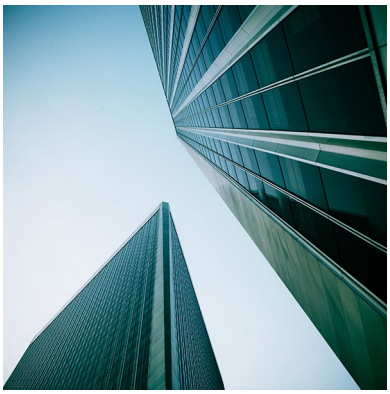

California Employment Law Notes

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By Anthony J. Oncidi

California Employment Law Blog

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Employer's Investigation Of Alleged Sexual Harassment Was Not Privileged

Paknad v. Superior Court, 119 Cal. App. 5th 1256 (2026)

While still employed by Intuitive Surgical, Michelle Paknad alleged sexual harassment, gender discrimination, and unlawful retaliation. In response, the employer retained outside counsel to investigate. During the investigations that followed, the attorney interviewed multiple witnesses, reviewed documents, and produced two reports containing her findings and conclusions. The employer relied upon the attorney's investigations to support its defenses against Paknad's subsequent lawsuit, specifically citing the thoroughness of the investigations in support of its avoidable-consequences defense (i.e., its defense that it took reasonable steps to prevent and correct workplace harassment).

In an earlier (unpublished) appellate proceeding in this same case, the Court of Appeal concluded that by relying upon the investigations in support of its affirmative defenses, the employer had placed the independence and adequacy of those investigations squarely at issue and, therefore, had waived the attorney-client privilege and the work-product doctrine over relevant portions of the investigations – including the investigations' factual findings and information related to the investigations' scope and adequacy. However, the Court recognized that some of the investigator's work product might "exceed the scope of what Intuitive had put at issue" and directed the lower court to review the materials to determine if "some protection is warranted notwithstanding the waiver."

Not surprisingly, the parties disagreed about how much of the attorney's work product was "at issue" – with the employee contending practically all of it was at issue, and the employer asserting the attorney's "core work product" (i.e., her findings, mental impressions, and conclusions regarding the claims) had *not* been waived and should be redacted and withheld from production to the employee. The trial court reviewed 437 pages of unredacted materials (including the two reports, documents (mostly emails), and the investigator's interview notes). The trial court found the employer's redactions to be appropriate because they consisted of "an attorney's impressions, conclusions, opinions, or legal research or theories" and, therefore, were "not discoverable under any circumstances."

Paknad then filed a second petition for mandamus relief before the Court of Appeal, which the Court denied, but which the California Supreme Court granted, thus resulting in this second proceeding before the Court of Appeal. In this latest opinion, the Court noted that both parties had somewhat misconstrued its earlier opinion, but clarified (more in line with Paknad's position) that "*Wellpoint* [*Health Networks, Inc. v. Superior Court*, 59 Cal. App. 4th 110, 128 (1997)] makes clear that *both* the attorney-client privilege and work product protection are waived when a party elects to defend itself by putting otherwise privileged information at issue."

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The Court concluded:

> We clarify that Intuitive, by its voluntary conduct, has waived the attorney-client privilege *and* attorney work-product protection as to (1) all [the investigator's] factual findings about Paknad's allegations of discrimination, harassment, or retaliation, and (2) information – whether in [the investigator's] reports or the underlying investigative materials – relevant to the scope or adequacy of [her] investigation of Paknad's allegations.

With that, the Court granted Paknad's second petition for writ of mandate and ordered the trial court to conduct further in camera review of the redacted portions of the investigator's materials to determine the scope of the employer's waiver.

Employer Is Not Presumed To Infer Employee's Undisclosed Mental Disability

Husband v. Target Corp., 2026 WL 1430244 (Cal. Ct. App. 2026)

Daniel Husband worked as a fulfillment expert for Target Corp. Husband's employment was terminated for violations of Target's workplace violence policy following a series of "threats of violence against coworkers." Husband sued Target for disability discrimination and related claims. During his deposition, Husband admitted he never informed Target that he had been diagnosed with bipolar I disorder. However, in an (attorney-prepared) declaration filed in opposition to Target's summary judgment motion, Husband claimed he had "mentioned" his diagnosis to human resources during orientation. Consistent with long-standing precedent, the court disregarded the declaration because it contradicted Husband's prior deposition testimony. The trial court granted Target's summary judgment motion because Target had no knowledge of Husband's alleged mental disability and because Husband never sought an accommodation from Target. The Court of Appeal affirmed summary judgment in favor of Target, holding that an employer will not be charged with knowing an employee has a disability unless the facts known to the employer make the existence of a disability "the only reasonable interpretation" of those facts.

Title VII Accommodation May Cause Non-Monetary "Undue Hardship" To Employer

Williams v. Legacy Health, 2026 WL 1239760 (9th Cir. 2026)

Employees of Legacy Health were denied religious exemptions from the employer's COVID-19 vaccination policy based on the undue hardship the exemptions would have caused the employer's business. Granting the employees' exemption requests posed undue hardship to Legacy in that it created a risk that employees would become ill and cause staffing issues from their absence and the infection could jeopardize the health of Legacy's patient population. In applying the undue hardship test as recently clarified by the Supreme Court in *Groff v. DeJoy*, 600 U.S. 447 (2023), the Ninth Circuit affirmed summary judgment for the employer, holding that proof of "prohibitive financial hardship" is not necessary to show undue hardship and "while that type of hardship may be sufficient, it is not necessary. 'Health and safety costs' matter, too." *See also Cardenas v. Los Angeles Unified School Dist.*, 2026 WL 1283679 (Cal. Ct. App. 2026) (employees forfeited challenge to summary judgment in COVID-19 vaccine accommodation case where there was no citation to record evidence in either the trial or appellate court).

Law Firm Should Have Been Disqualified From Case After Reviewing Privileged Emails

Guardian Storage Centers, LLC v. Simpson, 119 Cal. App. 5th 509 (2026)

After terminating the employment of Julie Simpson (Guardian's COO), Guardian's CEO/owner sued Simpson for a variety of claims, including breach of contract, interference with prospective economic advantage, and breach of fiduciary duty. Simpson cross-complained against Guardian and the CEO for wrongful termination, sexual harassment (over the course of 14 years), and retaliation. There were other employment-related claims filed by and against other former employees as well. During discovery, Simpson produced three emails that she had previously shared with her attorneys that were confidential attorney-client communications between Guardian's legal counsel and various of its owners and officers. Guardian's counsel informed the employees' counsel the emails were privileged and asked that they be returned and not be further used. Rather than return the emails, the employees' counsel impermissibly reviewed them "in depth," failed to notify Guardian in the first place about having them and indicated an intent to use them to support the employees' claims in the litigation. The trial court denied Guardian's motion to disqualify the employees' lawyers. The Court of Appeal reversed the trial court and held it had abused its discretion by failing to appreciate the full scope of the prejudice caused by the disclosure and, therefore, the court should have disqualified the employees' lawyers from the case. The appellate court distinguished *Wellpoint Health Networks, Inc. v. Superior Court*, 59 Cal. App. 4th 110, 128 (1997) on the ground that disclosure of the privileged emails in this case was not essential for a thorough examination of the adequacy of the investigation that Guardian had conducted into the employees' claims.

Nursing Student Could Sue Under FEHA, Deficient Attorney Declaration Should Have Been Excused

Walton v. Victor Valley Cmty. Coll. Dist., 119 Cal. App. 5th 1164 (2026)

Jessie Walton sued her employer for sexual harassment-related claims. The trial court excluded her attorney's declaration filed in opposition to the employer's summary judgment motion for a "correctible omission" (failure to state the location where it was signed and that it was subscribed under penalty of perjury under the laws of the state of California as required by Cal. Code Civ. Proc. § 2015.5). Even though Walton's attorney filed a corrected declaration hours after the hearing, the trial court granted the employer's summary judgment motion. The Court of Appeal reversed, holding that technical oversights of counsel such as existed here are curable defects. The Court further held that a postsecondary nursing student like Walton doing a clinical rotation at a hospital qualifies as an "unpaid intern" and thus has standing to sue for sexual harassment under the Fair Employment and Housing Act.

District Court Should Have Enforced Individualized Arbitration Agreements

O'Dell v. Aya Healthcare Servs., Inc., 171 F.4th 1173 (9th Cir. 2026)

This case arose from unpaid wage claims brought by former employees of Aya Healthcare, a travel-nursing agency. The district court initially compelled four cases to individual arbitrations without ruling on the enforceability of the agreement because the agreement contained a delegation clause which provided that an arbitrator would decide the validity of the agreement. The results in arbitration were split: two arbitrators upheld the arbitration agreements while two struck them down. When Aya later sought to enforce the same arbitration agreement against different employees, the district court disregarded the valid delegation clause in the agreement and issued its own ruling on the enforceability of the arbitration agreement. In doing so, the district court relied exclusively on the unfavorable arbitration rulings—giving them preclusive effect while refusing to enforce the agreement for over 250 other former employees. The Ninth Circuit reversed.

The court emphasized that the district court's approach clashed with the Federal Arbitration Act (FAA), which strongly favors enforcing arbitration agreements. Nothing in the FAA allows courts to invalidate such agreements based on how individual arbitrators rule in separate proceedings involving different parties. By treating a handful of arbitration decisions as binding on hundreds of other parties and claims, the district court effectively transformed an individual arbitration proceeding into a *de facto* class action without the parties' consent. That approach, the Ninth Circuit made clear, is fundamentally incompatible with the FAA because it suggests "the sort of 'judicial hostility to arbitration' that the FAA was enacted to prevent." *See also Toothman v. Redwood Toxicology Laboratory, Inc.*, 2026 WL 1228477 (Cal. Ct. App. 2026) (employee hired through placement agency was not required to arbitrate claims against direct employer, which was not a party to the arbitration agreement).

Arbitration Agreement Was Not Substantively Unconscionable

Santana v. Studebaker Health Care Ctr., LLC, 120 Cal. App. 5th 1 (2026)

When J. Ascencion Santana was hired by Studebaker Health Care Center, he signed a series of documents, including three that were "arbitration related." In response to Santana's subsequent wage and hour putative class action, Studebaker filed a motion to compel arbitration, which the trial court denied based upon various "conflicts" among the three arbitration-related documents (relating to a waiver of the right to bring a PAGA action). The Court of Appeal reversed, holding that the purported ambiguities among the documents did not undermine the parties' clear intent to arbitrate notwithstanding some procedural unconscionability (which generally exists with contracts of adhesion). *Compare Stoker v. Blue Origin, LLC*, 120 Cal. App. 5th 91 (2026) (arbitration agreement was substantively unconscionable in that it was overbroad, non-mutual, waived the right to a jury, and contained a class action waiver); *see also Jules v. Andre Balazs Properties*, 608 U.S. __, 2026 WL 1336216 (2026) (a federal court that has previously stayed claims in a pending arbitration under the FAA retains jurisdiction to confirm or vacate a resulting arbitral award).

Certification Of Class Action Should Not Have Been Denied On Grounds Of Atypicality Of Claims

Martinez v. Sierra Lifestar, Inc., 119 Cal. App. 5th 1303 (2026)

Adam Martinez filed this putative class action against Sierra Lifestar, alleging the employer improperly excluded bonuses when calculating employees' regular rate of pay for purposes of overtime. The trial court denied Martinez's motion for class certification on the ground that his claims were not typical of the putative class because he had received a particular bonus that was in the nature of a gift and/or was discretionary. The Court of Appeal reversed, holding that the issue of whether employees' various bonuses should have been included in the regular rate of pay applied to all employees in the putative class and, therefore, was not unique to Martinez.

Employee Who Settled Qui Tam Action Receives Interest On Attorneys' Fees From Time Of Entry Of Order

Thrower v. Academy Mortg. Corp., 172 F.4th 703 (9th Cir. 2026)

Gwen Thrower was awarded attorneys' fees, expenses, and costs in her False Claims Act action against Academy Mortgage, her former employer. After the district court approved the settlement in the amount of $38.5 million (including $11.5 million to Thrower personally), it awarded Thrower $8.6 million in attorneys' fees and $90,000 in expenses. Thrower also sought post-judgment interest on the attorneys' fees from the time of the court's approval of the settlement (January 2023). However, the district court awarded post-judgment interest on the attorneys' fees from the time of the entry of the order in May 2024 and not from the time of the approval of the settlement. The Ninth Circuit affirmed the lower court's judgment, holding that the May 2024 order was the only judgment that provided a "definite and certain designation of the amount" of attorneys' fees owed to Thrower from which to calculate the interest payment.