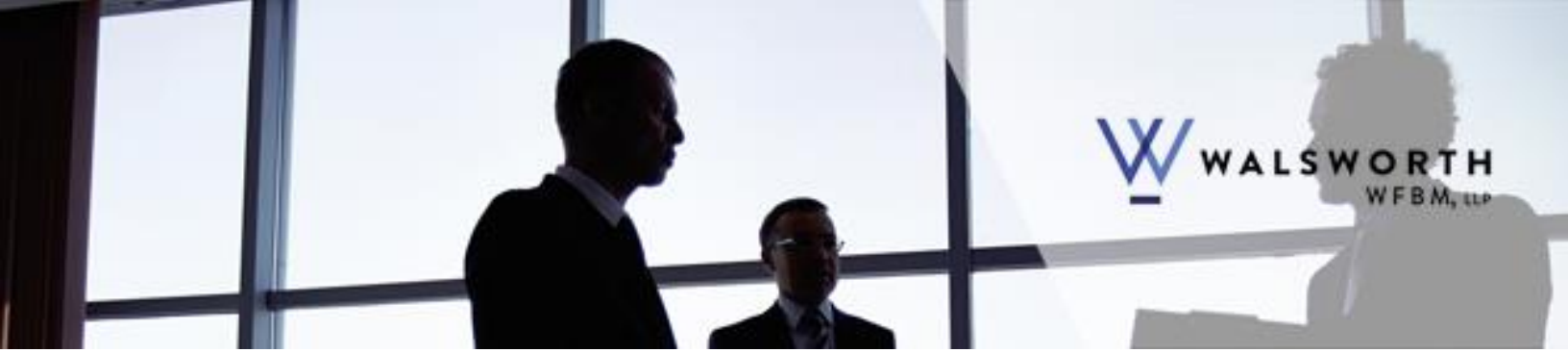


Employment Litigation

2020 Mid-Year Update

Walsworth is pleased to provide you with its mid-year update regarding employment law.

Recent Updates in Employment Law

Key Cases

► *Bostock v. Clayton County* (2020) 140 S. Ct. 1731

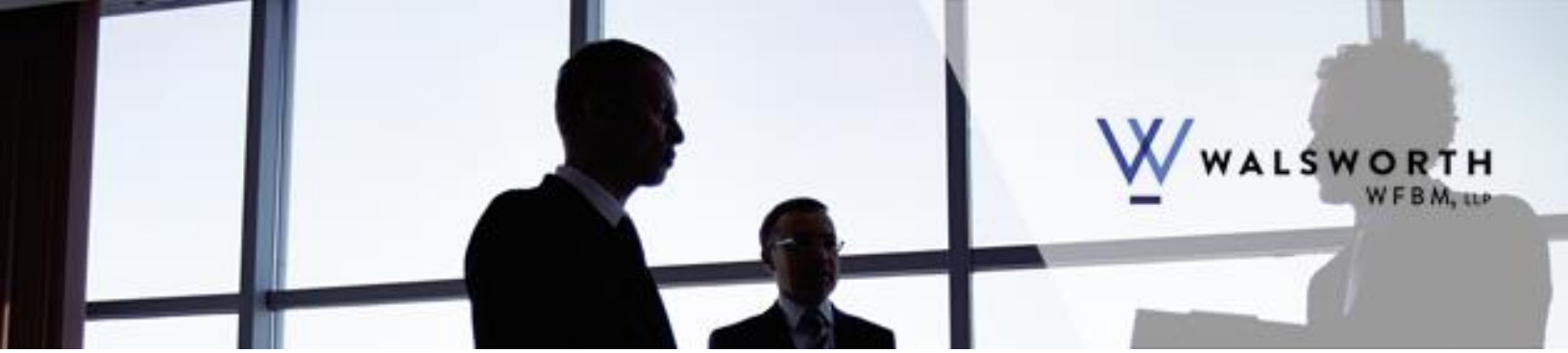
The United States Supreme Court held that an employer who fires an individual merely for being gay or transgender violates Title VII of the Civil Rights Act of 1964.

This case involved three plaintiffs who claimed their employers subjected them to unlawful discrimination. The first plaintiff, Mr. Bostock, was a social worker employed by Clayton County, Georgia. The county fired him after learning he had joined a gay softball league. Mr. Zarda, the second plaintiff, was a skydiving instructor. A client complained she was uncomfortable diving tandem with a male instructor. Mr. Zarda assured the client he was "100 percent gay." The skydiving company fired Mr. Zarda following this incident. The third plaintiff, Ms. Stephens, worked for a funeral home. She was fired when she announced her intent to identify as a woman and wear women's clothing. The employers and the Trump administration argued that the scope of Title VII's prohibition of discrimination based on sex was not broad enough to include protection based on sexual orientation and gender identity. In a 6-to-3 decision, Justice Neil Gorsuch wrote, "When an employer fires an employee for being homosexual or transgender, it necessarily intentionally discriminates against that individual in part because of sex." The Court went on to hold that "the plaintiff's sex need not be the sole or primary cause of the employer's adverse action."

► *Rizo v. Yovino (9th Cir. 2020) 950 F.3d 1217*

The Ninth Circuit Court of Appeals held that an employer cannot defeat an Equal Pay Act claim by arguing that it used a female employee's pay history to set her salary.

In this case, the plaintiff was a female math consultant who worked for the Fresno County Office of Education. She held master's degrees in educational technology and mathematics education. Before working for the county, she taught middle and high school math, and she was head of the mathematics department of an online school for which she designed the math curriculum. The county set its employees' pay based on a formula that started with the employee's prior salary, increased it by 5%, and placed the employee at the corresponding step on its pay schedule. Using this formula, the county set the plaintiff's salary at $62,733. Three years after she was hired by the county, the plaintiff learned she was the only female math consultant and all of her male colleagues were paid more than she was, even though she had more education and experience. The plaintiff sued the county for violation of the Equal Pay Act. The county defended its decision, arguing that its policy of setting employees' wages based on their prior pay was premised on a factor other than sex. The Ninth Circuit sided with the plaintiff, holding that the county's pay practice violated the Equal Pay Act. In reaching this decision, the court pointed out that a plaintiff alleging an Equal Pay Act violation does not need to prove his or her employer intended to discriminate based on gender. Rather, the plaintiff must prove she earned less than her similarly situated male colleagues for equal work. Once the



employee meets this burden, the employer must prove that one of the four exceptions to the Equal Pay Act applies — that is, that the salary was set pursuant to either (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production, or (4) a differential based on any other job-related factor other than sex. The court held that an employee's prior wages do not qualify as a job-related "factor other than sex" and that "setting wages based on prior pay risks perpetuating the history of sex-based wage discrimination."

- *Frlekin v. Apple, Inc. (2020) 8 Cal.5th 1038*

In this case, the California Supreme Court held that time spent by employees waiting for and undergoing security checks by their employer counted as hours worked for which the employees must be paid.

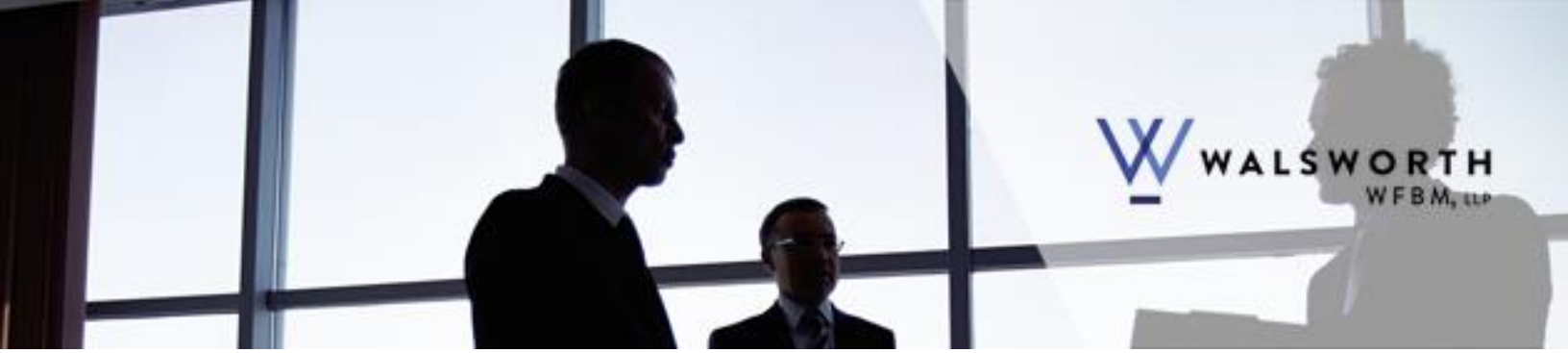
Apple's security policy required employees of its retail stores to permit Apple managers to search their bags, packages, purses, backpacks, briefcases, and personal Apple devices, such as iPhones, upon exiting the store for any reason, including breaks, lunch, and end of shift. Employees had to clock out before undergoing the security check, which lasted between five and 20 minutes. Apple did not compensate employees for this time. A group of nonexempt Apple employees brought a class action lawsuit against Apple, alleging that the time employees spent waiting for and undergoing security checks constituted hours worked for which they should be paid. It was undisputed that the items that were subject to search were voluntarily brought by all employees in the class for their personal convenience and not due to any requirement by Apple. The California Supreme Court held that this time spent by Apple employees was compensable time for which the employees should be paid.

In reaching this decision, the Court reasoned that under California law an employer must pay its employees for all hours worked, and that "hours worked" includes "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Apple employees were clearly under Apple's control while awaiting, and during, the exit searches. Moreover, the searches primarily benefited Apple because they were used to detect and deter theft.

- *Our Lady of Guadalupe School v. Morrissey-Berru, No. 19-267 (U.S. Jul. 8, 2020)*

The United States Supreme Court held that the First Amendment's religion clauses barred two teachers employed by Roman Catholic schools in the Archdiocese of Los Angeles from suing their employers for discrimination.

In this case, plaintiff Morrissey-Berru was an elementary school teacher at Our Lady of Guadalupe School ("OLGS"). Plaintiff Biel was an elementary school teacher at St. John's School. Both schools required plaintiffs to teach religion in the classroom and to worship and pray with their students. In addition, the schools measured plaintiffs' job performance on religious bases. Plaintiff Morrissey-Berru sued OLGS for age discrimination after she was terminated and replaced by a younger teacher. St. John's School terminated plaintiff Biel after she requested a leave of absence for treatment for breast cancer. Both plaintiffs sued, alleging discrimination. Justice Alito wrote the majority opinion, which Chief Justice Roberts and Justices Thomas, Breyer, Kagan, Gorsuch, and Kavanaugh joined. The Court emphasized that the First Amendment protects the right of churches and other religious institutions to decide matters of faith and doctrine without government intrusion. While churches are not immune from all state and federal laws, they are insulated "with respect to internal management decisions that are essential to the institution's central mission." These principles give



rise to the "ministerial exception," which provides that "courts are bound to stay out of employment disputes involving those holding certain important positions with churches or other religious institutions." The Court ruled that even though neither plaintiff held the title of "minister" or had formal religious training, the ministerial exception applied to bar plaintiffs' discrimination claims. In reaching this decision, the Court found "abundant evidence" that plaintiffs "performed vital religious duties such as educating their students in the Catholic faith and guiding their students to live their lives in accordance with that faith." Justice Sotomayor, joined by Justice Bader Ginsburg, wrote a dissenting opinion.

- *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania consolidated with Trump et al. v. Pennsylvania et al. No. 19-431 (U.S. July 8, 2020)*

The Supreme Court held that employers can exclude birth control from their health care plans if they oppose contraception on moral or religious grounds. Justice Thomas wrote the majority opinion, which was joined by Justices Gorsuch, Alito, Kavanaugh, and Chief Justice Roberts. Justice Kagan, joined by Justice Breyer, wrote a concurring opinion. Justice Bader Ginsburg dissented and was joined by Justice Sotomayor.

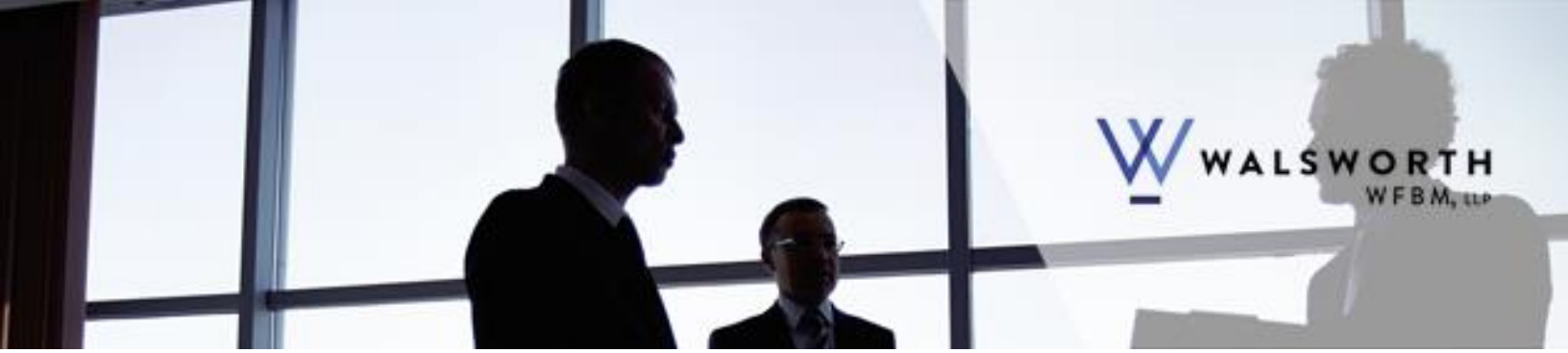
- *Herrera v. Zumiez* (9th Cir. 2020) 953 F.3d 1063

The Ninth Circuit Court of Appeals held that an employee was entitled to "reporting time pay" when the employee called in before her scheduled shift pursuant to the employer's "call in" policy, but was told not to report to work.

In this case, the employer, a retail clothing store, required its employees to call their managers 30 minutes to an hour before their scheduled shifts. The manager then advised the employee whether she should report to work. These phone calls lasted between five and 15 minutes. If the employee was instructed not to report to work, the employer did not pay her. The plaintiff brought a class action lawsuit against the employer, alleging that employees were entitled to reporting time pay when they called in before their shifts but were instructed not to report to work. California law provides that "each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work in an amount no less than two hours' wages and no more than four hours' wages." The employer argued that in order to be entitled to reporting time pay, the employee must physically report to work, as opposed to calling in to a store manager. The court sided with the employees and held that they were entitled to reporting time pay when they called in to their employer and were told not to appear for their shifts.

- *McPherson v. EF Intercultural Fndn., Inc.* (2020) 47 Cal.App.5th 243

The appellate court held that an employer's "unlimited" vacation policy was subject to a California law requiring payment of unused time at termination. However, the court limited its decision to the "unusual facts" of this particular case.



The plaintiffs in this case were exempt managers working for a nonprofit that runs educational and cultural exchange programs between the United States and other countries. The employer had a written vacation policy that allowed employees to accrue vacation time throughout the year based on their years of service. However, the policy did not apply to the three plaintiffs. Instead, they were allowed to take time off with pay but did not accrue vacation days. In addition, their vacation time was not tracked; rather, they simply asked their supervisors to approve any time off that they wished to take. The plaintiffs sued the employer following their termination, alleging the employer failed to pay them unused, accrued vacation time. The employer defended, arguing plaintiffs were subject to an "unlimited" vacation policy and plaintiffs did not "accrue" vacation. As such, they were not entitled to any payout of vacation time at termination. The court rejected the employer's argument, finding that the vacation policy was not in writing and that based on the evidence, plaintiffs were not subject to an unlimited policy. Rather, the employer expected plaintiffs to take vacation in the range typically available to other employees. Thus, they were not permitted to take "unlimited vacation," which the court said meant "more than would be available under a traditional accrual policy." In fact, the plaintiffs took on average two weeks of vacation per year and testified at trial that their work schedules precluded them from taking more vacation time.

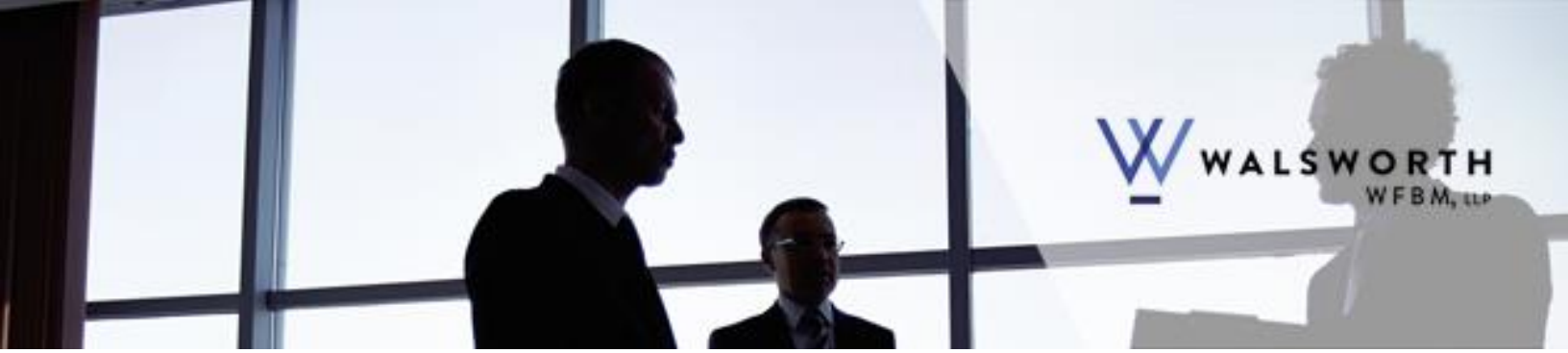
The court was careful to note that not all unlimited paid-time-off policies require payment of accrued time upon termination. The problem in this case was that the employer had no written policy for these plaintiffs, did not tell these plaintiffs they could take an unlimited amount of vacation, and did not tell plaintiffs that vacation leave was not part of their compensation. The court stated that an unlimited vacation policy that does not require the employer to pay unused accrued time upon separation of employment will be in writing and (1) clearly provide that the time off does not constitute wages, but is part of a flexible work schedule; (2) clearly explain the rights and obligations of both employer and employee and the consequences of failing to schedule time off; (3) allow sufficient opportunity for employees to take time off or work fewer hours in lieu of taking time off; and (4) be administered fairly so that it neither becomes an unlawful "use it or lose it" policy nor results in inequities allowing one employee to work minimal hours and take many days off while another employee works many hours and takes very little time off.

Key Legislation

► DOL White Collar Exemptions

The United States Department of Labor issued updated rules for "white collar" exemptions to federal overtime rules, including the executive, administrative, professional, and computer employee exemptions. These rules went into effect on January 1, 2020, and most significantly, require an employer to pay an employee a salary of at least $684 per week and $35,568 per year for the exemptions to apply. Previously, the minimum salary requirement was $455 per week and $23,660 per year. An employer may choose to pay a computer professional by the hour, but under the new rules, the employee must receive a minimum of $27.63 per hour to qualify for the exemption. The Department of Labor did not change the "duties test," which must also be met in order for these exemptions to apply.

It should be noted that certain states, including



California, require employers to pay a higher salary than that required by federal law for the white collar exemptions to apply. In California in 2020, employers with more than 25 employees must pay a minimum salary of $49,920 for the executive, administrative, and professional exemptions to apply. Employers with 25 or fewer employees must pay a salary of $45,760. To qualify for the computer employee exemption, employers must pay employees a minimum hourly rate of $46.55 or an annual salary of $96,968.33. These required salaries will continue to increase until at least 2023. As with the federal exemptions, California law also requires employees to meet a duties test for the exemptions to apply.

- AB 51 Arbitration Agreements

On October 10, 2019, California's Governor Newsom approved AB 51, which restricted an employer's ability to compel employees to sign, as a condition of employment, agreements requiring employment-related disputes alleging violations of the California Labor Code or the California Fair Employment and Housing Act to be subject to private, binding arbitration and waiving their right to have their claims decided in court by a judge or jury. Under the new law, arbitration agreements are enforceable only if the employee voluntarily consents.

Just days before the law was to become effective, the California Chamber of Commerce filed a lawsuit in federal court challenging the enforceability of the new law, and arguing that it is preempted by the Federal Arbitration Act. The federal court issued an injunction, preventing the law from going into effect. The state of California appealed the injunction, and the appeal is currently pending before the Ninth Circuit Court of Appeals. The parties are currently in the process of briefing the appeal. Thus, AB 51 remains blocked unless and until the state wins its appeal and the injunction is lifted.

- New Form I-9 Employment Verification

Effective May 1, 2020, the federal government requires all employers to complete the newly revised Form I-9 which is dated 10/21/2019. The form, which is required to verify the identity and employment authorization of newly hired employees, contains minor changes, including additional locations in the Country of Issuance field in the online version, clarification of acceptable documents, and additional information regarding who can act as an authorized representative on an employer's behalf. It also includes an updated website and privacy notice. Failure to use the updated form could result in penalties to employers.

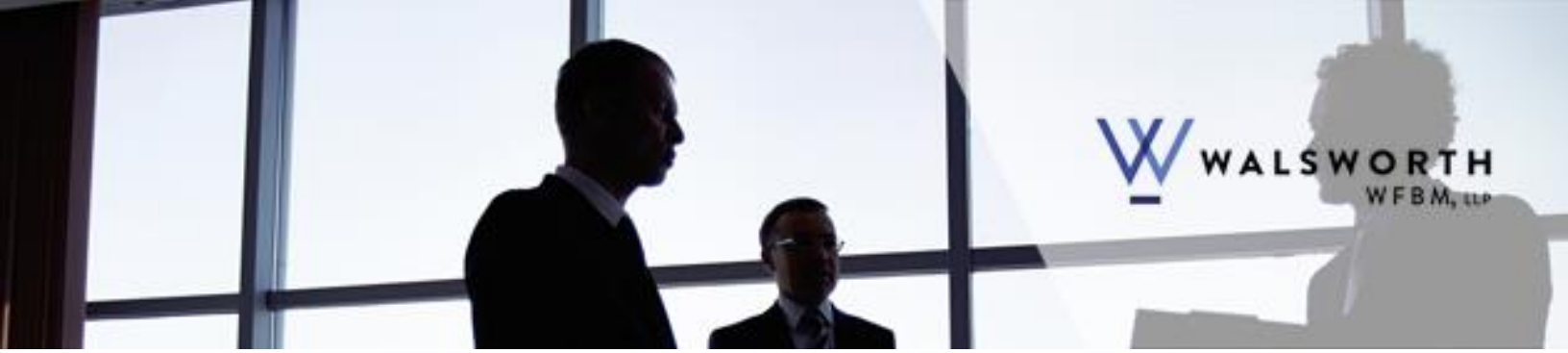
- AB 5 Worker Status: Employees and Independent Contractors.

Governor Newsom signed this bill on September 18, 2019, and it presumes all workers are employees unless they comply with the stringent "ABC Test." Under this test, a worker is an independent contractor only if he or she satisfies all three of the following requirements:

1. The worker is free to perform services without the control or direction of the company;
2. The worker is performing work tasks that are outside the usual course of the company's business activities; and
3. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

The bill contains exceptions for a number of categories of workers, such as real estate agents, lawyers, accountants, insurance brokers, and travel agents. However, these employees are not automatically classified as independent contractors; rather, they must meet the multifactor "Borello test," a less stringent standard, in order to be classified as an independent contractor.

Numerous bills have been introduced to repeal or amend AB 5, but it remains to be seen whether any of these proposed laws will ultimately pass. In



addition, there have been several legal challenges to the law that are making their way through the court system. For example, the California Trucking Association was successful in blocking the enforcement of AB 5 with respect to motor carriers in California that are regulated by the Federal Department of Transportation. "Gig economy" companies such as Uber and Postmates have filed legal challenges to the law, as have court reporters and freelance journalists. Further, Proposition 22 will be on the California ballot in November and will ask voters to decide whether rideshare and delivery drivers should be classified as employees or independent contractors. In the meantime, the state of California has begun enforcing AB 5 by suing gig economy companies, including Uber, Lyft, and Door Dash, for misclassifying their workers as independent contractors.

Several states are considering legislation based on AB 5. Currently, those states include New York, New Jersey, and Illinois.

- California Consumer Privacy Act Amendments

Governor Brown signed the California Consumer Privacy Act ("CCPA") into law on June 29, 2018. It applies to companies that do business in California, collect personal information about consumers (which include employees and applicants) and (1) have annual gross revenue over $25 million; or (2) annually receive, sell, or share personal information about more than 50,000 California residents or households or 50,000 devices; or (3) derive 50% or more of their annual income from selling personal information of consumers.

On October 11, 2019, Governor Newsom signed two amendments to the CCPA (AB 25 and AB 1355), which became effective on January 1, 2020. AB 25 extends the time for employers to comply with the CCPA. However, there are two exceptions to this extension: Covered employers must, effective January 1, 2020, (1) inform employees and applicants of the categories of personal information to be collected and (2) implement reasonable security measures to protect electronic and physical information collected from employees and applicants.

AB 1355 exempts from the CCPA personal information from which an employee's identifying information has been redacted or otherwise removed. In addition, it exempts "aggregate consumer information," which in the employment context could include information about groups of employees whose identities have been removed (for example, EEO-1 reports or pay equity surveys that do not identify specific employees). AB 1355 also excludes from the CCPA communications or transactions between a business and a consumer (including another business) where the communication occurs solely within the context of the business conducting due diligence or providing or receiving a product or service from that business.

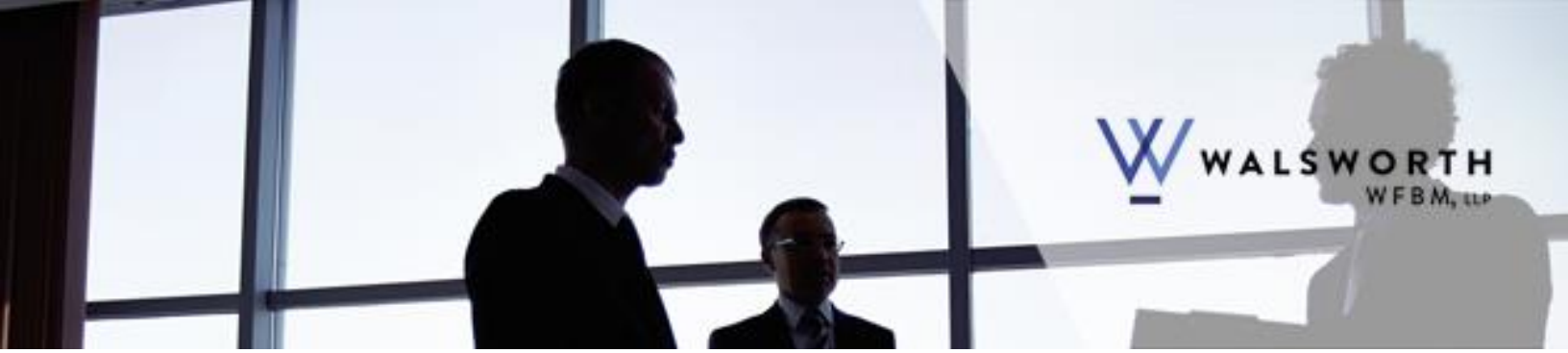
In November, Proposition 24 will ask California voters to decide whether additional changes will be made to CCPA. In addition to expanding privacy protections under the CCPA, Proposition 24 will, if it passes, give covered employers an additional two years before they are required to comply with all provisions of the CCPA.

Pending Legislation

- AB 2999 Mandatory Bereavement Leave.

If passed, this bill would require all California employers, regardless of size, to provide up to 10 days of unpaid bereavement leave to any employee, regardless of how long he/she has been employed. The leave applies in the event of the death of a spouse, child, parent, sibling, grandparent, grandchild, or domestic partner.

- SB 1383 Family Leave for Employees of Small Employers



This bill would require employers with five or more employees to provide employees with 12 weeks of unpaid family leave.

- AB 3216 CFRA Leave for COVID-19

This bill would require any employer, regardless of size, to allow an employee to take up to 12 workweeks of family care and medical leave during any 12-month period because the employee suffers from COVID-19 or must care for a child, spouse, or parent if the family member's school or place of care has been closed or the care provider for the family member is unavailable due to COVID-19. This leave would run concurrently with leave provided under the Family and Medical Leave Act.

The bill would also require employers to provide full-time employees with at least 56 hours or seven workdays of paid sick leave for purposes relating to a public health emergency (COVID-19). Part-time employees would be entitled to an amount equivalent to the amount of time they regularly work or are scheduled to work within a 10-day period. There is no requirement that the employee accrue this time, and it is available to all employees, regardless of how long they have worked for the employer. The paid emergency leave may be used for any purpose relating to the public health emergency, including in the event of the employee's own illness, or to care for an ill family member or for a child or family member whose school or place of care has closed due to the health emergency.

Finally, the bill would require employers to offer its laid-off employees information about job openings for which the laid-off employee is qualified and to offer positions to those laid-off employees based on a preference system.

- AB 398 Additional Payroll Tax for Large For-Profit Private Employers

This bill would impose an additional payroll tax of $275 per employee and would apply to large businesses (those with more than 500 employees). The tax would go toward the COVID-19 Local Government and School Recovery and Relief Fund for allocation to counties, cities, and K-12 school districts. The bill is currently pending before the California Assembly.

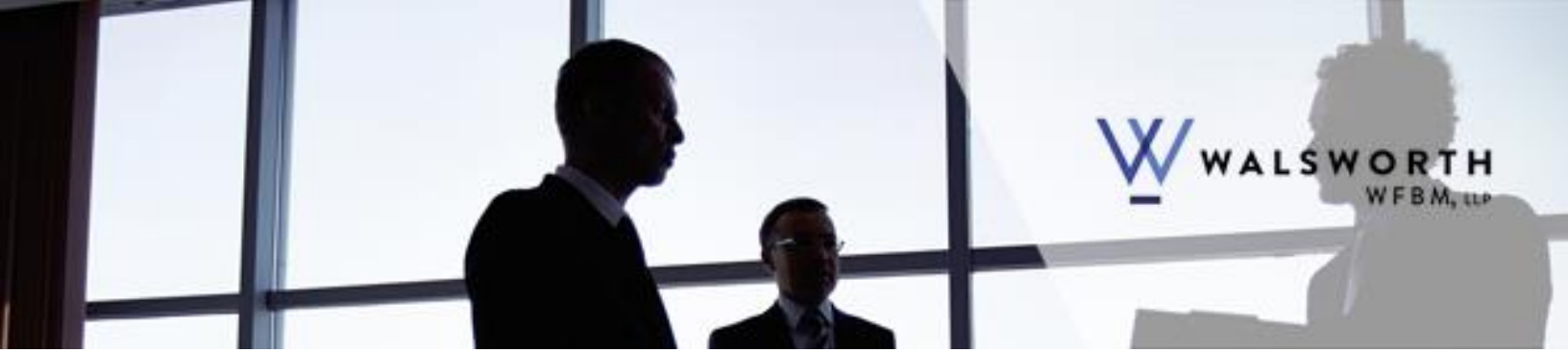
COVID-19

- Families First Coronavirus Response Act

On March 18, 2020, President Trump signed this act into law. It requires employers with fewer than 500 employees to provide employees with (1) two weeks (up to 80 hours) of paid sick leave at the employee's regular rate of pay in scenarios where the employee is unable to work because the employee is quarantined pursuant to a federal, state, or local government order or the advice of a health care provider and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; (2) two weeks (up to 80 hours) of paid sick leave at two-thirds the employee's regular rate of pay because the employee is unable to work due to a bona fide need to care for an individual subject to quarantine (pursuant to a federal, state, or local government order or advice of a health care provider), or to care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19; and (3) up to an additional 10 weeks of paid expanded family and medical leave at two-thirds the employee's regular rate of pay in scenarios where an employee who has been employed for at least 30 calendar days, is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child care unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

All employees of covered employers are eligible for two weeks of paid sick time for specified reasons



related to COVID-19. Employees employed for at least 30 days are eligible for up to an additional 10 weeks of paid family leave to care for a child under certain circumstances related to COVID-19.

A full-time employee who is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19 is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family and medical leave) at 40 hours a week, and a part-time employee is eligible for leave for the number of hours that the employee is normally scheduled to work over that period. Employees taking this leave are entitled to receive pay at two-thirds their regular rate or two-thirds the applicable minimum wage, whichever is higher, up to $200 per day and $12,000 in the aggregate (over a 12-week period). An employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for the first two weeks of partial paid leave.

This act will expire on December 31, 2020, unless Congress extends its application.

- CDC Interim Guidance for Business and Employers Responding to COVID-19

The CDC posted these interim guidelines on May 6, 2020, and they are available on the CDC website at https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html. The guidance contains strategies and recommendations for employers responding to COVID-19, including those seeking to resume business operations.

- OSHA Guidance on Returning to Work

OSHA's website includes numerous resources regarding COVID-19, including Guidance on Returning to Work and recommended steps employers may take to reduce employee exposure to COVID-19. The website can be found at https://www.osha.gov/SLTC/covid-19/.

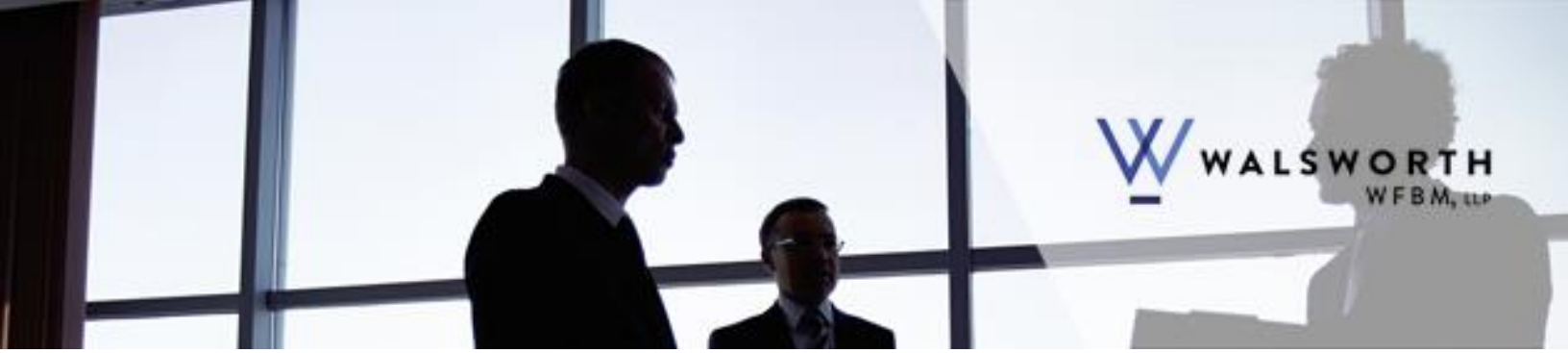
- Local Ordinances

A number of cities have enacted local ordinances requiring employers who operate within city limits to provide their employees with benefits due to COVID-19. In California, these cities include San Francisco, San Jose, Los Angeles, Oakland, Long Beach, Emeryville, Santa Monica, and San Diego. The county of Los Angeles has also enacted an ordinance that applies to food sector employees, and an ordinance that applies to unincorporated areas of Los Angeles County. With some variations, the ordinances mainly focus on providing benefits to employees of large companies (those with 500 or more employees) that are similar to those provided under the federal Families First Coronavirus Response Act ("FFCRA"). In addition, Governor Newsom issued an executive order requiring the provision of supplemental emergency paid sick leave to food sector workers, including farmworkers, grocery workers, and delivery drivers.

- Employment-Related Case Filings

Employees are already filing lawsuits across the country for COVID-19-related claims. These claims include allegations of whistleblowing, retaliation, and wrongful discharge for complaining about unsafe working conditions and being exposed in the workplace to individuals with COVID-19 symptoms. Other claims include disability discrimination (including forced leaves of absence and failure to accommodate) and violation of the FFCRA. Other claims arise out of wage-and-hour violations relating to remote work. Some members of Congress, including Senate Majority Leader Mitch McConnell, are advocating for the inclusion of liability protections for businesses in any future COVID-19 stimulus package.

- Claims Relating to Political Protests



The recent protests following the deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery have presented employers with difficult issues addressing rights of employees on both sides of these issues. Many major companies, such as Nike, Nordstrom, Estée Lauder, and Chevron, have publicly supported the Black Lives Matter movement. Goya Foods' CEO recently voiced his support for President Trump, and presumably other companies will make similar public statements in the run-up to this year's presidential election. Starbucks initially prohibited its employees from wearing Black Lives Matter clothing during work hours, but recently reversed its position and announced it plans to design for its workers a "protest" T-shirt that show various statements including "Black Lives Matter."

A Taco Bell employee in Ohio claims he was fired when he refused to remove his Black Lives Matter mask while on the job. Taco Bell issued a statement supporting Black Lives Matter, in contradiction with the franchise owner who made the employment decision.

While employees may reference their First Amendment rights in connection with statements in the workplace about race, politics, and other social issues, generally there is no right to free speech in the workplace of a private employer. The First Amendment restricts only the federal government from preventing a citizen's right to free speech. With that said, some states have laws prohibiting retaliation against employees for expressing their political beliefs. Those states include California, Colorado, North Dakota, and New York. In California, an employer may not discipline an employee for his or her off-duty political activities. An employer may have a blanket rule against wearing apparel expressing political messages in the workplace. However, employers must apply the policies consistently and may not prohibit some political speech (for example on issues with which the employer may agree) while permitting other political speech. In addition, what constitutes "political speech" is by no means clear.

There is no doubt the legal issues surrounding political speech and activities remain in flux. Stay tuned for further developments.

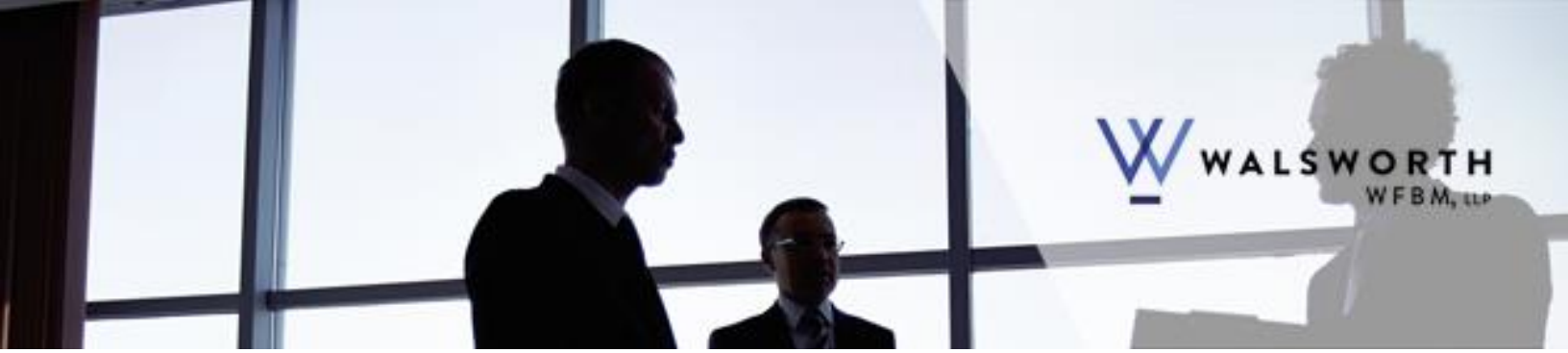
Administrative Filing Trends

► *EEOC 2019 Complaint Filing Statistics*

A total of 72,675 complaints were filed with EEOC in 2019, down from 76,418 complaints in 2018. Consistent with recent years, there were more complaints alleging retaliation than any other category of grievance. In 2019, there were 39,110 retaliation complaints, compared to 39,469 retaliation complaints in 2018. Disability discrimination complaints were the next-highest category, with 24,238 such complaints filed in 2019, compared to 24,605 in 2018. Race-based discrimination was the third-highest category with 23,976 complaints, compared to 24,600 in 2018. In 2018, sex-based discrimination was the second-highest category (24,655 complaints), but in 2019, this category fell to No. 4, with 23,532 complaints. The EEOC received 7,514 sexual harassment complaints, a 1.2% decrease from 2018's filings.

► *DFEH Complaint Filing Statistics*

California Department of Fair Employment and Housing (DFEH) has not yet released its filing statistics for 2019. However, in 2018, it received 27,840 complaints, an increase of 3,061 complaints from 2017. Of those complaints, 14,772 requested an immediate right to sue notice, allowing the complaining party to bring his/her claim directly to court. The DFEH accepted 5,395 complaints for investigation. The highest percentage of cases filed alleged disability discrimination (3,132 cases), followed by retaliation (2,785 cases), sex/gender (1,350), and race (1,289). In 2017, the highest percentage of cases filed alleged age discrimination (1,836), followed by disability discrimination (1,579), engagement in protected activity (1,094), and sex/gender discrimination (1,018).



Notable Verdicts

In light of the court closures that were ordered as a result of COVID-19, so far, 2020 has seen very few jury verdicts. However, the following are a few verdicts from trials that were completed before the court closures.

- *Hesselgrave v. Hacienda La Puente Unified School District, Los Angeles County Superior Court (March 9, 2020)*

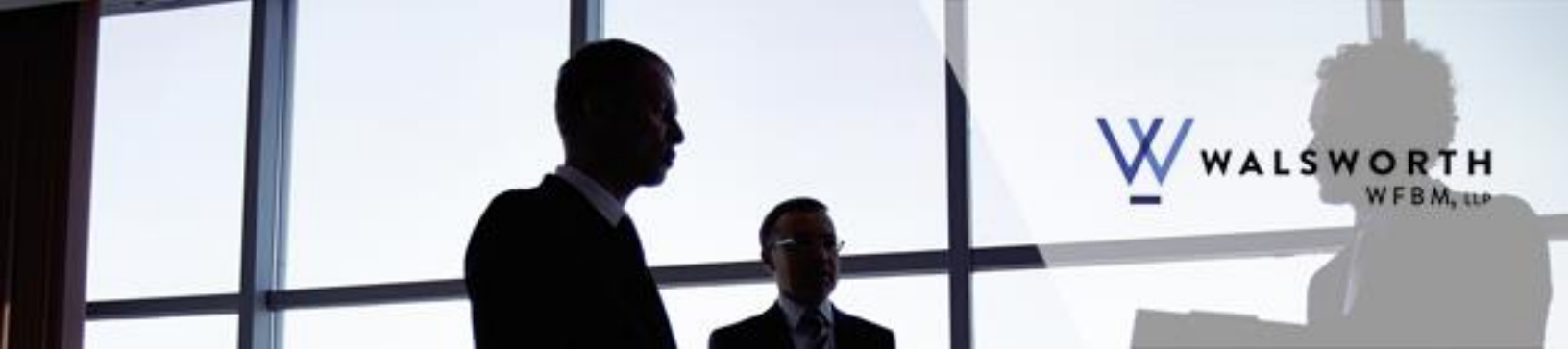
The plaintiff worked for the school district for many years and was promoted from elementary school teacher to vice principal to principal, and ultimately to human resources director. She claimed she opposed the school's discriminatory employment practices with regard to minority employees and pregnant applicants. As a result, the plaintiff claimed, her supervisor yelled at and harassed her, and then she was demoted, placed on administrative leave, and encouraged to find another job. The plaintiff sued the school district and her supervisor for retaliation for complaining about and supporting witnesses alleging discrimination and harassment. The school district defended the case, arguing that it disciplined the plaintiff for her poor performance. The jury awarded the plaintiff $610,190. The judge reduced the award to $326,731 based on the plaintiff's failure to mitigate her damages.

- *Samson v. Wells Fargo, United States District Court, Central District of California (March 13, 2020)*

The plaintiff worked for Wells Fargo Bank as a portfolio manager. She took a five-week medical leave, and when she returned, she advised her supervisor that her doctor restricted her from working more than 40 hours per week. That same day, she was terminated because "the bank was not doing well" and "needed to save money." Shortly after her termination, the plaintiff saw a job listing for her position, and Wells Fargo filled the position with a younger male employee. The plaintiff sued for disability discrimination and retaliation under the Fair Employment and Housing Act. Wells Fargo defended, alleging that due to the plaintiff's poor performance and attitude, it had decided to fire her before she requested her medical leave. The jury returned a verdict of $500,000 ($100,000 in compensatory damages and $400,000 in punitive damages).

- *Hanson v. Blackbird Studios, et al. United States District Court, Middle District of Tennessee (February 7, 2020)*

Plaintiff Richard Hanson worked as the operations manager for Blackbird Studios, which is owned by country music artist Martina McBride and her husband. As part of his duties, Hanson oversaw the studio's unpaid intern program. Over a four-year period, Hanson complained to Mr. McBride that he did not believe the intern program complied with the requirements of the Fair Labor Standards Act ("FLSA"). Specifically, he did not believe that the program provided interns with educational benefits, and instead, the interns spent most of their time running personal errands and performing custodial work. Ultimately, Hanson made an anonymous complaint to the Department of Labor, and Mr. McBride learned that Hanson was behind the complaint. Mr. McBride immediately fired Hanson. Hanson sued for retaliation for opposing violations of the FLSA. A jury awarded Hanson $159,242 ($59,242 in back pay and $100,000 in emotional distress damages).



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