to manage a case, including striking claims, was clearly established in precedent before PAGA was enacted. Thus, the PAGA statute is presumed to incorporate the law.
- **Plaintiff/Appellee Argument:** No, a court does not have the ability to manage or strike PAGA claims for two reasons:
  1. The language of PAGA (citing Section 2699(a)) does not permit a court to strike a claim, and
  2. PAGA claims (like other aggregate claims) are inherently difficult/complex and will require additional effort to manage when organizing evidence and preparing a trial plan.

Estrada v. Royalty Carpet Mills

- **Holding:** The decision resolved the split of authority between the Second Appellate District's decision in *Wesson v. Staples of the Offices Superstore, LLC*, which held that trial court has authority to strike PAGA claims as unmanageable, and the Fourth Appellate District's decision in *Estrada v. Royal Carpet Mills, Inc.*, which held the opposite, ultimately finding that trial courts do not have broad, inherent authority to strike PAGA claims on manageability grounds.
- The court also emphasized the various tools trial courts maintain to manage PAGA cases, including dispositive motions and sampling and representative testimony.
- Employers may look to the general election in November 2024 for the California Fair Pay and Accountability Act, which would repeal and replace PAGA, increasing enforcement mechanisms for the Labor Commissioner's office and ending the ability of private organizations or attorneys to assist with labor code enforcement actions.
- **Key Takeaway:** This decision has a significant impact on the viability and cost to litigate non-individual PAGA claims.

Wood v. Kaiser Found. Hosps., 88 Cal. App. 5th 742, 762 (2023)

- **Facts:** Plaintiff filed PAGA claim on behalf of herself and other aggrieved Kaiser employees for civil penalties, alleging that Kaiser failed to pay sick leave at "the correct rate" (i.e., the regular rate, not the base rate).
- Kaiser argued that Labor Code Section 248.5 (paid sick leave) authorizes employees to recover only "equitable, injunctive, or restitutionary relief," not PAGA penalties.
  - Labor Commissioner and AG on the other hand can recover penalties and other damages.
- **Holding:** Private right of action exists under PAGA to enforce the Healthy Workplaces, Healthy Families Act's requirement that sick time be paid at the regular rate, rejecting the prior majority view that there was no private right of action.
  - PAGA is not a private right of action, but rather a procedural device under which an agent or proxy of the state enforces the government's ability to collect penalties.
- **Key Takeaway:** Employers who fail to provide paid sick leave or fail to pay sick leave at the *regular rate of pay* may face PAGA actions.

In re Patacsil, 2023 WL 3964908 (Bankr. E.D. Cal. June 9, 2023)

- PAGA allocates 75% of any penalty award to the Labor and Workforce Development Agency (LWDA) and 25% to the aggrieved employees.
- The bankruptcy court in *In re Patacsil* held that amounts payable to the LWDA qualify as penalties "payable to and for the benefit of a governmental unit", which makes them nondischargeable in bankruptcy. 11 U.S.C. § 523(a)(7).
- Thus, employers who declare bankruptcy will remain liable for 75% of the penalty award.
- However, the bankruptcy court held that the other 25% of the penalty award and any statutory attorneys' fees do not satisfy any exception in the Bankruptcy Code and therefore are dischargeable in bankruptcy.
- **Key Takeaway:**
  - Consult with skilled bankruptcy and employment law counsel if you seek to file for bankruptcy while dealing with a PAGA lawsuit.

Young v. RemX Specialty Staffing, 91 Cal. App. 5th 427 (2023) – Final Pay for Temps

- **Holding:** No final paycheck due after end of temporary assignment.
  - Termination of a temporary assignment does not constitute a "discharge" for purposes of payment of final wages under Labor Code Section 201.3.
    - RemX's employee handbook specifically stated that the employment relationship ends only upon "express" notification and that the end of an assignment will not be considered a discharge or termination of the employment relationship.
    - Plaintiff's employment relationship with RemX was never actually terminated, and she could have remained on their payroll for another assignment.
- **Key Takeaway:**
  - Temporary services providers can pay an employee whose temporary assignment has ended on their regular payroll schedule so long as that employee is not formally terminated from the staffing agency.

Naranjo v. Spectrum Sec. Servs., Inc., 88 Cal. App. 5th 937 (2023) *(Naranjo III)* – Meal Premiums

- In *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal.5th 93 (2022) *(Naranjo II)*, the California Supreme Court held that missed meal/rest period premiums constitute "wages" that can trigger waiting time penalties and must be reported on wage statements.
- **Issues on Remand:**
  - Whether the trial court erred in finding that Spectrum's failure to pay employees missed meal/rest premiums was not "willful," barring recovery of waiting time penalties under Labor Code Section 203; and
  - Whether Spectrum's failure to report missed meal/rest period premiums on wage statements was "knowing and intentional," as required for recovery under Labor Code Section 226.

Naranjo v. Spectrum Sec. Servs., Inc., 88 Cal. App. 5th 937 (2023) *(Naranjo III)* – Meal Premiums

- **Holding:** A "good faith dispute" over whether meal/rest period premiums are owed precludes both: (1) a finding of "willfulness" necessary to support an award of waiting time penalties; and (2) a "knowing and intentional" wage statement violation.
- Spectrum's "good faith" defense was that its security officers were exempt from state law meal and rest period requirements under the federal enclave and intergovernmental immunity doctrines.
- There was also "good faith dispute" over whether meal/rest period premiums constituted wages until that issue was resolved in *Naranjo II*.

Naranjo v. Spectrum Sec. Servs., Inc., 88 Cal. App. 5th 937 (2023) *(Naranjo III)* – Meal Premiums

- **Key Takeaways:**
  - Employers should review their policies and implement procedures to ensure that missed/late/short meal and rest break premiums are paid to non-exempt employees.
  - Premiums paid must be separately and accurately reported on employees' wage statements.
  - Assert and develop evidence to support "good faith" affirmative defense to waiting time penalties and inaccurate wage statement claims.
  - *DO NOT FORGET: Premiums must be paid at the "regular rate" used to calculate overtime, not their hourly base rate.*
- California Supreme Court has granted review.

Minimum Wage Increase

- Effective January 1, 2024 for all employers, regardless of size:
  - Minimum wage for non-exempt employees increase to $16/hour from $15.50/hour.
  - Increase of 3.5% as determined by the California Director of Finance.
  - Impacts salary for white collar exemptions (professional, executive, administrative) increasing the minimum to $66,560.

- 2024 Election: Ballot Initiative 21-0043 proposes increasing the minimum wage to $18.00 per hour by January 1, 2025 for employers with 26 or more workers, with annual increases thereafter based on the CPI-W.

Potential FLSA Salary Threshold Increase

- The FLSA currently requires that salaries for exempt employees are not less than $684 per week, but this may change soon. (29 CFR § 541.600(a).)
- In November 2023, the US Department of Labor released a Notice of Proposed Rulemaking that, if passed, would raise the weekly salary from $684 to $1,059 per week.
- It would also increase the annualized salary threshold for the exemption for "highly compensated employees" from $107,432 per year to $143,988 per year.
- May go into effect in April 2024.

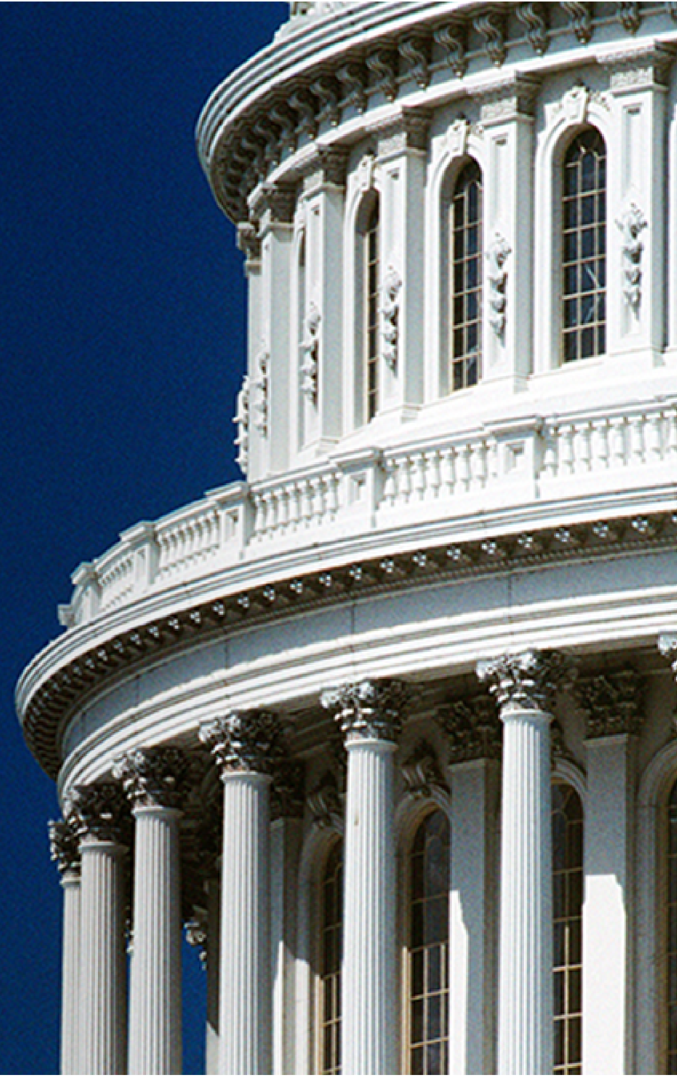
Increase of Computer Professionals Compensation

- Minimum compensation is adjusted annually to account for inflation according to the California Consumer Price Index (CPI).
- New minimum for exempt computer professionals:
  - The salary minimum will be $115,763.35 annually ($9,646.96 monthly) or an hourly wage of $55.58 to qualify for the California computer professional exemption.
  - Compensation threshold increases by 3.3% per the California Department of Industrial Relations.
- Duties test set forth under Labor Code Section 515.5, which is extremely difficult to meet, remains unchanged.
- Effective January 1, 2024.

AB 636: Changes to Wage Theft Notice Requirements

- Labor Code Section 2810.5 requires a Wage Theft Notice to new non-exempt hires, and when information changes.
- New Wage Theft Notices must include information on **“the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee’s first day of employment, that may affect their health and safety during their employment.”**
- New notice available on CA Department of Industrial Relations (DIR) website: https://www.dir.ca.gov/dlse/lc_2810.5_notice.pdf
- Beginning March 14, 2024, the bill requires that employers with employees on a federal H-2A visa to include an additional section on the Wage Theft Notice to those employees (in Spanish or in English, if requested) describing the employee’s additional rights and protections under California law.
- And remember to update the sick leave section!
- Labor Code Section 2810.5 applies only to non-exempt employees.
- Effective January 1, 2024.

Discrimination, Harassment, and Retaliation



Groff v. DeJoy, 600 U.S. 447, 143 S. Ct. 2279 (2023) – Religious Accommodation

- **Background:**
  - Plaintiff, an Evangelical Christian, worked for the USPS. The USPS began requiring plaintiff to work on Sundays, and plaintiff cited religious reasons that he could not work on Sundays (i.e., observing Sabbath). Initially USPS transferred him to a location that did not make Sunday deliveries, but eventually such location was required to make Sunday deliveries.
  - USPS tried to redistribute his deliveries to other employees, including those whose regular duties did not involve delivering mail. After repeated scheduling conflicts and overtime expenses, employee was subjected to progressive discipline and later resigned, bringing this lawsuit under Title VII.
  - The lower court granted summary judgment in favor of the USPS, and the Court of Appeals affirmed, finding that the USPS would have suffered an *undue hardship* because it would have been required to bear more than a *de minimis* cost to provide the requested religious accommodation.
- **Holding:** SCOTUS vacated the lower court's opinion, holding that an employer can only show "undue hardship" when the burden of granting a religious accommodation would result in *substantial increased costs in relation to the conduct of its business*, taking into account all relevant factors, including the accommodation at issue, and the practical impact it would have on the business in light of the nature, size, and operating cost of the employer.
- **Key Takeaway:** "Substantial increased costs" is a new, higher standard for defending a denial of a religious accommodation that many employers will have a difficult time meeting under Title VII.
  - Not all hope is lost: lower court may still find that the USPS met higher standard on remand.

Raines v. U.S. Healthworks Medical Group, 2023 WL 5341067 (Cal. S. Ct. 2023) – "Employer" Under FEHA

- **Background:** Plaintiffs were job applicants who received offers of employment contingent upon passing a medical screening. The screening included a detailed health history questionnaire conducted by US Healthworks (USHW) – a third-party provider.
  - Plaintiff alleged USHW asked intrusive questions unrelated to the applicants' ability to work in violation of the FEHA, which precludes employer (or its agent) from requiring medical or physical exam (1) until after conditional offer has been made and (2) provided the exam is "job related and consistent with business necessity."
  - The district court granted USHW's motion to dismiss. Ninth Circuit certified the question of the agent's *direct liability* for FEHA violations.
  - FEHA defines "employer" as "any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly…"
- **Holding:** CA Supreme Court held that business-entity agents with at least five employees that carry-out FEHA regulated activities as an agent of another employer may be held *directly liable* for employment discrimination. Court declined to "identify the specific scenarios" in which it could face direct liability.
- **Key Takeaway:** This decision provides clarification on the scope of third-party FEHA liability that was previously lacking. It also opens up more litigation against vendors providing hiring, screening, human resources, accommodations, or other services who now more clearly could face liability under FEHA.

Atalla v. Rite Aid Corp., 2023 WL 2521909 (Cal. Ct. App. 2023) – Sexual Harassment

- **Background:** Female employee and male supervisor had long-standing personal relationship that predated their working relationship - they socialized with their spouses, sent hundreds of texts with jokes and personal matters, went to lunch and coffee together, etc. One late night, supervisor sent female employee texts containing a "live photo" of him masturbating and a photo of his penis. He claimed that he was "so drunk right now" and "meant to send to wifey."
  - He apologized to female employee the next day.
- Female employee claimed sexual harassment. Rite Aid investigated, terminated supervisor's employment, and welcomed female employee back to work. Female employee refused to return.
- Superior Court granted summary judgment for Rite Aid. Employee appealed.
- **Holding:** Court of Appeal affirmed summary judgment for Rite Aid because evidence did not support an inference that the text chain conduct was *work-related,* meaning supervisor acting in his capacity as a supervisor. Therefore, the conduct was not imputable to Rite Aid.
- In reaching this conclusion, the court relied on evidence demonstrating a long-standing personal relationship between the female employee and supervisor that was wholly unconnected to their work and predated their working relationship.

Atalla v. Rite Aid Corp., 2023 WL 2521909 (Cal. Ct. App. 2023) – Sexual Harassment

- **Holding:** Court also held that there was no constructive termination of the female employee where Rite Aid terminated the supervisor.
- **Key Takeaways**:
  – Under FEHA, employers generally remain strictly liable for a supervisor's harassment, even where the employer is unaware of the supervisor's alleged bad actions.
  – However, *Atalla* limits the extent to which employers can be held responsible for conduct stemming from employees' personal relationships and after-hours conduct.

Sharp v. S&S Activewear, LLC, 69 F.4th 974 (9th Cir. 2023) – Sexual Harassment/HWE

- **Background:** Eight former employees - seven of whom were women - brought Title VII hostile work environment claim against employer, alleging that playing sexually graphic and violently misogynistic music in workplace created a hostile work environment. Plaintiffs alleged the music was"[b]lasted from commercial-strength speakers placed throughout the warehouse" and thus nearly impossible to escape.
  - The defendant argued "equal opportunity harasser" defense should apply because all employees were subject to the same behavior, rather than just one protected group.
  - District Court dismissed the claim, based on the "equal opportunity harasser" defense because the music was offensive to both men and women.
  - **Holding:** Ninth Circuit reversed, rejecting this defense, reasoning that that the repeated and prolonged exposure to music "saturated with sexually derogatory content" could constitute "harassment." Court held that "targeting a specific person is not a prerequisite" to HWE claim, and that the fact that both male and females were subjected to the music was "no defense" to HWE claim.
- **Key Takeaway:** Employer should continue to prohibit sexually explicit or derogatory audio and visual media in the workplace. The "equal opportunity harasser" is no longer an "escape hatch for liability."

AB 933: Defamation Privilege – Sexual Harassment

- Bill adds Section 47.1 to the CA Civil Code.
- In California, defamation includes written and oral false and unprivileged statements of fact that have a tendency to cause damage to someone's reputation.
- Civil Code Section 47 designates certain types of publications and communications as "privileged" and protects the makers of privileged statements from defamation lawsuits even if the statements have a tendency to damage another's reputation.
- AB 933 extends the definition of privileged communication in defamation actions to expressly include an individual's communications made without malice regarding an incident of sexual assault, harassment, or discrimination experienced by that individual, i.e., employees who report unlawful workplace harassment or discrimination.
- Privilege protects only individuals who have had a reasonable basis to file a complaint, meaning the individual who actually experienced the underlying conduct, regardless if filed or not.
- Must be made without malice.
- Broadly defines "communication" to include any factual information regarding an incident of sexual assault, harassment, or discrimination, and cyberbullying, as defined by California's Education Code, experienced by the individual making the communication, as defined.
- Prevailing defendant (i.e., the individual who made the privileged communication) can recover reasonable attorney fees and costs, treble damages, and punitive damages.

Lin v. Kaiser Found. Hosps., 2023 WL 2202544 (Cal. Ct. App. 2023) – Disability

- **Background:** Kaiser planned to terminate plaintiff and placed her on economic-based RIF list *before* she became disabled.
  - Plaintiff was selected for RIF by supervisor for performance difficulties, although lacking contemporaneous documentation. Subsequently, plaintiff suffered a shoulder injury and requested medical accommodations.
  - Plaintiff's supervisor then completed numerical ratings of performance as part of the RIF, and plaintiff received lowest rating.
  - Supervisor discussed plaintiff's performance with HR, noting that she was slow at typing *and would be slower with the injury*, and further that her *unavailability* (due to medical reasons) had burdened other teammates who had to complete her tasks. HR took notes of meeting.
  - Kaiser included plaintiff in RIF (while she was on leave). Plaintiff sued for disability discrimination.
- **Holding:** Court of appeal reversed summary judgment in Kaiser's favor. Kaiser's placement of plaintiff on RIF list before learning of her disability *was not dispositive* and *did not preclude her FEHA claims* as a matter of law. Rather, a jury may conclude that decision to leave plaintiff on RIF list and terminate her was based, at least in part, on her disability. Therefore, genuine issue of triable fact existed.
- **Key Takeaways:** Timing matters. Don't delay terminations. Moreover, even where an employer learns of a disability or other protected conduct ***after*** identifying an employee for termination, employer must carefully analyze the risk of the decision—including whether the evidence prior to the identification is strong and legitimate.

People ex rel. Garcia-Brower v. Kolla's Inc., 14 Cal. 5th 719, (Cal. S. Ct. 2023) – Whistleblowers

- **Background:** A Labor Commissioner brought an enforcement action on behalf of a plaintiff-bartender who complained to her employer about unpaid wages, to which her employer responded by threatening to report her to immigration and terminating her employment.
  - Labor Code Section 1102.5 prohibits retaliation against individuals for "disclosing information" about suspected violations of the law to their employer or other certain sources.
  - The trial court dismissed the action, and, on appeal, the CA Court of Appeals upheld the dismissal, both interpreting "disclosure" under Section 1102.5 to mean "the revelation of something **new**, or at least believed by the discloser to be **new**, to the person or agency to whom the disclosure is made."
    - In other words, because the employer was at least aware of the fact that it was not properly paying wages, the plaintiff's report to her employer reporting was not considered a "disclosure."
- **Holding:** The CA Supreme Court disagreed, holding that the complaint constituted a "disclosure" under Section 1102.5. The court reviewed the legislative history of Section 1102.5(b), holding that "disclosure" means "report," "inform," or "complain."
  - The court rejected the argument that this interpretation would threaten to convert everyday workplace disputes into whistleblower cases, noting that employers are already protected under the statute's "objective reasonableness" requirement and "clear and convincing" mixed motive affirmative defense.
- **Key Takeaway:** Whistleblowers are protected from retaliation even when the employer is already aware of the reported alleged misconduct. This broader interpretation could result in additional liability for employers.

SB 497: Retaliation Rebuttable Presumption

- Existing law prohibits an employer from discharging, discriminating, retaliating, or taking any adverse action against an employee or applicant engaged in protected activity.
- Establishes a rebuttable presumption in favor of an employee under Labor Code Sections 98.6, 1102.5, and 1197.5 if an employer takes any adverse action within ***90 days*** of an employee's protected activity.
  – Protected activity under these statutes includes, e.g., filing complaint or instituting proceeding under or relating to rights under jurisdiction of the Labor Commissioner, making written/oral complaint that he/she is owed unpaid wages, testifying in a proceeding regarding the above, etc.; disclosing information regarding violation of or noncompliance with law to a government/law enforcement agency, to a person with authority over employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance; or disclosing a violation of equal pay laws or employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise their rights regarding the above.
- Increases civil penalty imposed on employer under Section 1102.5 from $10,000 generally to $10,000 per employee per violation.
- Effective January 1, 2024.

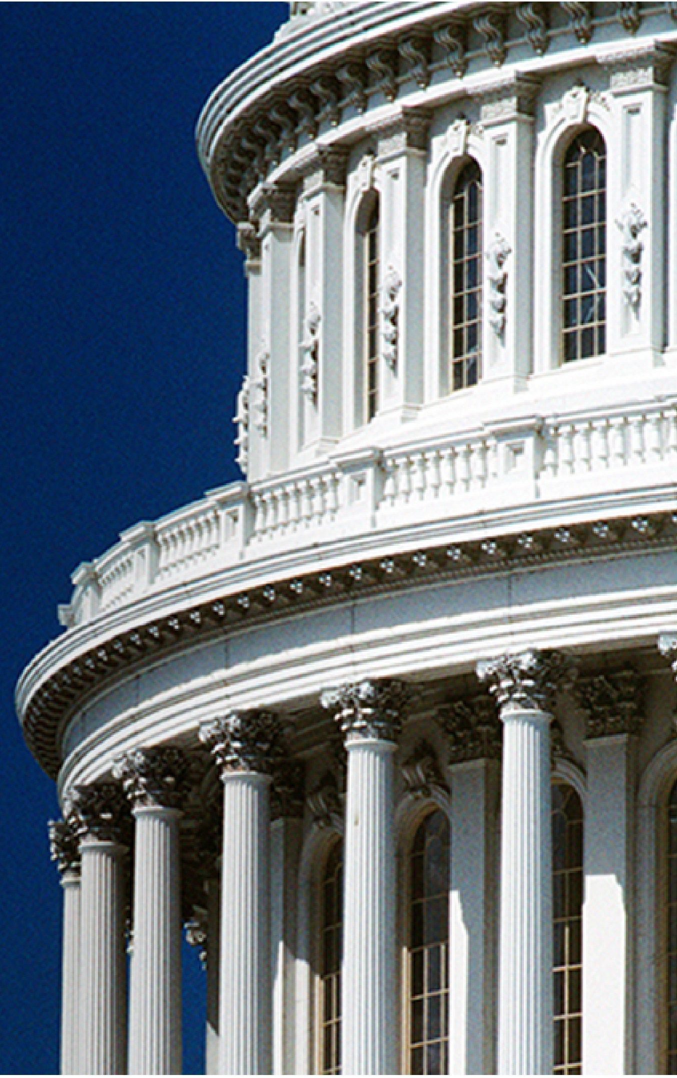
SB 700: Expansion of Marijuana-Use Protections

- SB 700 expands AB 2188 (passed last year) and with some exceptions prohibits discrimination in hiring, terminating, or any other term of employment on the basis of:

  (1) an employee or applicant's use of cannabis off-the-job and away from the workplace;

  (2) an employer-required drug screening test that has found the person to have **non**psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.
- Clarifies employers are prohibited from requesting information from an employee or applicant based on prior use of cannabis.
- Makes it unlawful to discriminate against a job applicant based on information regarding prior use of cannabis that is learned from a criminal history report unless authorized by other state or federal law.
- Note: Employers may still conduct scientifically valid pre-employment drug screening through methods that do not screen for nonpsychoactive cannabis metabolites and can refuse to hire someone who fails that test.
- Effective January 1, 2024.
- **Key Takeaways:** Implement drug screening that tests only for **psychoactive** cannabis metabolites.

Noncompete Agreements



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New B&P Code § 16600.5 – Private Right of Action

- Existing law: Except as provided in this chapter, ***every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.***
  - 3 Statutory exceptions - ONLY
- Employer cannot enter into contract void under § 16600. Contract is void regardless of where or when unenforceable contract was signed.
- Employer/former employer cannot attempt to enforce void contract regardless of whether the contract was signed and the employment was maintained outside of California.
- Employer commits civil violation if *enters into void contract or attempts to enforce* void contract.
- Purpose of the law is to protect against the restraint of trade when an employee seeks employment in California.
- Employee/former employee/prospective employee may bring a private action to enforce this chapter for injunctive relief and actual damages, and shall be entitled to recover reasonable attorney's fees and costs.
- Effective January 1, 2024.

New B&P Code § 16600.1 – Broadens Protections; Notice

- Unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy statutory exception.
- Codifies the holding in *Edwards v. Arthur Anderson LLP*, 44 Cal. 4th 937 (2008), that any noncompete, however "narrowly tailored", is void.
- Section 16600 not limited to contracts where the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract.
- Must provide notice to current and former employees who were employed *after January 1, 2022* whose contracts include a noncompete clause, or who were required to enter a void noncompete agreement.
  - Notice must notify the employee that the noncompete clause or noncompete agreement is void.
  - Notice shall be in the form of a written *individualized* communication to the employee or former employee.
  - Notice must be provided by February 14, 2024.
- Violation of new law constitutes an act of unfair competition under B&P Code Section 17200 et seq.
- Effective January 1, 2024.

Policy Updates: Leaves/Safety/Expenses

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SB 616: Key Takeaways

Topic	Existing	Effective Jan. 1, 2024
Frontloading at beginning of each year of employment, calendar year, or 12-month period	24 hours or 3 days	40 hours or 5 days
Continuous accrual cap (Note: Once employees use time to fall below the accrual cap, employees will start accruing again up to the cap)	48 hours or 6 days	80 hours or 10 days
Alternative accrual method timing	*Regular Basis Accrual:* 24 hours by the 120th day of employment, calendar year, or 12-month period *Non-regular Basis Accrual:* 24 hours or 3 days by the 120th day of employment	*Regular Basis Accrual:* 24 hours by the 120th day of employment, calendar year, or 12-month period *and* 40 hours by the 200th day of employment, calendar year, or 12-month period *Non-regular Basis Accrual:* 24 hours or 3 days by the 120th day *and* 40 hours or 5 days by the 200th day of employment

SB 616: Key Takeaways

Topic	Existing	Effective Jan. 1, 2024
Use caps each year of employment, calendar year, or 12-month period	24 hours or 3 days	40 hours or 5 days
Non-construction unionized employees	Excluded from current paid sick leave law so long as the collective bargaining agreement (CBA) expressly provided for (1) certain wage and hour provisions, (2) final and binding arbitration of paid sick day disputes, (3) regular hourly rate or pay of at least 30% more than the state minimum wage, and (4) paid sick leave or other paid time off that could be used for paid sick leave reasons.	Partially excluded from amended paid sick leave law. Non-construction unionized employees will be entitled to the benefits under Labor Code section 246.5, which means they are now entitled to (1) use CBA-provided leave intended for sick leave use for specific qualifying reasons, (2) not be required to find a replacement to take sick leave, and (3) be free from discrimination or retaliation for using such leave or engaging in other protected activity.
Employees covered by the Federal Railroad Unemployment Insurance Act (RUIA)	Covered under current paid sick leave law	Not covered under amended paid sick leave law. This change reflects the outcome of the Ninth Circuit's decision in *National Railroad Passenger Corp. v. Su* (2022), which held that the RUIA preempted California law.

SB 848: Leave for Reproductive Loss Event

- Senate Bill 848 adds Section 12945.6 to the Government Code.
- Effective January 1, 2024, requires covered employers to provide eligible employees with up to five days of reproductive loss unpaid leave following a “reproductive loss event.”
  - A “reproductive loss event” is defined as “the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.”
  - Leave generally must be taken within 3 months of the reproductive loss event, and may be taken on non-consecutive days.
  - Leave is unpaid unless the employer has an existing policy that provides for paid leave that would cover reproductive loss leave, or the employee elects to use another source of accrued paid leave.
- The law caps the amount of reproductive loss leave to a maximum of 20 days within a 12-month period. Thus, where an employee may experience multiple reproductive loss events, an employer is not required to provide more than 20 days of reproductive loss leave.
- Prohibits retaliation against an employee who uses this leave or shares information about it.

SB 553: Prevention of Workplace Violence

- Amends Labor Code Section 6401.7.
  - Requires that the employer's Injury Prevention Program include a workplace violence prevention plan.
- Adds Labor Code Section 6401.9.
  - Establishes standards for the workplace violence prevention plan.
- Adds Code of Civil Procedure Section 527.8.
  - Authorizes a collective bargaining representative to seek workplace violence restraining orders on behalf of the union's members.

- Deadline: July 1, 2024

Background Checks: Effective October 1, 2023

- Amended FEHA regulations governing an employer's use and consideration of a job applicant's criminal history in employment decisions.
- Before the new regulations, the California Fair Chance Act already required employers to conduct an individualized assessment before making a preliminary decision to rescind an applicant's conditional offer of employment due to the applicant's criminal history to ensure that the decision to deny employment is *job-related and consistent with business necessity.*
  - As before, employers must consider the following three factors when conducting an individualized assessment: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct and/or completion of the sentence; and (3) the nature of the job held or sought.
- Amended regulations identify detailed information the employer must consider when analyzing (1)-(3) above if provided to it (e.g., age, harm to people or property, elapsed time since crime/incarceration, amount of loss, drug addiction, mental illness, domestic violence, etc.)
- Employers previously were only required to consider evidence of rehabilitation or mitigating circumstances as part of the individualized ***re***assessment. Now, employers ***must*** consider such evidence as part of the ***initial individualized assessment***.
- Amended regulations prohibit employers from ***requiring*** applicants to provide any specific type of evidence or disqualifying applicants for failing to provide any specific type of evidence (e.g., a police report).

Background Checks: Effective October 1, 2023

- "Applicant" now includes current employees who have applied or indicated a specific desire to be considered for a different position or who are subjected to review of criminal history due to change in ownership, management, or policy.

- "Employer" now also includes (1) a labor contractor (supplies labor); (2) staffing agency; (3) any entity that selects, obtains, or is provided workers from a pool; and (4) any entity that evaluates the applicant's conviction history on behalf of an employer, or acts as an agent of an employer.

- **Key Takeaways:**
  - Employers should review their existing policies and practices, particularly those that pertain to conducting individualized assessments of applicants' criminal histories, to ensure that they are in compliance with the amended regulations.
  - Provide training to anyone evaluating background checks.
  - Employers also must still comply with "local" background check requirements (e.g., Los Angeles and San Francisco "Fair Chance" ordinances).

Militello v. VFARM, 1509, 89 Cal. App. 5th 602 (2023) – Privacy

- **Background:** In a dispute between business partners, one partner moved to disqualify opposing counsel, arguing that plaintiff improperly provided private emails sent on the company's network, which plaintiff's counsel attempted to use in the litigation in violation of the spousal communications privilege.
- **Holding:** Affirming the trial court's order disqualifying the attorney, the court noted that the lack of a policy governing electronic systems monitoring, or any other policies that would put the sender on notice that email communication was not private.
  - Emails exchanged between an employee and her spouse were protected by the spousal privilege, even though they were sent on the company's network using company email.
  - There is a presumption in favor of the privilege, and there was insufficient evidence to establish the employee lacked a reasonable expectation that communications were private.
- **Key Takeaways:** Employers should have clear, well-defined policies on the use of company equipment and networks, including:
  - Defining resources and systems covered by the policy;
  - Notifying employees there is no reasonable expectation of privacy when using company devices;
  - Notifying employees that company issued devices and systems are monitored; and
  - Requiring acknowledgment of policy.

Thai v. International Business Machines Corp., 93 Cal. App. 5th 364 (2023), *review denied* (Oct. 11, 2023) – Expenses

- **Issue:** Whether the employer was obligated to reimburse its employees for computer, internet, and phone-related expenses they incurred as a result of working at home during the COVID-19 pandemic.
  - Working at home was required not by the defendant/employer.
  - Instead required by Governor Gavin Newsom's stay-at-home order.
- **Law:** Labor Code Section 2802 requires employers to indemnify employees for "all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties…"
- **Holding:** Even if government-mandated, stay-at-home orders were an intervening cause of employees working from home and incurring necessary business expenses, the employer is *still liable* to reimburse the employees for those expenses under California Labor Code Section 2802.
  - Expenses were incurred in "direct consequence of the discharge of" the employee's duties.

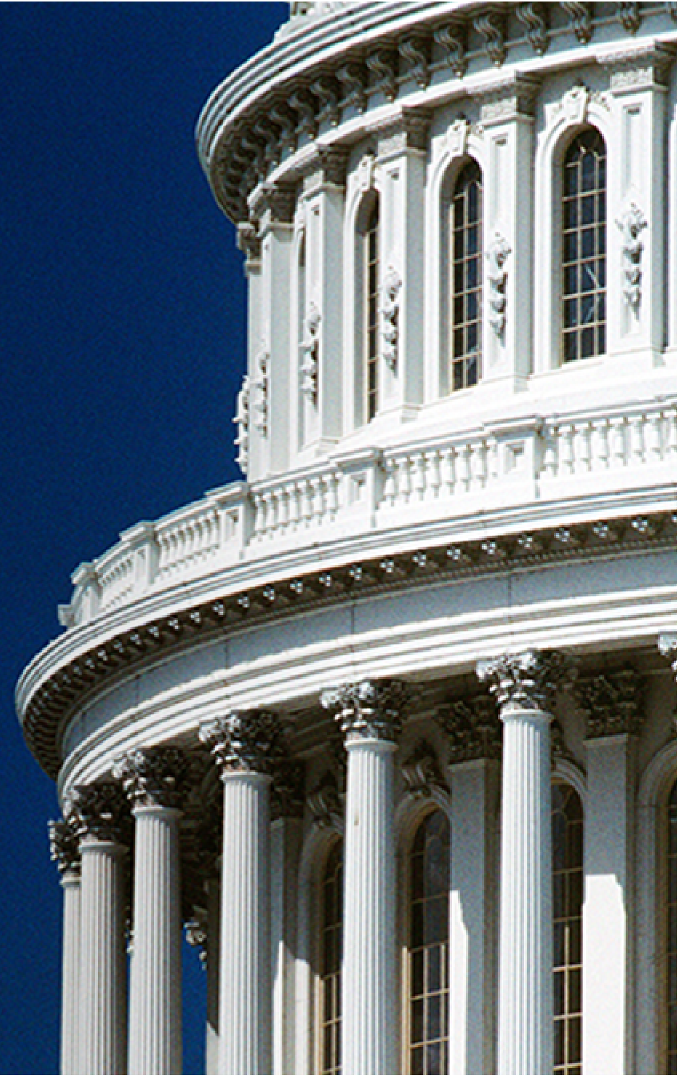
Potts v. Sirius XM Radio Inc., 2023 WL 2628234 (C.D. Cal. Mar. 7, 2023) – Expenses

- **Background:** Plaintiff was required to work from home in the wake of COVID-19 and shelter-in-place orders. Employer's reimbursement policies provided employees with a flat stipend, with additional reimbursement available upon request, plus plaintiff was provided with a company credit card that she could have used.
  - Employer sent plaintiff an email reminding her to submit outstanding requests for reimbursement. However, plaintiff never contacted HR or submitted requests for reimbursements.
  - Plaintiff alleged Sirius violated Labor Code Section 2802 by failing to reimburse her out-of-pocket expenses for, among other things, furniture and office supplies, increased utility costs, and a portion of her rent.

Potts v. Sirius XM Radio Inc., 2023 WL 2628234 (C.D. Cal. Mar. 7, 2023) – Expenses

- **Holding:** The court granted employer's motion for summary judgment after finding that employer had no actual or constructive knowledge of the plaintiff's expenses.
  - An employee's failure to submit a request for reimbursement does not automatically defeat a Labor Code Section 2802 claim.
  - Rather, liability depends on whether an employer "knows or has reason to know" that an employee incurred a reimbursable expense.
  - Here, employer exercised due diligence to ensure that employees were properly reimbursed – i.e., automatic stipend, appropriate policies, communicating to employees about those policies, and reminding them to submit claims for outstanding expenses.
  - Plaintiff's failure to submit requests for additional amounts above the regular stipend meant there was "no way" that employer could have known her expenses actually exceeded the stipend she received.
- The case is on appeal to the Ninth Circuit.

Independent Contractor/Joint Employer



AB 594: Private Enforcement of Labor Code Violations – Labor Code §§ 218 & 226.8

- Directed at “widespread” “wage theft” in California, particularly as to lower wage workers, harming them and fair competition in the state.
- Expands the state of California’s authority to enforce provisions of the Labor Code by explicitly allowing a “public prosecutor” (meaning the attorney general, a district attorney, a city attorney, a county counsel, or any other city or county prosecutor) to enforce certain violations of the Labor Code by prosecuting the violations civilly or criminally, or enforcing the provisions independently.
- Makes unlawful:
  - Willful misclassification of an individual as an independent contractor.
  - Charging a willfully misclassified individual a fee or making deductions where such acts would have violated the law if individual not misclassified.

AB 594

- Willful is defined as “voluntarily and knowingly”
- Penalties:
  - $5,000 - $15,000 per violation ($10,000 - $25,000 per violation for pattern/practice)
  - In addition to any other penalties provided by law
  - Contractors’ State License Board disciplinary action
- Provides that, in any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the Labor Code.
- DLSE gets 14-day pre-filing notice and intervention rights (2029 sunset).
- Don’t forget: In addition to any other remedy ordered, an agency or court shall order the employer found to have misclassified a worker to display prominently on its internet, for one year, that it has committed a serious violation of the law by engaging in the willful misclassification of employees.

Castellanos v. State of Cal., 89 Cal. App. 5th 131 (2023)

- **Background:** In 2019, California enacted AB 5, codifying the "ABC" test for distinguishing employees and independent contractors. In response, several app-based companies asked California voters to exempt app-based drivers and delivery businesses from AB 5 with Proposition 22.
  - Group of ride-share drivers and the Service Employees International Union sought to have Proposition 22 declared invalid because it violates the California Constitution.
- Trial court ruled that Proposition 22 was unconstitutional, including because it intrudes on the Legislature's exclusive authority to enact legislation including workers' compensation laws.
- **Holding:** While certain provisions of Proposition 22 were unconstitutional, those provisions could be severed and the remainder of Proposition 22 was constitutional.
- **Key Takeaway:** App-based rideshare companies that provide minimum protections in Proposition 22 continue to be exempt from AB 5.
- California Supreme Court has granted review.
  - Attorney General filed amicus brief arguing that Proposition 22 is constitutional.

Olson v. State of Cal., 62 F.4th 1206 (9th Cir. 2023)

- **Background:** AB 5 codified the onerous "ABC Test" for classifying independent contractors/employees, and AB 2257 created wide-ranging exemptions to this test.
  - AB 5's sponsor, and other state legislators, made public statements in newspapers and tweets evidencing animus toward Uber, Postmates, and other app-based ride-hailing and delivery companies.
  - Uber, Postmates, and their drivers challenged AB 5, alleging that it violated the Equal Protection, Due Process, Contract, and Bill of Attainder clauses of the federal and state constitutions.
  - District Court denied plaintiffs motion for preliminary injunction and dismissed their complaint.
  - Plaintiffs appealed.
  - Proposition 22, which classifies app-based drivers as independent contractors rather than employees, was passed *after* the District Court's order and oral arguments in the Ninth Circuit.

Olson v. State of Cal., 62 F.4th 1206 (9th Cir. 2023)

- **Ninth Circuit Holding:** Ninth Circuit held that plaintiffs plausibly alleged that *AB 5 singled out app-based ride-hailing and delivery service providers* and reversed dismissal of complaint based on Equal Protection Clause, reasoning:
  - Primary impetus for bill was author's unfavorable view of Uber, Postmates, and similar gig-based business models;
  - Creation of exemptions through lobbying/backroom dealing was “starkly inconsistent” with bill’s purpose; and
  - Exclusion of plaintiffs from exemptions provided to comparable app-based workers (e.g., TaskRabbit) could be attributed to animus.
- Ninth Circuit remanded the case and ordered District Court to reconsider the motion for preliminary injunction because AB 2257 and Prop. 22 did not exist when plaintiffs filed their initial complaint. California filed a petition for panel and en banc rehearing.
- **Pending En Banc Case**: California’s petition was granted on December 18, 2023. The rehearing is scheduled to take place the week of March 18, 2024 in San Francisco, CA.

DOL Changes Independent Contractor Standard

The DOL repealed the Trump-era 2021 approach and returned to a six-factor analysis that examines the totality of circumstances of the relationship, where no one factor is prioritized over the others.

The DOL seeks to ensure that more workers receive the protections of employee status and therefore make it more challenging for companies to classify workers as independent contractors.

This rule will inevitably be cited as persuasive authority for federal courts considering classification issues.

Six Factor Analysis:

1. **The opportunity for profit or loss depending on managerial skill;**
2. **Investments by the worker and potential employer;**
3. **The degree of permanence of the work relationship;**
4. **The nature and degree of control over performance of the work and working relationship;**
   - Now considers actions taken for compliance with laws and regulations as evidence of control, unless performed for the "sole purpose of compliance."
5. **The extent to which the work performed is an integral part of the potential employer's business; and**
   - Now asks whether the work completed by the worker is integral, rather than whether the individual worker is integral to the organization.
6. **The skill and initiative of the worker.**

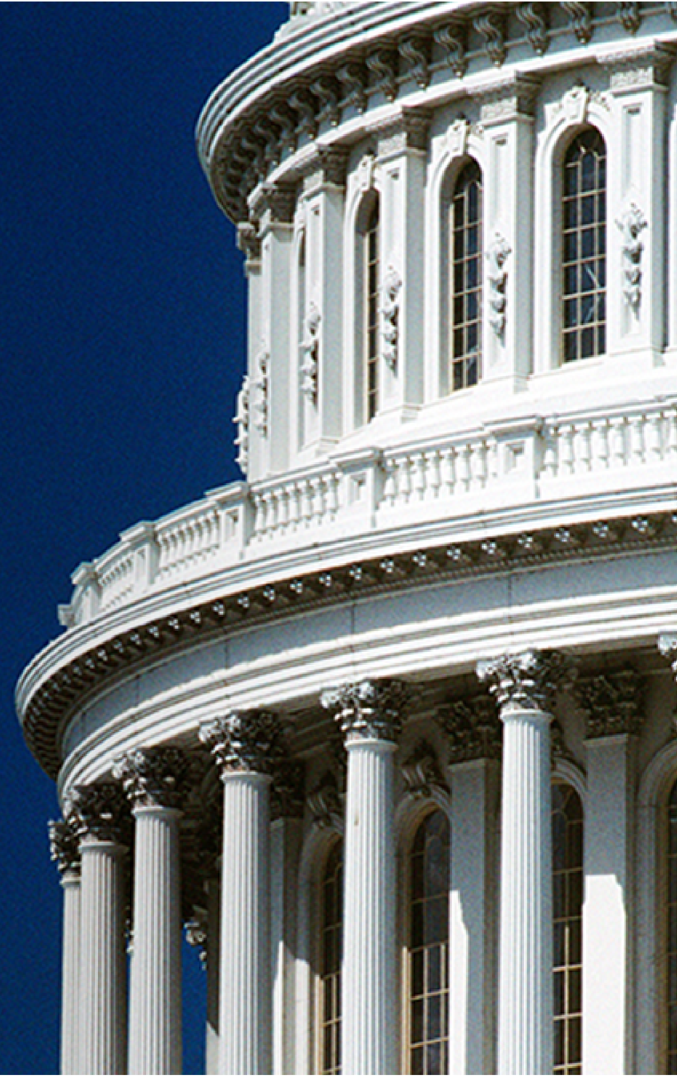
Morales-Garcia v. Better Produce, Inc., 70 F.4th 532 (9th Cir. 2023)

- **Background:**
  - Plaintiffs, agricultural workers, were hired by employer/strawberry growers to pick fruit that was then turned over to the defendants for distribution primarily to large retail grocery chains.
  - Employer/growers filed for bankruptcy and agricultural workers sought recovery from ***distributors as "client employers"*** and joint employers under Labor Code Section 2810.3.
  - The District Court ruled for the distributors on all theories, and plaintiffs appealed only the ruling on the "client employer" claim.
- **Relevant Statutory Definitions:**
  - A "client employer" is defined as "a business entity…that obtains or is provided workers to perform labor within its usual course of business from a labor contractor."
  - A "labor contractor" is defined as "an individual or entity that supplies…a client employer with workers to perform labor within the client employer's usual course of business."
  - "Usual course of business" is defined as "the regular and customary work of a business, performed within or upon the premises or worksite of the client employer."

Morales-Garcia v. Better Produce, Inc., 70 F.4th 532 (9th Cir. 2023)

- **Key Facts:**
  - Distributors leased the farms and subleased them to the employer/growers.
  - Under sublease agreements, land could only be used to grow strawberries and the distributors owned the exclusive right to sell the strawberries to their retail customers.
  - Distributors retained right to conduct inspections, provided employer/growers with packaging materials with the distributors' labels on them, and dictated quantity of strawberries to be produced.
  - Employer/growers conducted farming operations and supervised plaintiffs.
- **Holding:** The Ninth Circuit affirmed, holding that the distributors were *not* "client employers" because the work that plaintiffs performed took place on the farms, not on the premises or worksites of the distributors.
  - To be liable under Labor Code Section 2810.3, the alleged "client employer" must "exercise some element of control *over the place* where the laborers work."
  - Farms were not "worksites" because the distributors were not in the business of harvesting product grown on the farms.

Arbitration Agreements



Chamber of Commerce v. Bonta, 62 F.4th 473 (9th Cir. 2023)

- **Background:** Existing law AB 51 was passed to protect employees from what the legislature termed "forced arbitration." The law prohibits and criminalizes mandatory arbitration of FEHA and Labor Code claims as a condition of employment or continued employment.
  - United States Chamber of Commerce filed a complaint against the State of California challenging AB 51 as preempted by the Federal Arbitration Act (FAA).
  - The FAA protects the integrity of arbitration agreements by deeming them valid, irrevocable, and enforceable.
- District Court issued a preliminary injunction, holding the FAA fully preempts AB 51.
- Divided Ninth Circuit vacated the preliminary injunction, reasoning that only the enforcement of civil and criminal sanctions provisions conflict with the FAA.

Chamber of Commerce v. Bonta, 62 F.4th 473 (9th Cir. 2023)

- **On Rehearing**: On rehearing, Ninth Circuit held that the FAA fully preempts AB 51 because a state law that discriminates against the formation of an arbitration agreement is preempted, even if the agreement is ultimately enforceable. The matter was subsequently remanded to the District Court.
- **Permanent Injunction**: The District Court permanently enjoined AB 51 with respect to arbitration agreements covered by the FAA after the U.S. Chamber of Commerce and the State of California stipulated to the permanent injunction and dismissal of the case.
- **Key Takeaways:**
  - California employers, whose arbitration agreements are subject to the FAA, can require arbitration of FEHA and Labor Code claims as a condition of employment and continued employment.
  - Arbitration agreement should explicitly state that the FAA applies and that employer's business impacts interstate commerce.

Adolph v. Uber Technologies, Inc., 14 Cal.5th 1104 (2023) – PAGA Standing

- **Context:** US Supreme Court held in *Viking River* :
  - While no "wholesale waivers" of PAGA actions are allowed, an arbitration agreement under federal law can require the arbitration of the employee's *individual* claims under PAGA.
  - Plaintiff lacks standing to bring *Non*-individual PAGA claims (i.e. on behalf of others) in court so they must be dismissed.
  - Victory for employers because CA had previously allowed employees to avoid mandatory arbitration of PAGA claims.
- **And then *Adolph* came along, holding:** Employee required to arbitrate individual PAGA claim *maintains* standing to pursue representative PAGA court claims.
  - California courts are not bound by the US Supreme Court's interpretation of state law in *Viking River*, which held that, if a named plaintiff's individual PAGA claim was compelled to arbitration, that named plaintiff would lack standing to pursue their representative PAGA claim, and those claims must be dismissed.
  - Two requirements for PAGA standing: (1) plaintiff was employed by the violator and (2) plaintiff suffered one or more of the alleged violations that were committed.

Adolph v. Uber Technologies, Inc., 14 Cal.5th 1104 (2023) – PAGA Standing

- **Key Takeaways:**
  - Amend arbitration agreements to remove *wholesale* waivers of "representative" actions. Waive only right to pursue "non-individual" representative claims in arbitration.
    - *Viking River; DeMarinis v. Heritage Bank of Commerce* (CA1/3 A167091, filed 12/11/23, ord. pub. 1/8/24) –Language in arbitration agreement that, "[t]here shall be no right or authority for any dispute to be brought, heard, or arbitrated on a class, collective, or representative basis…" improperly required employees to waive their right to bring any "representative" PAGA claim waiver provision was enforceable (including *individual* PAGA claims).
      - Arbitration agreement failed to include severability provision which may have allowed court to "sever" illegal portion of "wholesale" PAGA waiver.
  - Include "stay of non-arbitrable claims pending arbitration" provisions to pause representative PAGA claims pending in court until an arbitrator resolved the individual claim.
  - Include "severability" provision that permits a court to sever only terms found to be illegal/overbroad while enforcing the other provisions.
  - Think strategically about arbitrating the individual PAGA claim:
    - Court held if an arbitrator concludes that a plaintiff was not an "aggrieved employee," (i.e., employer defeats the claim) then plaintiff "could no longer prosecute his non-individual claims due to lack of standing."
    - Alternatively, arbitrator could find that plaintiff was "aggrieved."

Duran v. EmployBridge Holding Co., 92 Cal. App. 5th 59 (2023) – Non-individual v. Individual PAGA Claims

- **Background:** Arbitration agreement contained a carve-out provision stating: "claims under PAGA…are not arbitrable under this Agreement."
  - The trial court denied employer's motion to compel arbitration, holding that "claims under PAGA" effectively excluded "individual" PAGA claims from arbitration. Accordingly, all PAGA claims are subject to court action. The Court of Appeals affirmed.
  - Employer argued that it intended to carve-out from arbitration claims that applicable law deemed non-arbitrable, such as *non-individual* PAGA claims but that arbitrable claims, such as an *individual* PAGA claim, should be subject to arbitration.

- **Holding:** Denial of motion to compel arbitration affirmed. If employer had intended that only nonarbitrable PAGA claims would not be subject to arbitration under the agreement, the employer should have drafted the clause to say so.

Duran v. EmployBridge Holding Co., 92 Cal. App. 5th 59 (2023)

- **Key Takeaways:**
  - Arbitration agreements should carve out only *non-individual* PAGA claims (i.e., those brought on behalf of others).
  - *Individual* PAGA claims (i.e., suffered by/impacting only the plaintiff) should be subject to mandatory arbitration.

Rocha v. U-Haul Co. of Cal., 88 Cal. App. 5th 65 (2023)

- **Background:** Plaintiffs alleged a Labor Code Section 1102.5 (whistleblower) claim against their employer U-Haul. U-Haul moved to compel arbitration, and plaintiffs moved to amend their complaint to add a PAGA claim based on the same allegations. Trial court denied plaintiffs' motion.
  - In arbitration, the arbitrator determined U-Haul did not violate Section 1102.5.
  - Trial court affirmed the arbitration award.
  - Plaintiffs appealed, arguing that the trial court abused its discretion by denying leave to amend and that the arbitrator's decision on their *non*-PAGA Section 1102.5 claim did not preclude them from establishing PAGA standing based on the same alleged violation.

- **Holding:** Plaintiffs lost on appeal. Under the doctrine of issue preclusion, an arbitrator's determination that the employer did not commit an alleged Labor Code violation precluded plaintiffs from establishing standing under PAGA based on the same alleged violation, even though the claims in arbitration were individual, *non*-PAGA Labor Code claims.

- **Key Takeaways:** An arbitration victory on the merits on *non*-PAGA Labor Code claims bars the employee from pursuing a PAGA claim based on the same violations.

Alberto v. Cambrian, 91 Cal. App. 5th 482, No. B314192 (Cal. Ct. App. May 10, 2023) - Substantive Unconscionability Based on Other Contracts Signed in Same Transaction

- **Background:** Employee signed arbitration agreement and separate confidentiality agreement on the same day.
  - Employee brought wage and hour claim against employer, and employer moved to compel arbitration.
  - Trial court found that arbitration agreement was substantively unconscionable due, in part, to unconscionable provisions in confidentiality agreement, and denied employer's motion to compel.
- **Holding:** Court of Appeal affirmed.
  - Arbitration and confidentiality agreements must be read together.
    - Executed on the same day; part of a single primary transaction of "hiring"; govern the "same issue" of resolving employment-related disputes.
    - Agreements, when read together, were "permeated" with unconscionability and lack of mutuality:

Alberto v. Cambrian, 91 Cal. App. 5th 482, No. B314192 (Cal. Ct. App. May 10, 2023)

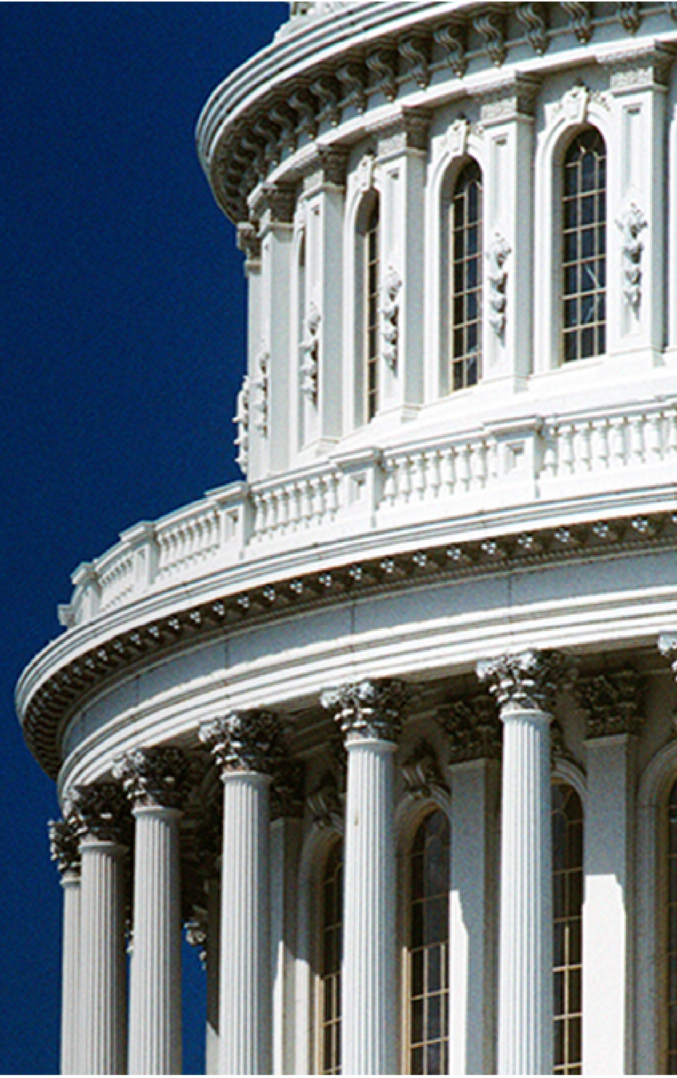
  - Employer could seek relief in court under the confidentiality agreement, while the employee was forced to seek relief in arbitration.
  - Employee forced to consent to injunctive relief (confidentiality agreement).
  - Employee forced to waive right for employer to post bond (confidentiality agreement).
  - Employee was prohibited from discussing wages (confidentiality agreement defined them as “trade secrets”).
  - Employee was forced to waive all “representative” actions, including *individual* PAGA claims (arbitration contract).

- **Key Takeaways:**
  - Employers should review their arbitration agreements *and* confidentiality agreements (or any other agreement signed upon onboarding) to ensure consistency.
  - Ensure compliance with current California and federal law in order to preserve the ability to compel arbitration to the fullest extent of the law.

SB 365: No Automatic Stay When Appealing Denial of Motion to Compel Arbitration

- Amends Code of Civil Procedure Section 1294.
- States that appeal of an order dismissing or denying a petition to compel arbitration does not automatically stay proceedings in the trial court.
- **Key Takeaway:** Law is a significant blow to employers in litigation, as it could force them to continue the costly and burdensome defense of claims in court that should be subject to valid arbitration agreements.

Industry-Specific Laws



Morgan Lewis 150 YEARS

SB 525: Minimum Wage Increase for Healthcare Workers

- Increases minimum wage for almost all hourly healthcare workers depending on employer category.
  - Covers: "***an employee of a health care facility employer"*** who provides patient care, healthcare services, or ***other services that directly or indirectly support the provision of healthcare, which includes but is not limited to a*** nurse, physician, caregiver, medical resident, intern or fellow, patient care technician, janitor, housekeeping staff person, groundskeeper, guard, clerical worker, ***nonmanagerial administrative worker***, food service worker, gift shop worker, technical and ancillary services worker, medical coding and medical billing personnel, scheduler, call center and warehouse worker, and laundry worker.
  - Includes contractors/subcontractors who provide healthcare services if (i) contracted with health care facility employer to provide health care services or ***services supporting the provision of health care*** and (ii) health care facility employer directly or indirectly, exercises control over the employee's wages, hours, or working conditions.
  - However, "covered health care employee" also includes all [*contracted or subcontracted]* employees performing ***contracted*** work ***primarily on the premises of a health care facility*** to provide health care services or services supporting the provision of health care.
- Does not include outside sales, medical transportation, or waste handling.
- Prohibits local governments from enacting local laws relating to wages or compensation for healthcare facility employees.

Note: ***The salary test for overtime exemption is 1.5 x healthcare worker minimum wage, or 2x state minimum wage, whichever is greater.***

Employer Category Category of healthcare employer determines the increase schedule:	**Schedule** Effective June 1 of each year.
Hospitals or systems with more than 10,000 employees	$23 in June 2024 $24 in June 2025 $25 in June 2026
Rural, county-owned, and high government payer hospitals	$18 in June 2024 $25 in June 2033
Free clinics which are not government-owned	$21 in June 2024 $22 in June 2026 $25 in June 2027
Certain licensed skilled nursing facilities/clinics	$21 in June 2024 $23 in June 2026 $25 in June 2028
All other covered facilities	$21 in June 2024 $23 in June 2026 $25 in June 2028

AB 1228 & SB 476: Fast-Food Industry Changes

AB 1228

- A compromise between the fast-food industry and labor groups.
- Creates $20 minimum wage effective April 1, 2024.
- Applies to "National Fast-Food Chains."
  - 60 establishments nationally
  - Limited-service restaurants
  - Bakeries and restaurants within grocery stores exempt
- No joint liability for franchisors.
- Establishes new Fast-Food Council.
- **Note:** An exempt employee must earn no less than twice the minimum wage. As a result, an exempt worker's minimum salary in the fast food industry will become $83,200.

SB 476

- Requires an employer treat the time it takes to complete the food handler training and exam as compensable "hours worked."
- Requires the employer to pay costs associated with an employee obtaining a food handler card.
- Prohibits an employer from conditioning employment on an applicant or employee having an existing food handler card.
- Effective Jan. 1, 2024.

California COVID Laws Expiring

- **SB 1159:** The rebuttable presumption that an employee's COVID-19 illness is an occupational injury and therefore eligible for workers' compensation benefits expired on January 1, 2024.
- **AB 685:** As of December 31, 2023, California employers are no longer required to post or send notices of workplace COVID-19 exposures. Importantly, employers must still notify employees and independent contractors who had "close contact" in the workplace. If an employer excludes an employee from the workplace for COVID-19-related reasons (including "close contact" exposure), they must give employees information about COVID-19-related benefits to which they may be entitled.

SB 723: COVID-19 Right of Recall Extended – Hospitality

- In 2021, California enacted a law requiring that certain employers in the hospitality and service industries recall employees who were laid-off because of COVID-19. It was set to sunset December 31, 2024.
- SB 723 extends the current law to December 31, 2025.
- Expands recall rights to anyone who was employed by an employer for at least six months and whose most recent separation by the employer occurred after March 4, 2020 related to the COVID-19 pandemic.
- Adds a presumption that a separation due to a lack of business, reduction in force, or other economic, non-disciplinary reasons is due to a reason related to the COVID-19 pandemic, putting the burden on the employer to establish otherwise.

SB 41: Break Exemption for Unionized Cabin Crews

- Adds Section 512.2 to the Labor Code, exempting airline cabin crew employees covered by CBAs with valid meal and rest break provisions by virtue of new Labor Code Section 512.2 from California's meal and rest period requirements.
- Effective March 23, 2023.

AB 647: Right of Recall for Grocery Employees

- Significantly expands the recall rights for grocery workers when there is a change of control in a grocery establishment.
  - Under existing law, when there is a change of control at a grocery establishment, the incumbent is required to provide a list of eligible workers to the successor within 15 days of the transfer document.
  - AB 647 amends this to:
    1) Include distribution centers owned/operated by "grocery establishments" and used to distribute goods to or from its owned stores, regardless of square footage;
    2) Require the incumbent to provide the list of eligible workers to any collective bargaining representative in addition to the successor; and
    3) Exclude retail facilities closed for 12 months or more.
- Prohibits retaliation and adds private right of action for employees to include reinstatement, front pay, back pay, value of benefits, and attorney's fees.
- Effective January 1, 2024.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Astana
Beijing
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong
Houston
London
Los Angeles
Miami
Munich
New York
Orange County
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