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California Employment Law Notes

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Supreme Court Saves (But Guts) Anti-Arbitration Statute

Hohenshelt v. Golden State Foods Corp., 18 Cal. 5th 310 (2025)

In this closely watched case, the California Supreme Court held that California Code of Civil Procedure Section 1281.98 — a do-or-die statute requiring employers to pay arbitration fees within 30 days or "waive" the right to arbitrate altogether—is not preempted by the Federal Arbitration Act ("FAA"). While it is not the precise outcome employers may have hoped for, many correctly view the decision as a win, because in saving the statute from preemption, the Court effectively defanged it to foreclose its harshest consequences.

In close to a dozen published opinions, the California Court of Appeal had interpreted Section 1281.98 as imposing a strict, inflexible rule: Any late payment by an employer, regardless of the reason, resulted in an automatic forfeiture of the right to arbitrate. Citing various "generally applicable state law contract principles" against forfeiture, the California Supreme Court concluded the statute does not mean what it plainly says when it provides that an employer "waives its right to compel the employee . . . to proceed with that arbitration" if it fails to pay the arbitration fees within 30 days. Cal. Civ. Proc. Code § 1281.98(a)(1). Despite the absence of any support for a more charitable interpretation, the Court saved the statute from oblivion by concluding it is aimed only at deterring willful nonpayment of arbitration fees and therefore does not automatically strip employers of arbitration rights, provided the delay results from a good-faith mistake, inadvertence or other excusable neglect.

In a rare but spirited dissent, Justice Corrigan (joined by Justice Jenkins) argued that the Court's interpretation is clearly at odds with the statute's text and noted that even the majority's interpretation runs afoul of the FAA's equal-treatment principle by imposing unique and burdensome requirements on arbitration agreements — *e.g.*, by effectively imposing a "time is of the essence" default presumption with respect to arbitration agreements but not any other type of contract. As Justice John Shepard Wiley Jr. sagely predicted in his dissent in the lower court: "By again putting arbitration on the chopping block, this statute invites a seventh reprimand from the Supreme Court of the United States."

Employer Not Liable For Co-Worker's Off-Duty Conduct, But Should Have Better Protected Employee

Kruitbosch v. Bakersfield Recovery Servs., Inc., 2025 WL 2600238 (Cal. Ct. App. 2025)

A coworker (Lisa Sanders) of plaintiff Steven Kruitbosch allegedly subjected him to crude sexual advances at his home and via his personal cellphone away from the premises of their employer, Bakersfield Recovery Service, Inc. (BRS). Specifically, Sanders sent Kruitbosch multiple unsolicited nude pictures, showed up uninvited to his house, and repeatedly propositioned him for sex. When Kruitbosch reported the conduct to Human Resources, the HR rep told him there was nothing that could be done, ostensibly because the alleged activity occurred off work premises.

The HR rep later posted a video on social media depicting whining dogs and stated, "'This is a workday at thr [sic] office . . . lmbo[,]'" which Kruitbosch understood to be mocking him. The HR rep also sarcastically commented to Kruitbosch, "'I hope you don't get no more pictures[,]'" presumably referring to the unsolicited nude pictures that Sanders had sent him. At no point did anyone at BRS take any steps to separate Kruitbosch from Sanders or to prevent further harassment, nor did BRS initiate any disciplinary action against Sanders. Although Kruitbosch made efforts to avoid Sanders at work, his distress at the prospect of interacting with her, coupled with BRS's failure to protect him in the workplace and mocking him for his complaint, allegedly detracted from his work duties and made continuing his employment feel impossible; Kruitbosch resigned a week later.

Kruitbosch filed suit against BRS, alleging sexual harassment, discrimination and retaliation in violation of the California Fair Employment and Housing Act (FEHA). The trial court dismissed Kruitbosch's second amended complaint with prejudice and without leave to amend. Kruitbosch appealed. The California Court of Appeal reversed in part and affirmed in part. Although the Court found Sanders's allegedly harassing conduct to be "thoroughly repugnant," it was not sufficiently work-related to be within the ambit of the FEHA, and it did not occur at the workplace. Therefore, BRS was not liable for Sanders's allegedly harassing conduct. There were no allegations that Sanders approached Kruitbosch at his home or contacted him via cellphone for any work-related purpose, even pretextually. Specifically, there were no allegations indicating that Sanders's unwanted sexual advances had anything to do with work — they did not occur in the context of a work-related event, arise from circumstances approved, sanctioned or paid for by BRS, or derive from work-related social circumstances where employees would foreseeably interact and socialize with one another.

However, the Court found the hostile work environment claim against BRS was viable insofar as the employer's response to Kruitbosch's complaint about Sanders's conduct altered Kruitbosch's work environment in an objectively severe manner. Given the totality of the circumstances presented, the Court held that BRS's refusal to take any action (*i.e.*, its ratification through inaction) while simultaneously mocking Kruitbosch's concerns, could indicate to a reasonable person that BRS had no objection to Sanders's conduct and that Kruitbosch's concerns about her conduct were literally a ("lmbo") joke to BRS. The aggressive nature of Sanders's sexual advances and BRS's complete inaction could be viewed as having the effect of altering Kruitbosch's work environment in an objectively severe manner, as Kruitbosch had alleged.

Attorney Sanctioned $10,000 For Citing Nonexistent, AI-Generated Legal Authority

Noland v. Land of the Free, L.P., 2025 WL 2629868 (Cal. Ct. App. 2025)

Sylvia Noland asserted 25 causes of action against her former employer, including claims for wrongful termination, PAGA and other Labor Code violations, breach of contract, intentional infliction of emotional distress, etc. The employer filed a successful motion for summary judgment, which resulted in dismissal of the case. In the appellate briefing plaintiff's counsel filed, "nearly all of the quotations… ha[d] been fabricated." In addition, a few of the cases purportedly relied upon by the appellant-employee "d[id] not exist at all." Plaintiff's counsel acknowledged to the Court that he had relied on AI "to support citation of legal issues" and that the fabricated quotes were AI-generated; counsel further asserted "he had not been aware that generative AI frequently fabricates or hallucinates legal sources and, thus, he did not 'manually verify [the quotations] against more reliable sources.'" The Court of Appeal declined to permit the filing of revised briefs and concluded that counsel's reliance on fabricated legal authority rendered the appeal frivolous and violative of the California Rules of Court. Because the employer's counsel did not alert the Court to the existence of the fabricated citations and apparently learned of same *from the Court*, the Court ordered plaintiff's counsel to pay $10,000 in sanctions to the clerk of the Court rather than to the employer or its counsel.

Ministerial Exception Barred Employee's Discrimination Claims

McMahon v. World Vision, Inc., 147 F.4th 959 (9th Cir. 2025)

World Vision, a religious organization, revoked a job offer it had made to Aubry McMahon to be a remote customer service representative after learning that McMahon was married to a same-sex partner. McMahon sued for discrimination based on sex, sexual orientation and marital status under Title VII and Washington state law. The district court initially granted summary judgment to World Vision based on the church autonomy doctrine before reversing itself and granting summary judgment in favor of McMahon. In this appeal, the Ninth Circuit reversed the district court, holding that the ministerial exception bars McMahon's employment discrimination claims because World Vision's customer service representatives perform key religious functions central to World Vision's mission, including engaging with donors in prayer. Accordingly, the Ninth Circuit ordered the district court to grant World Vision's motion for summary judgment. *See also Petersen v. Snohomish Reg'l Fire & Rescue*, 2025 WL 2503128 (9th Cir. 2025) (employer could not reasonably accommodate firefighters' COVID-19 vaccine exemption requests without undue hardship).

City of Las Vegas Did Not Discriminate Against Employee Based On Her Race/Gender

Lister v. City of Las Vegas, 148 F.4th 690 (9th Cir. 2025)

Latonia Lister sued the City of Las Vegas for sex- and/or race-based employment discrimination under Title VII. Lister was the city's first African American female firefighter who had worked for the city in that capacity for almost 30 years. Lister alleged that while she was on duty and under the supervision of Captain Michael Brenneman (a white male), she walked into the room at dinnertime and observed Brenneman, who was feeding a dog pieces of steak, say, "Here, girl. Here, Latonia," while smacking his lips to make kissing noises. After deliberating for nearly two hours, the jury concluded that the incident was "severe or pervasive" and "objectively and subjectively offensive to a reasonable person," but that it was not retaliatory and was not motivated by gender-based and/or race-based discrimination; nevertheless, the jury awarded Lister $150,000 for pain and suffering damages. Because the jury found no liability on the part of the city, the district court set aside the damages award and entered judgment for the city. The Ninth Circuit affirmed the judgment.

Prevailing Employee's Counsel Was Entitled To Attorney's Fees of $4.9 Million

Bronshteyn v. Department of Consumer Affairs, 2025 WL 2658416 (Cal. Ct. App. 2025)

Diana Bronshteyn, who was diagnosed with fibromyalgia, sued her employer (the Department of Consumer Affairs) for disability discrimination, failure to accommodate her disability and related claims. According to the Court of Appeal, "the Department fought the case hard from the start." Among other things, the Department unsuccessfully opposed Bronshteyn's motion for leave to amend; demurred to the complaint; moved for summary adjudication; filed and opposed multiple motions to compel discovery responses; rejected an offer to compromise in the amount of $600,000, and, ultimately, lost the case when the jury awarded Bronshteyn more than $3.3 million (more than five times greater than Bronshteyn's pre-trial offer to compromise). In response to its prevailing-party attorney's fee application, plaintiff's counsel was awarded $4.9 million in attorney's fees, which included a 1.75 multiplier for fees incurred up to and including the jury verdict and a 1.25 enhancement for hours worked after the verdict; the trial court approved fees for plaintiff's counsel in excess of $1,000 per hour in view of rates typically charged for experienced employment lawyers practicing in Los Angeles. In an opinion authored by Justice John Shepard Wiley Jr., the Court of Appeal affirmed the award of costs and attorney's fees to plaintiff's counsel.

Supreme Court Clarifies Employer's Good Faith Defense To Liquidated Damages Claim

Iloff v. LaPaille, 18 Cal. 5th 551 (2025)

Laurence Iloff performed maintenance on various structures that were located on property that was owned by Bridgeville Properties, Inc. and managed by Cynthia LaPaille. Under an informal arrangement, Iloff's employers allowed him to live rent-free in one of the houses on the property but did not provide him any other benefits or compensation for his services. After his employers terminated the arrangement, Iloff filed claims against them with the California Labor Commissioner. The employers contended that Iloff had been an independent contractor, but the Labor Commissioner determined he was an employee and was entitled to unpaid wages, liquidated damages and penalties. Following a bench trial, the superior court found that Iloff was an employee, but ruled Iloff was not entitled to liquidated damages because his employer had acted in "good faith" in not paying him and had "reasonable grounds for believing" they were complying with the minimum wage law. The superior court also rejected Iloff's claim for penalties under the Paid Sick Leave law, concluding that the statute did not authorize Iloff to seek those penalties in the context of the employers' appeal from a Labor Commissioner ruling. In this opinion, the Supreme Court held that in order to prove the good faith defense to a liquidated damages award, the employer must show it made a reasonable attempt to determine the requirements of the minimum wage law, which these employers failed to do: "In this case, our determination is straightforward because the employers do not claim to have made *any* attempt to determine the requirements of the law governing compensation for Iloff's services to their business." The Supreme Court further held that an employee may raise a Paid Sick Leave law claim in the context of an employer's appeal of a Labor Commissioner ruling.

Employer Properly Calculated Sick Leave For Exempt Employee

***Hirdman v. Charter Commc'ns, LLC*, 113 Cal. App. 5th 376 (2025)**

Bradley Hirdman filed a lawsuit against his former employer (Charter Communications, LLC) alleging a violation of the Private Attorneys General Act (PAGA) based on Charter's alleged misclassification of Hirdman as an exempt outside salesperson for purposes of calculating his paid sick leave pursuant to Cal. Lab. Code § 246(l)(3). The trial court and the Court of Appeal in this opinion determined that Hirdman had been an exempt employee and, as such, his paid sick leave was properly calculated pursuant to Section 246(l)(3) – in short, holding that that Section does not apply only to exempt administrative, executive and professional employees, but also includes exempt outside salespersons.

Union Employee's Wage/Hour Claims Were Not Preempted By Federal Law

Renteria-Hinojosa v. Sunsweet Growers, Inc., 2025 WL 2351203 (9th Cir. 2025)

Annamarie Renteria-Hinojosa filed two putative class actions against her employer (Sunsweet Growers), alleging various wage and hour violations under California law, including PAGA. Renteria-Hinojosa's employment was governed by two successive collective bargaining agreements (CBAs) between her union and Sunsweet. In response to the lawsuits, Sunsweet removed both actions to federal court, asserting federal question jurisdiction on the ground that the claims were preempted by Section 301 of the Labor Management Relations Act. Following removal to federal court, Sunsweet moved to dismiss both actions, arguing that the state law claims were either preempted by federal law or, in the alternative, were subject to arbitration under the applicable CBA. The Ninth Circuit held that the district court properly dismissed Renteria-Hinojosa's untimely wage claims on the ground that she failed to exhaust the CBA dispute resolution procedures and remanded to state court the remaining non-preempted claims.

The Court further concluded that Renteria-Hinojosa's claims for unpaid overtime, sick leave pay, meal and rest breaks, and adequate seating, arising under various provisions of the California Labor Code, the California Business & Professions Code, and the California Code of Regulations, were not preempted because they "do not arise exclusively from the CBAs, but rather from 'rights conferred' by state law" (citing *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007)). In "step two" of its analysis, the Court held that because the state law claims did not require interpretation of the "substantive provisions" of the CBAs, the claims were not preempted by Section 301. Finally, the Court held that the district court did not abuse its discretion by remanding the remaining state law claims to state court rather than exercising supplemental jurisdiction over them. *See also Williams v. J.B. Hunt Transp., Inc.*, 2025 WL 2345897 (9th Cir. 2025) (trucking company's piece-rate pay plan complied with Cal. Lab. Code § 226.2, and company was properly granted judgment on the PAGA and cellphone reimbursement claims under Cal. Lab. Code § 2802).

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