Proskauer

California Employment Law Notes

January 2019

School Teacher's ADA Claim Against Catholic School Was Not Barred By "Ministerial Exception"

Biel v. St. James School, 2018 WL 6597221 (9th Cir. 2018)

Kristen Biel was fired from her fifth grade teaching position at St. James Catholic School after she told the school that she had breast cancer and would need to miss work to undergo chemotherapy. Following her termination, Biel alleged that the school had violated the Americans with Disabilities Act ("ADA"). The district court dismissed Biel's lawsuit on the ground that it was barred by the First Amendment's "ministerial exception" to generally applicable employment laws such as the ADA. The Ninth Circuit reversed, holding that under the totality of the circumstances test, the ministerial exception did not bar Biel's claims because she did not qualify as a minister of the Catholic Church.

City Attorney Should Not Have Been Disqualified From Representing City

City of San Diego v. Superior Court, 2018 WL 6629322 (Cal. Ct. App. 2018)

As part of an internal affairs investigation regarding the unauthorized disclosure of a confidential police report, the San Diego Police Department questioned detective Dana Hoover regarding communications she had had with an attorney who was representing her in an employment-related lawsuit against the city. Although Hoover invoked the attorney-client privilege, the Department directed her to answer the questions or face discipline and/or termination of employment. The trial court concluded that the city violated the attorney-client privilege and that a deputy city attorney violated the California State Bar Rules of Professional Conduct by questioning Hoover about her lawsuit without the permission of her lawyer. The Court of Appeal held, however, that the trial court erred when it granted Hoover's motion to disqualify the city attorney in view of the fact that none of the information that Hoover disclosed would have a "substantial continuing effect on future judicial proceedings."

Prevailing Employer Should Not Have Been Awarded CCP § 998 Costs

Huerta v. Kava Holdings, Inc., 29 Cal. App. 5th 74 (2018)

Felix Huerta sued Kava Holdings dba Hotel Bel-Air after the hotel terminated him and another restaurant server who was involved in an altercation during work. The trial court granted Kava's motion for nonsuit as to Huerta's claim for retaliation under the Fair Employment and Housing Act ("FEHA"), and the jury returned a verdict against Huerta on the remaining FEHA claims. The trial court subsequently denied Kava's motion for attorney's fees, expert fees and costs under Cal. Gov't Code § 12965(b) on the ground that Huerta's action was not frivolous, but granted Kava $50,000 in costs and expert witness fees under Cal. Code Civ. Proc. § 998 based on Huerta's rejection of Kava's pretrial settlement offer. The Court of Appeal reversed, holding that Section 998 does not apply to non-frivolous FEHA actions. (The Court further noted that effective Jan. 1, 2019, Section 998 will have no application to costs and attorney and expert witness fees in a FEHA action unless the lawsuit is found to be frivolous.)

Employer May Be Liable For Accident Caused By On-Call Employee

Moreno v. Visser Ranch, Inc., 2018 WL 6696021 (Cal. Ct. App. 2018)

Ray David Moreno, a passenger riding in a truck that his father (Ernesto Moreno) was driving, was injured when the truck left the roadway, hit an embankment and rolled over. Ray sued his father, the corporation that employed his father and an affiliated corporation that owned the vehicle. The employer required Ernesto to be on call 24 hours a day, seven days a week to respond immediately to cell phone calls for repairs and maintenance. The trial court granted summary adjudication in favor of the employer on the respondeat superior claim on the ground that Ernesto, who was returning home late in the evening after attending a family gathering, was not acting in the scope of his employment at the time of the accident. The Court of Appeal reversed, holding that the trier of fact could find that Ernesto's use of the truck for personal travel after work was dictated by the employer's requirements.

Employer's Rounding Policy Complied With California Law

Donohue v. AMN Servs., LLC, 2018 WL 6445360 (Cal. Ct. App. 2018)

AMN used a computer-based timekeeping system for all nonexempt employees, including plaintiffs/nurse recruiters. The timekeeping system rounded recruiters' punch times (both punch in and punch out) to the nearest 10-minute increment. To establish the proper hourly compensation, AMN converted each 10-minute increment to a decimal (to the nearest hundredth of a minute), totaled the number of hours (to the hundredth of a minute) and multiplied the total hours by the recruiter's hourly rate. AMN's expert labor economist testified that the rounding rule used by AMN was "neutral; in the long run, neither the employer nor the employee benefits from this policy." The trial court ruled that the rounding policy complied with California law, and the Court of Appeal affirmed. On similar grounds, the Court affirmed the trial court's summary adjudication in AMN's favor of plaintiffs' claims for unpaid meal and rest periods, wage statement violations, waiting time penalties, PAGA penalties, violation of the unfair competition law and for unreimbursed business expenses.

Wage Order Permitting Hospital Employees To Waive Meal Break Is Valid

Gerard v. Orange Coast Mem. Med. Ctr., 2018 WL 6442036 (Cal. S. Ct. 2018)

Plaintiff health care workers formerly employed by Orange Coast Memorial Medical Center alleged that they usually worked shifts of 12 hours or more. A hospital policy allowed employees who worked shifts longer than 10 hours to voluntarily waive one of their two meal periods, even if their shifts lasted more than 12 hours. Plaintiffs asserted putative class actions and claims under the Private Attorneys General Act ("PAGA"), alleging that the wage order violated the California Labor Code; the hospital responded that the meal period waivers conformed to the applicable wage order and that the wage order does not violate the Labor Code. In this opinion, the California Supreme Court agreed, holding that the wage order does not violate the Labor Code and affirmed summary judgment for the hospital.

Employees Who Voluntarily Used Company Vehicle Are Not Entitled To Travel Time

Hernandez v. Pacific Bell Tel. Co., 29 Cal. App. 5th 131 (2018)

Employees of Pacific Bell who install and repair video and internet services in customers' homes asserted a putative class action against the company for allegedly unpaid compensation for time they spent traveling in an employer-provided vehicle (loaded with equipment and tools) between their homes and a customer's residence under an optional and voluntary Home Dispatch Program ("HDP"). Pacific Bell argued that commuting in an employer-provided vehicle is compensable under California law only if such commuting is mandated, whereas participation in the HDP was optional and voluntary. The trial court agreed, granting summary judgment in Pacific Bell's favor, and the Court of Appeal affirmed.

Employees Are Entitled To Additional Compensation For Shortened Meal Periods

Kaanaana v. Barrett Bus. Servs., Inc., 2018 WL 6261482 (Cal. Ct. App. 2018)

The employees in this case (belt sorters who worked at two publicly owned and operated recycling facilities under contracts with Los Angeles County Sanitation Districts) alleged the employers' failure to pay the prevailing wage and to provide full 30-minute meal periods. The trial court held that the class members were not performing "public work" within the meaning of the prevailing wage law, but the Court of Appeal reversed and held the prevailing wage law applies. The Court further held that the employees were entitled to one hour of pay at the employee's regular rate for each workday that a full 30-minute meal period was not provided and, in addition, payment of minimum wage for all time worked. Finally, the Court held that on remand the trial court is to consider the amount of civil penalties, waiting time penalties and attorney's fees owed to the plaintiffs. *See also Carrington v. Starbucks Corp.*, 2018 WL 6695970 (Cal. Ct. App. 2018) (employee established at trial that she suffered at least two meal period violations that were ascertainable and sufficient to form the basis of a PAGA representative action); *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996 (9th Cir. 2018) (plaintiff may obtain class certification under FRCP 23 even though based upon inadmissible evidence).

Property Inspectors' Putative Class Action Was Properly Denied Certification

McCleery v. Allstate Ins. Co., 2018 WL 6583916 (Cal. Ct. App. 2018)

Plaintiffs/property inspectors alleged they were improperly hired as independent contractors by insurance companies and sought payment of unpaid minimum wages, overtime, meal and rest breaks, employee expense reimbursements as well as compliance with various other Labor Code provisions. The trial court concluded that plaintiffs' proposed class action would not be superior to individual actions because their expert's survey failed to address all of the information needed for an accurate determination of liability and the plan plaintiffs submitted deprived defendants of the right of cross-examination and the ability to present their affirmative defenses because the anonymous nature of the survey results led to "inaccurate and unverifiable results." The Court of Appeal agreed and affirmed the trial court's denial of certification of the putative class. *See also Edwards v. Heartland Payment Sys., Inc.*, 2018 WL 6272659 (Cal. Ct. App. 2018) (trial court properly denied mandatory and permissive intervention in wage-hour cases settled during mediation).

Related Professionals

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