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2022 California Employment Law Midyear Update

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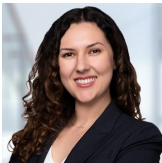

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Key Cases:

Viking River Cruises, Inc. v. Moriana (2022) 596 U.S. __, 142 S.Ct. 1906

Plaintiff brought claims against her employer, Viking River Cruises, Inc. ("Viking"), under the California Private Attorneys General Act ("PAGA"), alleging both individual claims and representative claims for wage and hour violations. Plaintiff's employment contract included an arbitration agreement and class action waiver that prohibited plaintiff from bringing representative actions against Viking, including under PAGA. The trial court denied Viking's motion to compel arbitration, ruling that the PAGA waiver in the arbitration agreement was contrary to California policy and such claims cannot be split into arbitrable individual claims and non-arbitrable representative claims. The United States Supreme Court held that the Federal Arbitration Act preempted the California rule to the extent that such rule precluded division of PAGA actions into individual and non-individual claims through an arbitration agreement. Thus, plaintiff's individual PAGA claim was appropriately subject to arbitration. With regard to plaintiff's representative PAGA claim, the Supreme Court held that it was not subject to dismissal simply because it was a representative claim. However, the Supreme Court noted that a plaintiff has standing to bring a representative claim only when she also has an individual claim in that same action. Since plaintiff's individual PAGA claim was compelled to arbitration, her representative PAGA claim in Superior Court had to be dismissed for lack of standing.

This case is a victory for employers. However, it will remain to be seen if the California Legislature passes laws in the future to limit the impact of this case.

Naranjo v. Spectrum Security Services, Inc. (2022) 13 Cal.5th 93

Plaintiff worked as a security guard for Spectrum Security Services, Inc. ("Spectrum"). Spectrum fired plaintiff for leaving his post during a meal break in violation of Spectrum's policy that required him to remain on duty during all meal breaks. Plaintiff filed a class action lawsuit on behalf of Spectrum employees, alleging that Spectrum did not have written on-duty meal break agreements with its employees and thus violated California meal break requirements by not paying its employees premium pay for missed meal breaks. Under California law, generally an employer that does not provide its employees with duty-free meal and rest breaks must pay its employees "premium pay" of one hour of pay at the employees' regular rate of compensation for each missed break. The California Supreme Court held that the premium pay for missed breaks constitutes "wages" that must be reported on an employee's pay stub. In addition, the court held that the employer must pay the premium pay at the time of an employee's termination or within 72 hours of the employee's resignation.

This case is significant because the break premium is a "wage" as opposed to a "penalty," thus allowing an aggrieved employee who establishes that her employer willfully failed to pay the premium to recover an additional penalty of 30 days' pay and her reasonable attorney's fees and costs in proving the violation. In addition, the employer must pay yet another penalty of up to $4,000 and the employee's attorney's fees for failing to report the premium pay on the employee's pay stub.

Key Cases:

Lawson v. PPG Architectural Finishes, Inc. (2022) 12 Cal.5th 703

Plaintiff was a territory manager for PPG, a paint and coatings manufacturer. He alleged he was fired after reporting that his manager allegedly engaged in unlawful activity. He sued his employer for violating the California Labor Code Section 1102.5 whistleblowing statute. Section 1102.5 prohibits an employer from retaliating against an employee who complains about employer practices the employee reasonably believes violate the law. The California Supreme Court held that an employee under Section 1102.5 may prove his claim using the burden of proof framework described in California Labor Code Section 1102.6. This framework requires an employee to show, by a preponderance of the evidence, that his whistleblowing activity was a contributing factor in the employer's decision to take adverse action against him. The burden then shifts to the employer, who must show by clear and convincing evidence that it would have taken the same action for legitimate, independent reasons. Section 1102.6 allows an employee to prove retaliation even when the employer had a non-retaliatory reason for the adverse action, so long as the employee has at least one retaliatory reason that contributed to the adverse action.

Before this ruling, some courts applied a burden of proof that was more favorable to employers. Thus, this ruling will make it easier for employees to prevail against their employers in lawsuits alleging retaliation for whistleblowing.

Grande v. Eisenhower Medical Center (June 30, 2022) _ P.3d _, 2022 WL 2349762

Plaintiffs filed a class action lawsuit against a staffing agency, FlexCare, in which plaintiffs represented a broad group of FlexCare employees that FlexCare placed at various health care facilities throughout California. The plaintiffs claimed FlexCare violated various wage and hour laws. The parties agreed to settle the case for $750,000, and executed a settlement agreement and release of claims. The settlement agreement generally identified FlexCare's "agents" in its definition of "released parties." Thereafter, plaintiffs filed a second class action lawsuit against Eisenhower Medical Center ("Eisenhower"), the employer to which FlexCare assigned them to work. This second lawsuit alleged the same wage and hour violations as the first lawsuit against FlexCare. However, the second lawsuit's class was narrower than the first, in that it included only employees whom FlexCare placed with Eisenhower. The trial court held that the second lawsuit was proper because Eisenhower was not a released party under the settlement agreement between plaintiffs and FlexCare, and the California Supreme Court agreed. In reaching its decision, the Supreme Court found that FlexCare and Eisenhower had divergent interests in the litigation, and as such, Eisenhower could not reasonably have expected to be bound by a judgment in the first class action. Consequently, the settlement in the first action did not preclude plaintiffs from suing Eisenhower in the second action. Moreover, the settlement agreement in the first action did not specifically name Eisenhower as a "released party," and the general language releasing FlexCare's "agents" was insufficient to protect Eisenhower from being sued in the subsequent case.

Key Cases:

Shaw v. Superior Court of Contra Costa County (2022) 78 Cal.App.5th 245

In this case, plaintiff filed an action against her employer, BevMo, under the Private Attorneys General Act ("PAGA") alleging various wage and hour violations. However, a year before plaintiff filed her action, another employee filed a PAGA action against BevMo based on the same wage and hour violations. The trial court granted BevMo's motion to stay plaintiff's case, pending the outcome of the prior PAGA action. The trial court then denied plaintiff's motion to lift the stay, coordinate the case with the prior PAGA case, and intervene in the prior PAGA case. These orders were upheld on appeal.

The Shaw case represents an important win for employers because it is the first time a California appellate court has definitively held that when an employer is faced with overlapping PAGA lawsuits, the initial lawsuit must be resolved before later-filed PAGA lawsuits alleging the same violations may proceed.

Chamber of Commerce of the United States of America v. Bonta (9th Cir. 2021) 13 F.4th 766

This case addressed a challenge to California AB 51, a law that Governor Newsom signed in 2019 that prohibited employers from requiring employees, as a condition of employment or continued employment, to agree to arbitrate their claims for violation of the California Fair Employment and Housing Act. The California Chamber of Commerce ("Chamber") filed a lawsuit seeking the district court's declaration that AB 51 violated the Federal Arbitration Act ("FAA"). The district court granted an injunction that enjoined enforcement of the law as to arbitration agreements governed by the FAA. The Ninth Circuit Court of Appeals reversed, holding that requiring employees to voluntarily consent to arbitration (as opposed to requiring them to arbitrate) does not run afoul of the FAA. Nor does AB 51 stand as an obstacle to the FAA, because it does not affect the enforceability of arbitration agreements to which the parties voluntarily consented. The Ninth Circuit did, however, uphold the district court's finding that AB 51's provision for a civil or criminal sanction against an employer that requires an employee to sign an arbitration agreement violated the FAA and therefore was invalid.

In response to the Ninth Circuit's decision, the Chamber filed a petition for rehearing. In February 2022, the Ninth Circuit deferred consideration of the Chamber's petition until the United States Supreme Court decided the Viking River Cruises, Inc. v. Moriana case. As we have reported, the United States Supreme Court decided the Viking case on June 15, 2022. Thus, we expect a decision shortly from the Ninth Circuit on the Chamber's petition for a rehearing. Enforcement of AB 51 remains stayed pending the outcome of all appeals in the Bonta case.

Key Legislation:

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act

This law amends the Federal Arbitration Act to prevent an employer from compelling employees who assert claims of sexual harassment and sexual assault from litigating their claims in private arbitration even when the employee and employer have signed a valid arbitration agreement. The law gives the employee the option of pursuing sexual harassment/assault claims in state or federal court. In addition, the law prevents employers from limiting an employee's rights to file and participate in class actions alleging sexual harassment and sexual assault through a class waiver.

While this law applies to lawsuits filed on or after March 3, 2022, it applies retroactively to limit arbitration agreements signed before the law was enacted.

The law does not, however, invalidate all existing arbitration agreements. Employers may still compel employees to arbitrate other employment claims such as wrongful termination, discrimination, failure to accommodate, and harassment that do not include allegations of sexual harassment or sexual assault (subject potentially to the outcome of the Bonta case previously described).

The Silenced No More Act (California SB 331)

In 2018, the California Legislature enacted the Stand Together Against Non-Disclosure Act to prohibit a confidentiality or non-disclosure provision in a settlement agreement when the provision prevents or restricts a plaintiff or claimant from disclosing factual information related to a civil or administrative complaint alleging sexual assault or sexual harassment. This law applies to all settlement agreements entered into on or after January 1, 2019.

SB 331 broadened this law to prevent such non-disclosure agreements when a plaintiff or claimant alleges in a civil or administrative complaint workplace harassment or discrimination based on any protected class (race, color, age, national origin, ancestry, religion, sexual orientation, disability, or medical condition), failure to prevent workplace harassment or discrimination, or retaliation for reporting or opposing harassment or discrimination.

The law does not prohibit a confidentiality agreement that prevents a plaintiff or claimant from disclosing the amount paid to settle a claim. In addition, the law allows a plaintiff or claimant to include a provision that would keep his or her identity confidential. This amendment to the law applies to agreements entered into on or after January 1, 2022.

SB 331 also requires employers to give employees or former employees at least five days to consider severance agreements. However, the employee or former employee may elect to sign the agreement the five days expire. In addition, the employer must notify the employee or former employee of his right to consult with counsel prior to signing the severance agreement. **(Cont. on p.5)**

Key Legislation:

The Silenced No More Act (California SB 331) (Cont.)

SB 331 further requires severance or settlement agreements that release Fair Employment and Housing Act ("FEHA") claims to include language to the effect of: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

Under SB 331, a severance agreement cannot bar a separated employee from disclosing information about unlawful acts in the workplace unless the provision is part of a settlement agreement to resolve a discrimination claim that the employee has filed in court, before an administrative agency, in an alternative dispute resolution forum (such as arbitration or mediation), or through an employer's internal complaint process. In addition, the employee must be given notice and an opportunity to retain an attorney or be represented by counsel.

Current Status of Women on Boards (California SB 826)

In 2018, Governor Jerry Brown signed Women on Boards (SB 826), which required all public companies headquartered in California to have at least one woman on the board of directors by the end of 2019. The law required public companies with five directors to have at least two female directors, and public companies with six or more directors to have at least three female directors by the end of 2021. The purpose of the law was to promote diversity on boards of directors and eliminate discrimination in the selection of directors.

Plaintiffs sued, alleging that SB 826 violated the equal protection clause of the California Constitution. After a five-month court trial, on May 13, 2022, a Los Angeles County Superior Court judge ruled that SB 826 violated the California Constitution and enjoined the law. The California secretary of state recently appealed that May 13, 2022 decision. Thus, while the law is currently not effective, it remains to be seen whether an appellate court reverses the Los Angeles ruling and reinstates the law.

Key Legislation:

Minimum Wage State Laws and Local Ordinances

As of January 1, 2022, the California state minimum wage increased to $15.00 per hour for employers with 26 or more employees and $14.00 per hour for employers with 25 or fewer employees. A number of California municipalities have higher minimum wages, some of which increased on July 1, 2022. Those municipalities with new minimum wages effective July 1, 2022, include:

Alameda: $15.75/hour;
Berkeley: $16.99/hour;
Emeryville: $17.68/hour;
Fremont: $16.00/hour;
Los Angeles City: $16.04/hour;
Los Angeles County (unincorporated areas): $15.96/hour;
Malibu: $15.96/hour;
Milpitas: $16.40/hour;
Pasadena: $16.11/hour;
San Francisco: $16.99/hour;
Santa Monica: $15.96/hour; and
West Hollywood: $16.00/hour for 49 or fewer employees; $16.50/hour for 50 or more employees

Remote workers are subject to the minimum wage of the municipality in which they work, which may not be the same as their employer's office or the office to which they are assigned. Thus, it is important for employers to be mindful of where their remote workers are located to ensure compliance with the minimum wage laws.

The California state minimum wage is likely to increase again to $15.50 per hour on January 1, 2023, in light of the rise of inflation. In addition, a proposal to raise the state minimum wage to $18.00 per hour will likely appear as an initiative on the November ballot.

Pending Legislation:

Duty to Accommodate Employees for Family Responsibilities (California AB 2182)

This proposed law would amend the Fair Employment and Housing Act ("FEHA") to prohibit employment discrimination on account of "family responsibilities." The proposed new law defines "family responsibilities" as the obligations of an employee or applicant to provide care for a minor child or care recipient. In addition, it would require an employer to reasonably accommodate an employee's family responsibilities that arise because of an unforeseen closure or unavailability of the child's or care recipient's school or care provider. These accommodations include, granting temporary or part-time work, shifting hours or days of work, and permitting remote work. Finally, the proposed law would make it unlawful for an employer to retaliate or otherwise discriminate against the employee for requesting an accommodation or exercising, or attempting to exercise, these rights.

The bill is currently under consideration before the California Assembly's Appropriations Committee.

Pending Legislation:

Cannabis Use and Employment Discrimination (California AB 2188)

This bill, if enacted, would prohibit an employer from discriminating against employees or applicants for their use of cannabis "off the job and away from the workplace." However, it would not allow employees to be impaired by or use marijuana while at work.

The proposed law would also prohibit an employer from discriminating against an applicant or employee who fails a drug test that detects "nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids." However, it would not prevent an employer from conducting pre-employment drug testing through methods that do not screen for nonpsychoactive cannabis metabolites.

The proposed law would not apply to the building and construction industries, federal contractors, federal funding recipients, or federal licensees required to maintain drug-free workplaces. Nor would it apply to occupations that are required by federal or state laws to be tested for controlled substances.

The bill passed the California Assembly by a vote of 42 to 23. It moved to the California Senate and is currently being considered by the Labor, Public Employment and Retirement Committee.

Amendment to States of Emergency and Emergency Conditions (California SB 1044)

This bill would prohibit an employer, in the event of a state of emergency or an emergency condition, from taking or threatening disciplinary action against an employee who refuses to attend work or who leaves work because the employee feels unsafe. "State of emergency" includes a government-declared disaster or alert of natural disaster or emergency that poses an imminent and ongoing risk of harm to the workplace, the employee, or the employee's home. "emergency condition" means "conditions of disaster or extreme peril" caused by natural forces or a criminal act, or an order to evacuate a workplace, a worker's home, or the school of a worker's child due to natural disaster or a criminal act. "State of emergency" and "emergency condition" do not include a health pandemic.

The bill would also prohibit an employer from preventing employees from accessing their mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to confirm their safety. The bill would require an employee to notify the employer of the state of emergency or emergency condition, which requires the employee to leave or refuse to report to the workplace.

The bill is currently being considered by the California Assembly's Appropriations Committee.

Pending Legislation:

Vaccine Verification Bill (California AB 1993)

This proposed law would compel employers to require its employees and independent contractors who are eligible to receive the COVID-19 vaccine to show proof that they are fully vaccinated. "Fully vaccinated" means the person has received all required doses of a COVID-19 vaccine authorized by the United States Food and Drug Administration ("FDA") or the World Health Organization ("WHO") or has received the first dose of a two-dose COVID-19 vaccine authorized by the FDA or the WHO, and received second dose of the vaccine within 45 days after receiving the first dose.

The bill exempts from this requirement those with a medical condition, disability, or "sincerely held religious belief that precludes the person from receiving the vaccination."

The bill would require that on January 1, 2023, each employer affirm that its employees or independent contractors provided proof of vaccination. The law would be repealed when the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices determines that COVID-19 vaccinations are no longer necessary for the health and safety of individuals.

The proposed bill is currently pending in the California Assembly's Labor and Employment Committee.

32-Hour Workweek (California AB 2932)

This bill would change the existing 40-hour workweek for purposes of overtime to a 32-hour workweek. Existing law requires employers to pay overtime to nonexempt employees who work in excess of eight hours a day or 40 hours a week. The proposed law would require large employers with 500 or more employees to pay overtime to nonexempt employees who work in excess of 32 hours in a workweek. The current eight-hour workday would remain unchanged.

Additionally, the proposed law would prohibit an employer from reducing an employee's regular rate of pay to compensate for the reduced work hours.

The proposed law would not apply to employers with fewer than 500 employees, nor would it apply to unionized employees or employees subject to collective bargaining agreements.

The California Assembly's Labor and Employment Commission is currently considering the proposed bill.

COVID-19 Employment Laws and Cases:

Supplemental Paid Sick Leave Law (California Labor Code Section 248.6)

In early 2022, Governor Newsom signed this new law that applies to employers with 26 or more employees. Under the law, employers must pay their employees up to 80 hours of COVID-19-related paid sick leave from January 1, 2022, through September 30, 2022.

A full-time employee is entitled to 40 hours of paid sick leave if this person is unable to work or telework because he (1) is required to isolate or quarantine due to COVID-19 by an order from the California Department of Public Heath, the CDC, or a local health officer; (2) has been advised by a health care provider to isolate or quarantine; or (3) is attending an appointment for the employee's own vaccination or booster or the vaccination or booster of a family member against COVID-19.

A full-time employee may take an additional 40 hours of paid leave if he is unable to work or telework because he (1) tests positive for COVID-19; or (2) is caring for a family member who tested positive for COVID-19.

A part-time employee may take supplemental paid leave up to the number of hours he works over two weeks if the employee is unable to work or telework due to COVID-19. Half of this time may be taken to care for himself or for a family member who tests positive for COVID-19.

Cal/OSHA COVID-19 Emergency Temporary Standards

In May 2022, Cal/OSHA revised its COVID-19 Emergency Temporary Standards. The following are notable changes from the prior standards:

(1) The standards no longer require an employer's written COVID-19 prevention program to include a workplace cleaning and disinfection protocol and have eliminated all cleaning and disinfecting requirements.

(2) Face coverings must be worn only when the California Department of Health requires their use, which currently applies only to indoor work in homeless shelters, health care settings, state and local correctional facilities, long-term care settings, and adult and senior care facilities. However, any employee (regardless of vaccination status) may request that his employer provide a face covering or respirator without fear of retaliation.

(3) Employers must make COVID-19 testing available at no cost and provide paid time off to employees who have symptoms of COVID-19, regardless of vaccination status and regardless of whether there is a known exposure.

(4) Regardless of vaccination status, employees who test positive for COVID-19 can return to work after five days if the employee has a negative test, symptoms are improving, and they wear a face covering at work for an additional five days. Otherwise, most employees can return to work after ten days.

In addition, many cities and counties have their own COVID-19 regulations, particularly with regard to face coverings. As such, it is also important for employers be aware of and follow such regulations.

COVID-19 Employment Laws and Cases:

Kuciemba v. Victory Woodworks, Inc. (9th Cir. 2022) 31 F.4th 1268

Plaintiff, Robert Kuciemba, worked for defendant, a furniture and construction company. He alleged that defendant failed to comply with San Francisco's health orders imposed to limit the spread of COVID-19. As a result, he alleged he was exposed to COVID-19 at work, and infected his wife with the disease, resulting in her monthlong hospitalization. The district court granted defendant's motion to dismiss the case, holding that both Ms. Kuciemba's personal injury claim and Mr. Kuciemba's loss of consortium claim against defendant were barred by the exclusive remedy under the Workers' Compensation Act. The district court further concluded that defendant did not owe a duty of care to Ms. Kuciemba.

The Ninth Circuit Court of Appeals certified the following questions to the California Supreme Court: (1) If an employee contracts COVID-19 at his workplace and brings the virus home to his spouse, does the exclusive remedy under the Workers' Compensation Act bar the spouse's civil claim against the employer? (2) Under California law, does an employer owe a duty to the households of its employees to exercise ordinary care to prevent the spread of COVID-19?

See's Candies, Inc. v. Superior Court (2021) 73 Cal.App.5th 66

Matilde Ek worked on the candy assembly and packing line at See's Candies, Inc.'s factory in Los Angeles. She alleged that See's failed to take proper precautions to prevent the spread of COVID-19. As a result, she contracted the disease, which spread to her husband (who did not work for See's). Mr. Ek died from COVID-19. Plaintiffs sued See's for wrongful death, alleging causes of action for negligence and premises liability. The trial court overruled See's demurrer. On appeal, See's argued that the wrongful death action was barred by the Workers' Compensation Act's exclusivity rule because Mr. Ek's illness and subsequent death would not have occurred but for Ms. Ek contracting COVID-19 at work.

The appellate court rejected this argument and affirmed the trial court's ruling. In doing so, the appellate court criticized the district court's ruling in Kuciemba v. Victory Woodworks, Inc. (described previously), finding that the district court's order was conclusory and provided no explanations or discussions of relevant authority.

This is the first California case to hold that an employer may be subject to a civil lawsuit by family members of an employee who died of COVID. Earlier this year, the California Supreme Court declined to review the appellate court's decision.

COVID-19 Employment Laws and Cases:

Roman v. Hertz Local Edition Corp. (S.D. Cal. 2022) 2022 WL 1541865

In this case, Hertz terminated plaintiff for attending work while experiencing COVID-19 symptoms and awaiting the results of a COVID-19 test in violation of Hertz's COVID-19 protocol. Plaintiff sued Hertz alleging various claims, including disability discrimination, failure to engage in the interactive process and to accommodate, and wrongful termination. The district court granted summary judgment in favor of Hertz, finding that under the specific facts of this case, plaintiff failed to prove she was a disabled employee within the meaning of the California Fair Employment and Housing Act ("FEHA"). In analyzing whether COVID-19 is a disability under FEHA, the district court ruled that "[w]hen it presents with temporary symptoms akin to the common cold or seasonal flu, COVID-19 will fall outside the FEHA definition of ailments considered a disability." However, the Court qualified its decision by emphasizing that COVID-19 can cause "exceedingly severe, even deadly, symptoms with long duration," and can result in "long haul" COVID. The Court held that in such cases, COVID-19 would qualify as a disability under FEHA. In addition, the court noted that the California appellate courts and the California Supreme Court have not yet determined whether COVID-19 is a disability under FEHA.

Thus, if the California appellate courts and the California Supreme Court determine that COVID-19 is a disability within the meaning of FEHA, the Hertz case will be of little precedential value.

Key Cases Pending Before California Supreme Court:

Raines v. U.S. Healthworks Medical Group (9th Cir. 2022) 28 F.4th 968 (Mem.)

Plaintiffs, a class of job applicants, received conditional offers of employment that were contingent upon passing pre-employment medical screenings conducted by defendant U.S. Healthworks. Plaintiffs sued U.S. Healthworks, alleging that it asked non-job-related questions in a medical screening questionnaire that they were required to complete, including whether the plaintiffs had a history of venereal disease, mental illness, or HIV. The questionnaire also asked female plaintiffs if they were pregnant. The two lead plaintiffs refused to complete the questionnaire, and consequently, their prospective employers revoked their job offers. Plaintiffs sued U.S. Healthworks based on various claims, including discrimination in violation of the California Fair Employment and Housing Act ("FEHA"). The district court dismissed the claims, holding that although U.S. Healthworks was an agent of plaintiffs' prospective employers, the FEHA does not impose direct liability on agents.

The Ninth Circuit Court of Appeals certified to the California Supreme Court the following question of state law: Does FEHA, which defines "employer" to include "any person acting as an agent of an employer," permit a business entity acting as an agent of an employer to be held directly liable for employment discrimination?

Key Cases Pending Before California Supreme Court:

Bailey v. San Francisco District Attorney's Office, 2020 WL 5542657 (rev. granted 12/30/2020)

Plaintiff alleged that she was subjected to a single incident in which a coworker referred to her using a racial epithet. She complained to her employer, who subsequently terminated her employment. Plaintiff sued her employer for racial harassment and retaliation for complaining about harassment. The trial court granted the employer's motion for summary judgment. The appellate court affirmed, ruling that a single epithet by a coworker, while highly offensive, was insufficient to rise to the level of actionable harassment.

In its decision, the appellate court emphasized the "significant difference" between a slur by a supervisor, which impacts the work environment "far more severely" than use of the same slur by a coworker.

The California Supreme Court granted plaintiff's petition to review the case to determine whether the appellate court correctly affirmed the Trial Court's order granting summary judgment in favor of defendant.

Turrieta v. Lyft, Inc. (2021) 69 Cal.App.5th 955 (rev. granted (2022) 502 P.3d 3)

Two groups of Lyft drivers filed separate actions against Lyft under the California Private Attorneys General Act ("PAGA"), alleging that Lyft misclassified them as independent contractors. The first group of drivers settled with Lyft and brought a motion before the trial court, seeking approval of the settlement. The second group of Lyft drivers attempted to object to the settlement, alleging that the first settlement amount was unreasonably low.

The trial court approved the settlement, thus rejecting the objection by the second group of Lyft drivers. The appellate court affirmed, holding that the second group of drivers lacked standing to object to the first group's settlement.

The California Supreme Court granted a petition to review the case to decide the following issue: Does a plaintiff in a representative action filed under PAGA have the right to object to a judgment in a related action that purports to settle the claims that plaintiff has brought on behalf of the state?

Administrative Filing Trends:

EEOC 2020 Complaint Filing Statistics

A total of 61,331 complaints were filed with the U.S. Equal Employment Opportunity Commission ("EEOC") in 2021, down from 67,448 complaints in 2020. Consistent with recent years, there were more complaints alleging retaliation than any other category of grievance; however, it appears the number of cases has decreased overall.

In 2021, there were 34,332 retaliation complaints, compared with 37,632 retaliation complaints in 2020. Disability discrimination complaints were the next-highest category, with 22,843 such complaints filed in 2021, compared with 24,324 in 2020. Race-based discrimination was the third-highest category, with 20,908 complaints compared with 22,064 in 2020. In 2020, sex-based discrimination was the fourth-highest category (21,398 complaints), but in 2021, this category fell to the fifth-highest category, with 18,762 complaints.

DFEH Complaint Filing Statistics

The California Department of Fair Housing and Employment ("DFEH") has not yet released its filing statistics for 2021.

However, in 2020, it received 23,898 complaints, a decrease of 3,942 complaints from 2019. Of those complaints, 13,708 requested an immediate right-to-sue notice, allowing the complaining party to bring a claim directly to court. DFEH accepted 5,784 complaints for investigation. The highest percentage of cases filed alleged disability discrimination (2,350 cases), followed by cases alleging any form of discrimination or harassment (2,333 cases), sex/gender discrimination (1,638 cases), and race discrimination (1,548 cases).

In 2019, the highest percentage of cases filed alleged disability discrimination (3,132 cases), followed by retaliation (2,785 cases), sex/gender discrimination (1,350 cases), and race discrimination (1,289 cases).

Notable Verdicts and Settlements:

Owen Diaz v. Tesla, Inc.
United States District Court for the Northern District of California

Plaintiff's verdict of $137 million in racial discrimination and harassment jury trial. Plaintiff, an elevator operator at the Tesla factory in Fremont, California, alleged that his work environment was permeated with racial hostility and harassment, including drawings of caricatures of African American children, swastikas, and a racial epithet that was written in a bathroom stall. In addition, plaintiff claimed that both supervisors and coworkers referred to him using racial slurs and told him to "go back to Africa." Plaintiff alleged that Tesla's management failed to meaningfully respond to his complaints about the work environment.

The jury awarded plaintiff $6.9 million for emotional distress and $130 million in punitive damages. Subsequently, the trial judge reduced the total verdict to $15 million. In June 2022, the trial court granted Tesla's request for a new trial.

McCracken and Negron v. Riot Games
Class Action
Los Angeles County Superior Court

In December 2021, a settlement of $100 million was reached in a sexual discrimination, harassment, and unequal pay case.

This case involved a class of female employees of Riot Games, a publisher of popular video games, who claimed they were paid less than their male counterparts for substantially similar work. The parties initially settled the case for $10 million. However, the California Department of Fair Employment and Housing and the California Division of Labor Standards Enforcement blocked the settlement, arguing that it was insufficiently low.

Ultimately, the parties agreed to the $100 million settlement. Of the total settlement amount, $80 million will be distributed among 2,365 women who worked for Riot Games between November 2014 and the present. The remaining $20 million will go toward attorneys' fees and costs of suit.

Notable Verdicts and Settlements:

Rudnicki v. Farmers Insurance Exchange
Los Angeles County Superior Court

A Los Angeles jury awarded plaintiff Rudnicki $155 million in a retaliation case. Plaintiff worked for Farmers Insurance for 37 years. At the time of his termination, he was senior vice president of Farmers' in-house legal division. He alleged Farmers terminated his employment after he testified against Farmers in connection with a gender discrimination lawsuit brought by a group of female employees. Farmers claimed that it terminated plaintiff for misconduct that had nothing to do with his testimony in the discrimination case.

A Los Angeles jury awarded plaintiff $3.4 million in past economic damages, $1 million in future economic damages, and $1 million in emotional distress damages. The jury also awarded plaintiff $150 million in punitive damages after deliberating for just 40 minutes.

It remains to be seen whether the trial court reduces this verdict.

About Walsworth:

Walsworth's employment lawyers provide a broad spectrum of employment litigation, as well as advice and counsel services. We represent a wide variety of large and small businesses, public entities, and nonprofit corporations. We also act as coordinating and local counsel by assisting our clients and their national counsel in managing all aspects of discovery, trial preparation, and trial in large-scale litigation.

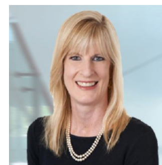
We have successfully defended single, multi-plaintiff, and class action claims in state and federal courts, and in private, binding arbitration and mediation. These cases involved allegations of wrongful termination, harassment, discrimination, whistleblowing, wage and hour violations, breach of contract, failure to accommodate, failure to engage in the interactive process, failure to prevent discrimination and harassment, violations of the Family and Medical Leave Act ("FMLA") and the California Family Rights Act ("CFRA"), misappropriation of trade secrets, and unfair competition. We have also successfully represented employers at administrative hearings before the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the California Division of Labor Standards Enforcement, the Employment Development Department, and the Workers' Compensation Appeals Board in connection with Labor Code Section 132a discrimination/retaliation and serious and willful claims. Our team has also represented public entities in arbitrations, Skelly (disciplinary) hearings, and Pitchess motions.

Our Work:

We litigate and provide advice and counsel for a full scope of labor and employment matters, including but not limited to:

- Disability Access and Accommodation
- Employee Handbooks
- Executive Compensation
- FMLA/CFRA Leave Management
- Independent Contractor Agreements
- Policy Memoranda (including anti-harassment policies and investigation guidelines)
- Severance Policies and Separation Agreements
- Sexual Harassment Policies and Prevention Training
- Terminations
- Whistleblower Claims
- Workplace Investigations and Audits

Get in Touch:



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