Proskauer

California Employment Law Notes

January 2025

Plaintiff May Defeat Federal Question Removal With An Amendment To Complaint

Royal Canin USA v. Wullschleger, 604 U.S. ___, 2025 WL 96212 (2025)

In this non-employment-related opinion with important implications for litigation throughout the country, the United States Supreme Court held that after a defendant removes a case from state to federal court based on federal question grounds, the plaintiff may in an amended complaint delete all references to federal law and thereby deprive the federal court of supplemental jurisdiction over the remaining state-law claims, resulting in a remand back to state court. Since most plaintiffs prefer to litigate their cases in state court, this opinion will likely result in fewer successful removals to federal court by employers.

Disability Discrimination Claims Were Properly Dismissed Though Invasion Of Privacy Claims Survive

Wentworth v. Regents of the Univ. of Cal., 105 Cal. App. 5th 580 (2024)

Blake Wentworth, formerly a professor at the University of California, Berkeley, sued the University for failure to engage in the interactive process and failure to reasonably accommodate an alleged disability in violation of the Fair Employment and Housing Act (FEHA), as well as for violating the California Constitution and the Information Practices Act (the "IPA") (Cal. Civ. Code § 1798, *et seq*.) by disclosing private information involving Wentworth's medical history and the investigation of multiple student complaints that had been lodged against him. The Court of Appeal affirmed summary adjudication of the disability-related claims based on evidence that the University properly engaged in the interactive process and offered Wentworth a reasonable accommodation. As for the invasion of privacy claims, the Court held that there are triable issues of fact as to whether the University invaded Wentworth's privacy by disclosing he had been offered a paid medical leave of absence and that 10 student complaints had been made against him and investigated by the University. The appellate court rejected Wentworth's challenge to orders denying his motion to compel responses to discovery requests and his motion for a retrial but reversed the trial court's order denying his motion for attorney's fees and remanded the case for further proceedings.

Lowest Standard Of Proof Applies To Employer's Defense Against FLSA Claims

***EMD Sales, Inc. v. Carrera*, 604 U.S. ___, 2025 WL 96207 (2025)**

The question in this case is what standard of proof an employer must satisfy in defending against claims asserted under the federal Fair Labor Standards Act (FLSA). Several EMD sales representatives sued the company for violating the FLSA by failing to pay them overtime. EMD defended against the claims on the ground that the employees were exempt from overtime under the FLSA's outside-sales exemption. The lower courts held that EMD needed to prove its case under the "clear-and-convincing" evidence standard, which is higher than the "preponderance-of-the-evidence" standard that is (according to the Supreme Court) the "default standard of proof in American civil litigation." The Supreme Court reversed the lower court (specifically, the Fourth Circuit) and held that the preponderance-of-the-evidence standard does indeed apply and that the higher standard only applies when mandated by a statute, the Constitution, or in "other uncommon cases" in which the government seeks to take "unusual coercive action" against an individual. The Supreme Court's holding is consistent with long-standing law in the Ninth Circuit. *See Coast Van Lines, Inc. v. Armstrong*, 167 F.2d 705 (9th Cir. 1948).

Employee Is Not Entitled To New Trial After Jury Awards Her No Emotional Distress Damages

Howell v. State Dep't of State Hosps., 107 Cal. App. 5th 143 (2024)

After three years of litigation and a two-week trial, a Napa County jury found Ashley Howell's former employer (the Department of State Hospitals) liable for disability discrimination and awarded her $36,751 in lost earnings and health insurance benefits but nothing for her alleged emotional distress/pain and suffering. In addition, the trial court awarded Howell $135,102 in fees and costs. The trial court denied Howell's motion for a new trial on her claim for noneconomic (emotional distress) damages. The Court of Appeal held that the trial court had not abused its discretion by failing to grant a new trial based in part on the fact that Howell had previously been diagnosed with major depressive disorder and posttraumatic stress disorder following a sexual assault she suffered three years before she began employment with the Department. Some of the physicians who testified at trial attributed Howell's mental distress largely to the pre-employment sexual assault and concluded that by February 2020 (less than a month after the termination) Howell "presented essentially the best [her qualified medical evaluator] had ever seen her" notwithstanding her "continued… mild to moderate PTSD." The appellate court also held that the trial court properly struck the jury's award for lost health insurance benefits because Howell failed to prove she suffered a loss (e.g., paid insurance premiums or out-of-pocket costs related to the loss of insurance). Finally, the appellate court affirmed the trial court's award of $135,102 in fees and costs despite Howell's request for $1.8 million on the ground (according to the trial court) that the fee request was "striking" and "unsupportable" and the time spent on various matters was "shocking" and "beyond all reason." The Court of Appeal did, however, remand the case to the trial court to consider Howell's unopposed request for prejudgment interest. *Cf. Pollock v. Kelso*, 2025 WL 47533 (Cal. Ct. App. 2025) (employee was properly awarded $493,577 in prevailing-party attorney's fees after application of 1.8 multiplier).

Employer Could Not Recover Costs Under CCP § 998 In Wage/Hour Case

Chavez v. California Collision, LLC, 107 Cal. App. 5th 298 (2024)

Before trial on Samuel Zarate's wage/hour claims, the employer (California Collision, LLC ("CCL")) made an offer of settlement pursuant to Cal. Code Civ. Proc. § 998. After Zarate failed to recover at trial more money from CCL than it had offered before trial, the trial court awarded the company $54,473 in costs pursuant to Section 998. The Court of Appeal reversed, holding that the "to the extent they conflict, the specific one-way cost and fee shifting provisions [in favor of an employee] in Labor Code sections 1094 and 218.5 (absent a finding of bad faith [by the employee]) take precedence over the more general ones in Code of Civil Procedure sections 998 and 1032."

Surgeon's Whistleblower Claim Was Properly Rejected

Slone v. El Centro Reg'l Med. Ctr., 106 Cal. App. 5th 1160 (2024)

Johnathan Slone, M.D., sued his former employer (El Centro Regional Medical Center) for violation of Health & Safety Code § 1278.5 for retaliating against him after he reported his concerns about patient care. The case proceeded to a four-day bench trial after which the court found in favor of the Medical Center and against Slone. The Court of Appeal affirmed, holding that the trial court had properly concluded that the Medical Center did not discriminate or retaliate against Slone in any manner because of his "grievances, complaints, or reports" about patient care. Further, the trial court properly found no economic or noneconomic damages even assuming the Medical Center had unlawfully retaliated against Slone. The appellate court further noted that Slone's opening appellant's brief stated facts "almost exclusively in his favor" and "omitted material evidence favorable to [the Medical] Center that supported the judgment in its favor" contrary to the appellant's duty to "fairly summarize all of the facts in the light most favorable to the judgment." Finally, the Court held that "substantial evidence supports the [trial] court's finding that [the Medical] Center did not discriminate or retaliate against Slone because of his complaints about health care safety in violation of section 1278.5." *See Winston v. County of Los Angeles*, 107 Cal. App. 5th 402 (2024) (prevailing whistleblower was entitled to recover his attorney's fees based on amendment to whistleblower statute (Cal. Lab. Code § 1102.5(j)) that became effective while the action was pending).

Employment Claims Against Religious Institution Are Barred By The First Amendment

Markel v. Union of Orthodox Jewish Congregations of Am., 124 F.5th 796 (9th Cir. 2024)

Yaakov Markel was employed by the Union of Orthodox Jewish Congregations of America (OU) as a *mashgiach* to supervise food preparation for kosher compliance. Markel's relationship with OU and his supervisor, Rabbi Nachum Rabinowitz, "soured" after he did not receive a promotion and a raise that he claims he was promised. Markel resigned from his position and filed suit, alleging wage and hour violations and misrepresentation claims against OU and Rabbi Rabinowitz. The district court granted summary judgment to the defendants and the Ninth Circuit affirmed dismissal on the grounds that Markel was a "minister" within Orthodox Judaism and that OU is a religious organization. Based on the general principle of church autonomy in the First Amendment to the Constitution, the "ministerial exception" precludes the application of "laws governing the employment relationship between a religious institution and certain key employees" (citing *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 737 (2020)).

Employee Cannot Avoid Arbitration With "Headless" PAGA Claim

Leeper v. Shipt, Inc., 2024 WL 5251619 (Cal. Ct. App. 2024)

Christina Leeper entered into an independent contractor agreement with Shipt, Inc. ("Shipt"), a subsidiary of Target Corporation ("Target"), as well as an arbitration agreement that required her to arbitrate any personal/individual claims. She subsequently filed a purported "representative" lawsuit against Shipt and Target, alleging a "representative" PAGA claim – i.e., exclusively seeking penalties incurred by others (but not herself) stemming from alleged violations of the statute. Leeper opposed Shipt's motion to compel arbitration on the ground that she had not alleged any individual claims and, therefore, her PAGA claim could not be compelled to arbitration. The trial court agreed and denied the motion to compel. However, the Court of Appeal reversed, finding that "the unambiguous language in [Labor Code] section 2699, subdivision (a), [states that] any PAGA action necessarily includes both an individual PAGA claim *and* a representative PAGA claim" (emphasis added). Further supporting its holding, the Court looked to the statute's legislative history, noting that the legislature deliberately chose the word "and" after rejecting a prior version of the bill that phrased the language in the disjunctive. Accordingly, the Court directed the trial court to grant Shipt's motion to compel arbitration and to stay any representative component of the PAGA claim pending the outcome of the arbitration. *See also Huff v. Interior Specialists, Inc.*, 2024 WL 5231468 (Cal. Ct. App. 2024) (trial court erroneously dismissed and failed to stay representative action pending outcome of arbitration).

Non-Parties To Arbitration Agreement May Compel Arbitration Based On Equitable Estoppel

***Gonzalez v. Nowhere Beverly Hills LLC*, 107 Cal. App. 5th 111 (2024)**

Edgar Gonzalez worked for Nowhere Santa Monica at its Erewhon market for approximately five months before filing a putative class action for wage-and-hour violations under the California Labor Code. Gonzalez filed suit against 10 Nowhere entities in response to which the 10 entities filed a motion to compel arbitration based upon an arbitration agreement between Gonzalez and Nowhere Santa Monica. The trial court granted the motion as to the Santa Monica entity but denied it as to the other entities because they were not parties to the agreement. The Court of Appeal reversed on the ground that "all of Gonzalez's claims against [the other entities] are intimately founded in and intertwined with the employment agreement with Nowhere Santa Monica, an agreement which contains an arbitration agreement." The Court held that the inextricable entwinement was based on Gonzalez's joint employment theory and equitable estoppel principles. *See also Trujillo v. J-M Mfg. Co.*, 107 Cal. App. 5th 56 (2024) (Code Civ. Proc. § 1281.98 (requiring payment of arbitration fees within 30 days) does not apply to post-dispute stipulation to arbitrate that was not drafted by the employer).

Arbitration Agreement Was Unconscionable And Thus Unenforceable

Jenkins v. Dermatology Mgmt., LLC, 107 Cal. App. 5th 633 (2024)

The employer in this case sought to compel to arbitration a putative class action that was filed by former employee Annalycia Jenkins who claimed unfair competition pursuant to Cal. Bus. & Prof. Code § 17200. The trial court denied the employer's motion to compel because the arbitration agreement was substantially unconscionable based on a lack of mutuality (only Jenkins was required to arbitrate all potential claims); the purported shortening of the applicable statute of limitations to one year; the imposition of unreasonable restrictions on the parties' discovery rights; and the requirement that Jenkins pay for an equal share of the arbitrator's fees and costs. The trial court also found the agreement to be procedurally unconscionable and declined to sever the unconscionable terms because of their pervasiveness. The Court of Appeal affirmed.

Arbitrator's Findings Barred SOX Claim Filed In Court

Hansen v. Musk, 122 F.4th 1162 (9th Cir. 2024)

Karl Hansen sued Tesla, Inc., its CEO (Elon Musk) and another entity alleging he was retaliated against for reporting “misconduct” at Tesla. The district court ordered most of Hansen’s claims to arbitration except his claim under the Sarbanes-Oxley Act (SOX), which cannot be compelled to arbitration pursuant to a predispute arbitration agreement (18 U.S.C. § 1514A(e)). Following the arbitrator’s decision in their favor, defendants filed a motion before the district court to lift the stay of proceedings and to confirm the arbitration award, which was granted. Defendants then filed motions to dismiss the entire suit (including the SOX claim), arguing that the arbitrator’s findings precluded Hansen from relitigating the issues that were key to his SOX claim. The district court granted the motion to dismiss. The Ninth Circuit affirmed the dismissal.

Related Professionals

- **Anthony J. Oncidi**
  Partner