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California Employment Law Notes

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Supreme Court Invalidates Heightened Evidentiary Standard For Majority-Group Plaintiffs

Ames v. Ohio Dep't of Youth Servs., 605 U.S. ___, 145 S. Ct. 1540 (2025)

Marlean Ames, a heterosexual woman, alleged under Title VII that she had been denied a management promotion and demoted based on her sexual orientation. The district court and the Sixth Circuit Court of Appeals granted and affirmed respectively the employer's motion for summary judgment based on plaintiff's failure to show "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority." Five Circuit Courts of Appeals (not including the Ninth Circuit) applied the "background circumstances rule" to majority-group plaintiffs. In this opinion, the United States Supreme Court unanimously rejected the rule as being inconsistent with Title VII's text and the Supreme Court's case law construing the statute. For his part, Justice Thomas noted in his concurring opinion (joined by Justice Gorsuch) that the Court has never required the shifting-burden analysis of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) to be used in the summary judgment context: "[D]istrict courts across the country resolve summary judgment motions by applying the straightforward text of [Fed. R. Civ. P.] 56. In my view, it might behoove courts and litigants to take that same approach in Title VII cases."

Employee's Indirect Exposure To Harassing Conduct Supported $4 Million Verdict

Carranza v. City of Los Angeles, 111 Cal. App. 5th 388 (2025)

Lilian Carranza, an LAPD captain, learned that a photo of a topless woman who looked like but was not Carranza was circulating electronically among LAPD personnel. Carranza asked the Department to notify its employees that the photo was not of her and to order the employees to stop sharing it with one another. The LAPD declined to do so and failed to discipline any officers associated with the alleged harassment. Carranza sued the City of Los Angeles, alleging one cause of action for hostile work environment due to sexual harassment under the Fair Employment and Housing Act (FEHA). A jury awarded Carranza $4 million for past and future emotional distress damages. On appeal, the City argued that Carranza did not experience the alleged harassment directly and that the conduct alleged was neither severe nor pervasive enough to alter the conditions of her job. The Court of Appeal affirmed the judgment in Carranza's favor, holding that substantial evidence supported the jury's verdict.

Employee Who Refused To Return To Work After COVID Was Not Disabled

Allos v. Poway Unified Sch. Dist., 2025 WL 1864797 (Cal. Ct. App. 2025)

Kheloud Allos sued her former employer, the Poway Unified School District, for alleged violations of the FEHA and the Labor Code based on the district's refusal to allow her to work exclusively from home following the COVID pandemic. Allos, who worked as a senior business systems analyst, refused to return to work after the stay-at-home order was lifted in late 2020. The trial court granted summary judgment to the district based on statutory immunity conferred by Cal. Gov't Code § 855.4 as well as a determination that Allos was not disabled under the FEHA based upon a "suspected or self-diagnosed allergy to vaccines." Accordingly, the Court affirmed summary adjudication of Allos's related claims for failure to accommodate or engage in the interactive process; associational discrimination; retaliation; and violation of California Labor Code §§ 6400 and 6401, involving the obligation to furnish a "safe and healthful" place of employment.

Unsuccessful Whistleblower Was Not Entitled To Recover Attorney's Fees

Lampkin v. County of Los Angeles, 2025 WL 1874669 (Cal. Ct. App. 2025)

D’Andre Lampkin, a deputy in the Los Angeles County Sheriff’s Department, investigated a man whom he believed was soliciting a prostitute. (In reality, the suspect was one of Lampkin’s retired law enforcement colleagues having lunch with his girlfriend.) Following an altercation between Lampkin and the suspect, Lampkin reported the incident to his supervisor. Thereafter, Lampkin experienced a series of allegedly retaliatory actions by others in the Sheriff’s Department and sued the County under the whistleblower statute, Cal. Lab. Code § 1102.5. The statute provides an employer with an affirmative defense that it would have made the same decisions and taken the same actions “for legitimate, independent reasons” (the “same-decision” defense).

While the jury found that Lampkin had proven the required elements of a whistleblower claim, it also found that the County successfully met its burden to establish the same-decision defense. Accordingly, the jury awarded Lampkin (who sought only money damages at trial) zero dollars in damages. Notwithstanding the verdict, the trial court awarded Lampkin $450,000 in attorney’s fees and costs for having “successfully” proven a whistleblower claim under Section 1102.5. In this opinion, the Court of Appeal reversed the award of fees and costs, finding that by definition Lampkin had not been “successful”—despite proving the elements of his claim—because the County prevailed on its same-decision affirmative defense and the jury accordingly awarded him zero damages. *See also Cash v. County of Los Angeles*, 111 Cal. App. 5th 741 (2025) (prevailing plaintiff’s attorney’s fee award was properly reduced by 30 percent across-the-board based on “unreasonable padding,” and “unnecessary” and “duplicative work” – federal “heightened scrutiny” standard for fee reductions is inapplicable under California law); *Mooney v. Roller Bearing Co. of Am.*, 138 F.4th 1349 (9th Cir. 2025) (district court has discretion to award prejudgment interest based on a fluctuating federal rate to prevailing plaintiff in case involving successful state and federal FMLA-related claims).

Arbitration Agreement Was Unconscionable

Velarde v. Monroe Operations, LLC, 111 Cal. App. 5th 1009 (2025)

The Court noted “[t]here was extensive evidence of procedural unconscionability, with an adhesive contract, buried in a stack of 31 documents to be signed as quickly as possible while a human resources manager waited, before Velarde could start work that same day.” In addition, “[m]ost problematically, in response to Velarde’s statement that she was uncomfortable signing the arbitration agreement as she did not understand it, false representations were made by [the] HR manager to Velarde about the nature and terms of the agreement” – for example, Velarde was told the agreement would allow her and the company to resolve any issues without either side having to pay lawyers. The Court determined there was “ample evidence of procedural unconscionability,” and there was substantive unconscionability because the agreement did not conform to Velarde’s expectations. “Had [the employer] either correctly explained the terms of the agreement, or had not explained them at all, and had given Velarde a reasonable opportunity to review the agreement and to consult counsel, this would be a different case. But that is not what happened here.”

“Headless” PAGA Action May Proceed In Court

CRST Expedited, Inc. v. Superior Court, 2025 WL 1874891 (Cal. Ct. App. 2025)

Espiridion Sanchez filed this PAGA action against his former employer on behalf of himself and other allegedly “aggrieved employees.” The employer filed a motion to compel arbitration of Sanchez’s individual PAGA claims, relying on the United States Supreme Court’s opinion in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), and dismissed the entire action on the ground that PAGA “facially requires, conjunctively, that the aggrieved employee bring the action on behalf of himself and other current or former employees.” Following the California Supreme Court’s rapid response to *Viking River* in *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023), the trial court granted Sanchez’s motion to reconsider the order dismissing and reinstated the nonindividual PAGA claims. Next, Sanchez filed a motion to dismiss his individual PAGA claims in order to avoid having to arbitrate them – thus rendering the lawsuit a “headless” PAGA action.

After the trial court denied the employer's motion for judgment on the pleadings to dismiss the "headless" PAGA action, the employer filed a petition for writ of mandate, which, in this opinion, the Court of Appeal denied. After reasoning that in the context of PAGA, the word "and" is an "inclusive disjunctive" (meaning "and/or"), the Court concluded that the statute "allows PAGA plaintiffs and their counsel the flexibility to choose among bringing a PAGA action that seeks to recover civil penalties on (1) the LWDA's individual PAGA claims, (2) the LWDA's nonindividual PAGA claims, or (3) both." The Court noted that its opinion only applied to the version of PAGA that existed before the most recent legislative amendments to that statute took effect on July 1, 2024. *See also Osuna v. Spectrum Sec. Servs., Inc.*, 111 Cal. App. 5th 516 (2025) (plaintiff was an aggrieved employee with standing to assert a representative PAGA claim even though his individual PAGA claim was barred by the one-year statute of limitations). In related news, the viability of "headless" PAGA actions presumably will be determined by the California Supreme Court in *Leeper v. Shipt, Inc*., 107 Cal. App. 5th 1001 (2024), *rev. granted*, Case No. S289305 (Apr. 16, 2025).

Decertification Of Class Action Upheld

Allison v. Dignity Health, 112 Cal. App. 5th 192 (2025)

Two former registered nurses filed a putative class action against their former employer, alleging various wage and hour claims. Although the trial court initially granted in part and denied in part plaintiffs' motion for class certification, a different trial court judge subsequently granted Dignity Health's motion to decertify the class based on post-certification discovery that refuted the trial court's prior findings regarding predominance: "Accordingly, we hold the court did not abuse its discretion in concluding that individualized inquiries predominated Dignity's showing to rebut its presumed liability and that the issue was otherwise not manageable on a class basis." Dignity had submitted deposition testimony from class members evidencing a wide variation of relevant experiences regarding meal period compliance and premium payment requests. *See also Harrington v. Cracker Barrel Old Country Store, Inc.*, 2025 WL 1803034 (9th Cir. 2025) (district court must assess whether each opt-in plaintiff's claim bears a sufficient connection to the defendant's activities in the forum state in action arising under the Fair Labor Standards Act); *Columbia Legal Services v. Stemilt AG Services, LLC*, 2025 WL 1902292 (9th Cir. 2025) (discovery in class action proceeding is presumptively public, and district court abused its discretion by prohibiting counsel from using information and documents obtained in discovery in other advocacy without prior approval of court).

Defendant Bore Risk Of Loss Due To Fraud When It Wired Settlement Proceeds To Imposter

***Thomas v. Corbyn Restaurant Dev. Corp.*, 111 Cal. App. 5th 439 (2025)**

The parties involved in this personal injury lawsuit settled the case for $475,000. An unknown third-party purporting to be plaintiff's counsel sent "spoofed" emails to defendants' counsel providing fraudulent wire instructions for transmitting the settlement proceeds. Defense counsel wired the settlement proceeds to the fraudulent account, and the third party absconded with the funds. In the absence of authority under California law, the trial court applied "persuasive federal case law" that uniformly shifts the risk of loss to the party that is in the best position to prevent the fraud. In this case, the trial court determined that defense counsel was in the best position to prevent the fraud because they had failed to notice that the "spoofed" email address differed from plaintiff's counsel's authentic email address in several subtle ways and because the imposter's primary phone number was "inoperable" at that the time of the transfer, all of which should have been "red flag" warning signs to defense counsel. Several weeks later, the parties discovered they were victims of a cyber scam and that the settlement proceeds had been wired to a fraudulent account. The Court of Appeal affirmed, holding that the "numerous red flags, backed by substantial evidence in the record," supported the trial court's factual finding that defendants were in the best position to prevent the fraud.

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