Proskauer

California Employment Law Notes

November 2024

Uber Not Liable For Injuries Caused By Off-Duty Driver

Kim v. Uber Techs., Inc., 105 Cal. App. 5th 252 (2024)

This lawsuit arose out of a traffic accident that occurred at 2:28 a.m. when an off-duty Uber driver hit Mackenzie Young Jay Kim, the pedestrian plaintiff in the case. The undisputed facts established that the driver went to "offline status" at 2:24 a.m. at a location in West Los Angeles that was approximately a mile from the scene of the accident. The trial court granted summary judgment to Uber on the ground that there was no evidence that the driver was still driving for Uber at the time of the accident. The Court of Appeal affirmed summary judgment in favor of Uber.

Solitary Sexual Harassment Claim Shields Entire Lawsuit From Arbitration

Liu v. Miniso Depot, Inc., 105 Cal. App. 5th 791 (2024)

Youngtong “Jade” Liu sued her former employer, Miniso Depot, Inc., for various wage and hour violations of the California Labor Code and the California Code of Regulations; sex discrimination; sexual orientation/gender identity harassment and discrimination in violation of the Fair Employment and Housing Act (FEHA); retaliation in violation of the whistleblower statute (Labor Code § 1102.5); constructive termination in violation of public policy; intentional infliction of emotional distress – and sexual harassment under FEHA. In response to the complaint, Miniso filed a motion to compel arbitration, arguing that the sexual harassment claim failed to state a cause of action because it was predicated on “mere annoying, offensive, and stray remarks.” The trial court denied the motion to compel arbitration of any of the claims asserted based on the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA; 9 U.S.C. §§ 401-402). The trial court held that there is no “sufficiency of the pleadings standard” under the EFAA and, in any case, plaintiff had adequately pled a claim for sexual harassment. Further, the existence of a single claim for sexual harassment precluded arbitration “with respect to… the entire case,” including claims that were unrelated to the sexual harassment claim. The Court of Appeal affirmed the order denying the motion to compel arbitration. *See also Doe v. Second St. Corp.*, 105 Cal. App. 5th 552 (2024) (same); *cf. Campbell v. Sunshine Behavioral Health, LLC*, 105 Cal. App. 5th 419 (2024) (employer waived right to arbitrate by failing to notify trial court of the existence of the arbitration agreement for more than six months and proceeding as if it were going to mediate the case).

Employer Did Not Discriminate/Retaliate Against Disabled Employee Absent From Work For More Than Four Years

Miller v. California Dep’t of Corr. & Rehab., 105 Cal. App. 5th 261 (2024)

Maria Miller worked as a correctional officer at the California Institute for Women before she was injured in a slip-and-fall accident in 2016. After Miller had exhausted her workers' compensation wage replacement benefits in 2018, the Department placed her on an unpaid leave of absence. When the Department subsequently offered to medically demote Miller to an alternative available position that would accommodate her work restrictions, she declined the position and informed the Department that she suffered from a previously undisclosed mental disability that prevented her from returning to work while she was receiving treatment; Miller has remained on an unpaid leave of absence ever since. Miller sued the Department for disability discrimination, failure to accommodate her disability, failure to engage in the interactive process and retaliation. The trial court granted summary judgment to the employer, and the Court of Appeal affirmed, holding that Miller failed to show that she could perform the essential functions of her job with or without an accommodation. The Court also agreed with the trial court that "the involuntary act of becoming disabled" is not protected activity under the FEHA.

Flight Attendant's Discrimination Claims Should Not Have Been Dismissed

Wawrzenski v. United Airlines, Inc., 2024 WL 4750558 (Cal. Ct. App. 2024)

Alexa Wawrzenski was fired from her position as a United Airlines flight attendant for having a social media account featuring pictures of herself in uniform and wearing a bikini, with a link to an OnlyFans subscription-based account that she advertised as providing “exclusive private content you won’t see anywhere else.” Wawrzenski sued United for gender discrimination, hostile work environment harassment, and retaliation under the FEHA as well as retaliation under the whistleblower statute (Labor Code § 1102.5), wrongful termination in violation of public policy and intentional infliction of emotional distress. The trial court granted United’s motion for summary judgment, but the Court of Appeal reversed in part, holding that Wawrzenski had submitted sufficient evidence that United’s stated reasons for terminating her (violation of various social media policies and related guidelines and failure to remove photographs of her in a United uniform from Instagram) were pretextual based on disparate treatment as compared to male employees who had engaged in similar behavior and a failure to investigate her complaints of discrimination and harassment. The Court of Appeal also held that the trial court erred in ruling that the harassment was not severe or pervasive as a matter of law and that United had not retaliated against Wawrzenski for her complaints. Finally, the Court ruled that the trial court erred in failing to apply the continuing violation doctrine to the claim for hostile work environment harassment.

Manager’s Cross Claims Against Former Assistant Were Properly Dismissed

Osborne v. Pleasanton Auto. Co., 106 Cal. App. 5th 361 (2024)

Eva Osborne sued her former employer (Pleasanton Automotive) and its executive general manager (the ironically named Bob Slap) for discrimination, retaliation, harassment and wage and hour violations arising during the four years while Osborne worked as Slap's executive assistant. Two years into the litigation, Slap filed a cross-complaint against Osborne, asserting that statements she had submitted to the human resources director about Slap's requiring her to perform "demeaning personal tasks" constituted libel, slander, intentional infliction of emotional distress, intentional interference with contractual relations and negligence. In response, Osborne filed an anti-SLAPP motion to strike Slap's cross-complaint on the ground that the claims against her arose out of protected activity that she undertook in anticipation of litigation. The trial court granted Osborne's anti-SLAPP motion on the ground that the statements were both absolutely and conditionally privileged under Civil Code § 47. The Court of Appeal affirmed, holding that the litigation privilege barred Slap's claims (i.e., Slap's claims were properly "SLAPPED") because they had minimal merit. The Court also rejected Slap's argument that Osborne's statements were not protected activity under the anti-SLAPP statute because they were made in furtherance of an attempted extortion.

Executive Order Mandating $15 Minimum Wage For Federal Contractors Violates Federal Law

Nebraska v. Su, 121 F.4th 1 (9th Cir. 2024)

Five states challenged President Biden's 2021 Executive Order 14026, which directed federal agencies to include a clause in federal contracts requiring contractors to pay employees a $15 minimum wage. The states argued that the executive order and the implementing rule issued by the Department of Labor violate the Federal Property and Administrative Services Act (FPASA) and the major questions doctrine and that the implementing rule violates the Administrative Procedure Act. United States District Judge John Joseph Tuchi dismissed the complaint. In this opinion, the Ninth Circuit reversed the lower court's dismissal and its denial of a preliminary injunction, holding that the minimum wage mandate exceeds the authority of the president and the DOL provided under the FPASA. The Court further held that the major questions doctrine does not apply because the Executive Branch's reliance on the FPASA is not a "transformative expansion of its authority." Finally, the Court held that the DOL acted arbitrarily or capriciously when it failed to consider alternatives to the $15 per hour minimum wage.

PAGA Plaintiff Lost Standing Following Adverse Arbitration Award

Rodriguez v. Lawrence Eqpt., Inc., 2024 WL 4719479 (Cal. Ct. App. 2024)

Julian Rodriguez sued his former employer, Lawrence Equipment, Inc., for various wage and hour violations under the Labor Code and sought civil penalties and wages pursuant to the Private Attorneys General Act (PAGA). Enforcing the arbitration agreement Rodriguez had signed, the trial court ordered arbitration of the wage and hour claims and stayed Rodriguez's single PAGA cause of action pending the arbitration. After the arbitrator found in favor of Lawrence and against Rodriguez on the alleged wage and hour claims, Lawrence brought a motion for judgment on the pleadings in the trial court, asserting that the PAGA action was barred by issue preclusion because Rodriguez's standing as an aggrieved employee was based on the disproven wage and hour violations. The trial court granted the motion and dismissed the case. The Court of Appeal affirmed, holding that all of the elements of issue preclusion were satisfied and, therefore, Rodriguez was precluded from litigating the alleged Labor Code violations in an attempt to establish that he is an aggrieved employee under the PAGA statute.

Employer's Attempt To Disqualify Judge Was Untimely

North Am. Title Co. v. Superior Court, 17 Cal. 5th 155 (2024)

Pursuant to Cal. Code Civ. Proc. § 170.3, a party that seeks to disqualify a trial court judge by filing a verified statement of disqualification must do so "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification." The statute also provides that there shall be no waiver of disqualification if the basis therefor is that "the judge has a personal bias or prejudice concerning a party." In this case, the trial court judge entered a judgment against an employer in the amount of $43.5 million six years after that same judge found the employer liable in a bench trial of a wage and hour class action. The trial court judge struck the employer's subsequently filed statement of disqualification as untimely. In a writ proceeding, the court of appeal held that the timeliness limitation does not apply to a statement of disqualification for bias, prejudice or appearance of impartiality. The Supreme Court reversed the court of appeal and held that the nonwaiver provision in the statute is limited to the process of judicial self-disqualification and is inapplicable when a party such as the employer in this case seeks disqualification of the judge.

Former COO Could Proceed With False Claims Act Lawsuit

Mooney v. Fife, 118 F.4th 1081 (9th Cir. 2024)

Thomas Mooney was the chief operating officer of Vivida Dermatology before his employment was terminated for an alleged violation of a confidentiality provision in his employment agreement. Following his termination, Mooney sued his former employer for retaliation under the False Claims Act (FCA), breach of contract and breach of the implied covenant of good faith and fair dealing. The district court granted summary judgment for Vivida on all three claims. In this opinion, the Ninth Circuit reversed, holding that Mooney had engaged in protected activity in that he subjectively and objectively believed that Vivida was possibly committing fraud against the government in connection with its billing practices. The Court further held that Mooney had met the notice requirement with a showing that Vivida must have known that Mooney was engaging in protected conduct and, further, that it was irrelevant that Mooney had a job duty to ensure compliance with billing regulations and to report irregularities. Finally, Mooney established genuine issues of material fact as to whether the reasons proffered by Vivida for the termination were pretextual.

Related Professionals

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