Proskauer

California Employment Law Notes

November 2025

Employee Was Wrongfully Terminated After Failing Polygraph Test

McDoniel v. Kavry Mgmt., LLC, 114 Cal. App. 5th 949 (2025)

Steven McDoniel was employed by Kavry Management as an "assistant grower" at its licensed marijuana growing facility in Adelanto, California. After $70,000 in cash and marijuana were stolen from the storage room, employees were told, "Y'all need to go take a polygraph test." The polygrapher, Rachel Levy, claimed she would not have conducted the polygraph exams unless each employee had signed a preprinted consent form that she had previously provided to Kavry. (Kavry was unable to produce at trial any of the consent forms purportedly signed by its employees, including McDoniel.) McDoniel failed the polygraph exam twice, which caused him to be "shocked beyond belief," "scared" and "worried that the career he had planned in the marijuana-cultivation industry would be over." After McDoniel was terminated, he did some research and concluded he should have been advised of his right to refuse to take the polygraph exam. McDoniel sued Kavry for wrongful termination based on a violation of Cal. Lab. Code § 432.2 (regulating an employer's use of polygraph examinations). At trial, the jury awarded McDoniel $100,000 in emotional distress damages, and the court awarded him $228,000 in attorney's fees and costs. The Court of Appeal affirmed the $100,000 verdict, but reversed the award of attorney's fees and costs, holding that McDoniel was not entitled to recover fees or costs under Cal. Lab. Code § 432.6 (statute is inapplicable and did not become effective until after McDoniel's employment had ended) or PAGA (argument forfeited on appeal).

COVID-19 Religious Discrimination Claim Was Properly Dismissed

Detwiler v. Mid-Columbia Med. Ctr., 2025 WL 2700000 (9th Cir. 2025)

Sherry M. Detwiler worked as a privacy officer and the Director of Health Information for a hospital (Mid-Columbia Medical Center) from September 2020, until her employment was terminated in December 2021. Detwiler is a practicing Christian who believes her body is a “temple of the Holy Spirit” and sincerely believes she has a “religious duty to avoid defiling her ‘temple’ by taking in substances that the Bible explicitly condemns or which could potentially cause harm to her body.” While employed, Detwiler sought a religious exemption from the hospital’s policy implementing the Oregon Health Authority’s administrative rule requiring healthcare workers to be vaccinated against COVID-19 absent an approved exemption. Relying upon sources she found on the Internet, Detwiler concluded that COVID-19 vaccines were created from fetal cell lines and contained “neurotoxins” and other potentially harmful substances.

The hospital approved Detwiler’s request for a religious exemption from vaccination, but she was required to wear personal protective equipment while in the office and to submit to weekly antigen testing for the virus. In response, Detwiler requested a further accommodation, seeking an exemption from the antigen testing because she had found “multiple sources” indicating that ethylene oxide (which is on the cotton swab inserted into the nostril for the antigen test) is a carcinogenic substance. Detwiler then requested that the hospital allow her either to submit to saliva testing for the virus or to work remotely full-time; these requested accommodations were denied to her and her employment was terminated when she refused the previous accommodations that had been offered.

Detwiler sued the hospital for religious discrimination under Title VII and Oregon’s parallel anti discrimination statute. The district court granted the hospital’s FRCP 12(b)(6) motion to dismiss on the ground that Detwiler’s “specific determination of what is harmful… was not, in this case, premised on the Bible or any other religious tenet or teaching, but rather on her research-based scientific medical judgments.” The Ninth Circuit affirmed dismissal, holding that “Detwiler, by asserting a general religious principle and linking that principle to her personal, medical judgment via prayer alone, did not state a claim for religious accommodation.” See also *Curtis v. Inslee*, 154 F.4th 678 (9th Cir. 2025) (affirming dismissal of claims brought by former at-will employees of a nonprofit healthcare system arising from Washington governor’s proclamation requiring such workers to be vaccinated against COVID-19).

Employees Can Proceed With Age Discrimination Claims

Caldrone v. Circle K Stores, Inc., 2025 WL 2811320 (9th Cir. 2025)

Three former employees of Circle K Stores sued, alleging age discrimination based upon Circle K's denial of a promotion. The employees alleged that despite their "impressive track records" and indications on their part of interest in promotion, they were not given a chance to apply for the position of West Coast Regional Director. The district court granted summary judgment in favor of Circle K on the ground that the employees did not apply for the promotion and, in any event, Circle K had offered a legitimate, nondiscriminatory justification for the promotion decision in that the employee who was selected for the promotion was the only one who expressed an interest in the position for which he was "uniquely qualified." The Ninth Circuit reversed the grant of summary judgment based on evidence that Circle K had decided not to accept applications, which obviated plaintiffs' obligation to submit them. The Court further held that a 9.3-year age gap between the employee who received the promotion and the youngest of the plaintiffs was sufficient to show that the former was "substantially younger" than the latter (45.2 vs. 54.4 years old). The Court also held that evidence of ageist comments, an expressed desire by Circle K to promote younger candidates and encouragement of older employees to retire was admissible to defeat summary judgment.

Arbitration Agreement Was Unconscionable

Gurganus v. IGS Solutions LLC, 2025 WL 2944090 (Cal. Ct. App. 2025)

Sarah Gurganus sued her former employer (IGS Solutions) for violation of the Fair Employment and Housing Act (FEHA), including disability discrimination, wrongful termination and related claims. In response, IGS filed a motion to compel arbitration based upon an arbitration agreement that Gurganus electronically signed approximately five months into her employment with the company. Gurganus asserted that she was required to sign the arbitration agreement in an "oppressive manner as a condition of continued employment" and that there was evidence of "surprise," which rendered the agreement procedurally unconscionable. The trial court denied the motion to compel arbitration, holding that the agreement was both procedurally unconscionable (a contract of adhesion) and substantively unconscionable (lack of mutuality of arbitration and a confidentiality provision that could preclude informal discovery). Further, the trial court refused to sever the unconscionable terms of the agreement. The Court of Appeal affirmed the trial court's order denying the motion to compel arbitration. *See also Villalobos v. Maersk, Inc.*, 114 Cal. App. 5th 1170 (2025) (arbitration order was properly denied where agreement failed to specify whether arbitrator or court would decide arbitrability; Labor Code claims were not arbitrable); *Wilson v. TAP Worldwide, LLC*, 114 Cal. App. 5th 1077 (2025) (employer's failure to timely pay arbitration fees was not "willful, grossly negligent, or fraudulent" and, therefore, did not result in waiver of its right to compel arbitration).

"Headless" PAGA Claim May Proceed

***Galarsa v. Dolgen Cal., LLC*, 115 Cal. App. 5th 1 (2025)**

This case involves the (much-litigated) issue currently pending before the California Supreme Court in *Leeper v. Shipt, Inc.*, 107 Cal. App. 5th 1001, *rev. granted* (2025): Does the version of PAGA in effect from 2016 to mid-2024 authorize an aggrieved employee to bring a PAGA action that seeks recovery of civil penalties imposed for Labor Code violations suffered only by other employees? This is a so-called "headless" PAGA action, which is typically pursued in an effort to avoid the obligation to arbitrate an individual claim. The Court answered the question in the affirmative. The second question is whether the aggrieved employee has standing to pursue a PAGA action as the representative of the Labor and Workforce Development Agency (LWDA) and whether that issue must be resolved in arbitration. The Court held that the parties' agreement to arbitrate does not encompass the issue of the employee's status as an aggrieved employee because that dispute exists (if at all) between the LWDA and the employee and does not involve the employer. *See also Alvarado v. Wal-Mart Assocs., Inc.*, 2025 WL 2775774 (9th Cir. 2025) (district court abused its discretion by failing to provide a "concise but clear" explanation for its fee award to a plaintiff in a PAGA action who experienced limited success before accepting a settlement offer pursuant to Cal. Civ. Proc. Code § 998).

Retired Professional Football Player Is Ineligible For California Workers' Comp Benefits

Atlanta Falcons v. WCAB, 114 Cal. App. 5th 1268 (2025)

Wayne Gandy spent 15 years as a professional football player with the NFL. He played with the Los Angeles Rams during the 1994 season before the team moved to St. Louis, but never again played for a California team. Six years after his retirement from the Atlanta Falcons in 2009, Gandy filed a claim in California for workers' compensation benefits, claiming a cumulative injury to multiple body parts. The workers' compensation judge concluded that the Falcons were exempted from liability under California workers' compensation law pursuant to Cal. Lab. Code §§ 3600.5(c) and (d).; the judge also held that Gandy was exempted from coverage under the same provisions. The California Workers' Compensation Appeals Board (WCAB) rescinded the judge's decision. The Court of Appeal annulled the WCAB's opinion, noting that "the legislature's purpose [in enacting these laws] was to essentially prohibit professional athletes employed by out of state teams from filing California workers' compensation claims."

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