Proskauer

California Employment Law Notes

January 2026

Sexual Orientation Harassment Claim is Immune From Arbitration Under the EFAA

Quilala v. Securitas Sec. Servs. USA, Inc., 2025 WL 3639429 (Cal. Ct. App. 2025)

Francisco Quilala alleged sexual harassment based on sexual orientation and other employment-related claims against his former employer (Securitas Security Services). In response to the complaint, the employer filed a motion to compel arbitration, which the trial court denied based on the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA). Quilala alleged, among other things, that his supervisor asked "instrusive questions" about his sexual activity and mocked him by referring to him as "Mrs. Quilala" before he was fired. Although Quilala did not oppose the motion to compel arbitration based on the EFAA, the trial court nevertheless relied upon the statute in denying the motion. The Court of Appeal affirmed the order denying the motion to compel arbitration and held the trial court's tentative ruling was sufficient for due process purposes to notify the employer that the court intended to rely upon the EFAA. Further, the Court held the trial court was not required to give the employer additional time to provide supplemental briefing on the issue especially given the employer's failure to request it. Relying upon *Casey v. Superior Court*, 108 Cal App. 5th 575 (2025), among other recent cases, the Court further held the "non-harassment" claims could not be carved out and ordered to arbitration as the "EFAA applies to the case as a whole."

Employee's "Misinterpretation" of the Law Did Not Preclude Recovery on Whistleblower Claim

Contreras v. Green Thumb Produce, Inc., 116 Cal. App. 5th 1251 (2025)

Manuel Contreras mistakenly determined that his former employer (Green Thumb Produce) was violating the state's Equal Pay Act (EPA) by paying him less than his coworkers who were performing similar duties. Contreras did not understand that the EPA prohibits variations in wages based on "gender, race, or ethnicity," yet none of those grounds existed vis-à-vis Contreras. After Contreras received a verdict of more than $182,000 from a jury, Green Thumb filed a successful motion for partial judgment notwithstanding the verdict (JNOV), claiming the verdict on the whistleblower claim was unsupported because Contreras had misunderstood the EPA. The Court of Appeal reversed the JNOV ruling, holding that Contreras (who had a 10th grade education) had "reasonable cause" to believe his former employer violated the EPA, notwithstanding his misinterpretation of that law.

Plaintiffs Barred From Proceeding Pseudonymously

Roe v. Smith, 116 Cal. App. 5th 227 (2025)

Plaintiffs (Jane Roe and John Doe) sued defendants, a daughter and mother, pseudonymously as "Jenna Smith" and "Mother Smith." Jenna and Mother Smith told other students that John had sexually assaulted Jenna and Jane. Following an investigation in which John voluntarily cooperated, the school determined John was not responsible with respect to any of the claims Jenna had made against him. John and Jane then sued the Smiths for defamation, false light and intentional infliction of emotional distress and sought damages in excess of $5 million. Nonparty First Amendment Coalition (the Coalition) filed a motion to "unseal" plaintiffs' true names, which the trial court denied as being "premature" because there was nothing to unseal. The trial court then directed plaintiffs to file a motion to maintain their anonymity; all parties filed motions to proceed under pseudonyms, which the trial court granted. The Coalition filed an appeal as to the granting of plaintiffs' motion only. The Court of Appeal reversed the trial court's grant of plaintiffs' motion, holding that a "party's possible personal embarrassment, standing alone, does not justify concealing their identity from the public." Further, the Court disagreed that a "reasonable fear of one's employer learning about allegations of a private nature overcame the public's right of access."

Three-Year Workplace Violence Restraining Order is Upheld

County of Los Angeles v. Niblett, 116 Cal. App. 5th 454 (2025)

The County obtained a three-year Workplace Violence Restraining Order (WVRO) pursuant to Cal. Code Civ. Proc. § 527.8 that protected "nonparty Samuel S." from Neill Francis Niblett. Prior to the issuance of the WVRO, both men worked for the county's fire department (Samuel was an assistant chief and Niblett was a senior mechanic). The trial court granted the WVRO based on evidence that Niblett had often raised his voice to Samuel to complain about work-related decisions; Niblett on one occasion shouted profanities at Samuel and got so close to Samuel's face that Niblett was spitting on him; and Niblett "alluded to an incident in which a firefighter fatally shot another firefighter." On appeal, Niblett challenged the WVRO (which included a firearm restriction) on First and Second Amendment grounds, which the Court of Appeal rejected. The Court concluded that substantial evidence supports the trial court's finding that Niblett made a credible threat of violence when he alluded to the incident in which a firefighter fatally shot another firefighter.

Case Was Properly Dismissed Under 5-1/2 Year Rule

Randolph v. Trustees of the Cal. State Univ., 2025 WL 3763384 (Cal. Ct. App. 2025)

Teresa Randolph sued her former employer for employment discrimination, whistleblower retaliation and termination of her employment. The trial court dismissed the action based on Randolph's failure to bring the action to trial within the 5-1/2 year statutory deadline of Cal. Code Civ. Proc. § 583.310 and Judicial Council emergency rule 10. In opposition to the motion to dismiss, Randolph argued that the parties "verbally agreed" to a trial date that was beyond the 5-1/2 year deadline for commencing trial. The trial court ruled that Randolph had an obligation to object to the court setting the trial date beyond the statutory deadline and that the defendant's failure to object to the trial date was insufficient to establish an "oral stipulation" to commence the trial after the expiration of the statutory period. The Court of Appeal affirmed, declining to "create new law that when a minute order is *silent* as to any discussion relating to the trial date, a court may infer that a defendant *expressly* agreed to the new trial date…"

Salvation Army Workers May Have Been Volunteers Exempt From Wage/Hour Laws

Spilman v. The Salvation Army, 2026 WL 35953 (Cal. Ct. App. 2026)

Justin Spilman, Teresa Chase, and Jacob Tyler worked
full-time for the Salvation Army at its retail thrift stores. They worked without wages as part of a six-month, residential, substance abuse rehabilitation program. The trial court determined that the wage and hour laws do not apply because these three individuals were volunteers for a nonprofit and not employees based principally upon the absence of an agreement for compensation. The Court of Appeal reversed, holding that the existence of an agreement for compensation is not a "dispositive test" as to whether the individual is a volunteer or an employee. The Court remanded the case and instructed the trial court to determine whether there are triable issues of fact as to (1) whether these individuals were volunteers who freely agreed to work without pay; and (2) whether overall, the Salvation Army's use of volunteer labor does not serve as a subterfuge to evade the wage laws.

Lower Court Erred in Calculating Unpaid Wages and Assessing Manager's Liability

Iloff v. LaPaille, 2025 WL 3718335 (Cal. Ct. App. 2025)

Laurence Iloff performed maintenance on various structures that were located on property that was owned by Bridgeville Properties, Inc. (BPI) 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 with 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 and awarded him unpaid minimum wages. The trial court also found that LaPaille was not personally liable for BPI's failure to pay wages. The Court of Appeal reversed as to the calculation of unpaid wages (the trial court miscalculated the applicable statute of limitations) and penalties, and in its finding that LaPaille was not personally liable for BPI's failure to pay. *See also Dobarro v. Kim*, 116 Cal. App. 5th 158 (2025) (employer's deadline to appeal Labor Commissioner's decision was not subject to equitable tolling); *Mora v. C.E. Enterprises, Inc.*, 2025 WL 3214076 (Cal. Ct. App. 2025) (auto dealership did not violate "no borrowing rule" or Cal. Lab. Code § 226.2
vis-à-vis piece-rate compensation paid to its service technicians).

Strip Club Dancer Could Proceed With FLSA Retaliation Claim

Hollis v. R&R Restaurants, Inc., 159 F.4th 677 (9th Cir. 2025)

Zoe Hollis sued a Portland, Oregon strip club called Sassy's under the Fair Labor Standards Act (FLSA) for misclassifying its dancers as independent contractors rather than employees and for violating corresponding wage and hour provisions. After Hollis filed the complaint, Frank Faillace, a partner and manager of Sassy's and another club called Dante's, canceled an agreement for Hollis to perform in a weekly variety show ("Sinferno") at Dante's. Hollis then amended the complaint to allege retaliation in further violation of the FLSA. The district court granted summary judgment in favor of the defendant on the ground that Hollis did not have a private right of action for retaliation because she was not an employee of Dante's when Faillace canceled the scheduled performance. The Ninth Circuit reversed, holding that an alleged retaliator need not be the actual employer if the retaliator is acting directly or indirectly in the interest of the employer. The Court also held that it was not relevant to the viability of the retaliation claim that Hollis's underlying FLSA wage and hour claims were found to be time-barred if Hollis's work at Sassy's satisfied the economic realities test.

Employees Who Rescind Individual Settlement Agreements Might Have to Repay Compensation Received

The Merchant of Tennis, Inc. v. Superior Court, 2026 WL 102728 (Cal. Ct. App. 2026)

After Jessica Garcia filed a putative class action for unpaid wages against her former employer (The Merchant of Tennis), the employer entered into approximately 954 individual settlement agreements (ISAs) with employees (paying over $875,000) in exchange for waiving their claims and opting out of the class action litigation. After concluding the ISAs were voidable (due to alleged "coercion and fraud"), the trial court ordered the parties to give a curative notice to all putative class members advising that they could revoke their ISAs and join the class action lawsuit. Over the employer's objection, the trial court ruled that the curative notice did not need to include a statement that if employees chose to revoke their ISAs, they may have to pay back the settlement amount if the employer prevailed in the litigation. The employer filed a petition for writ of mandate asking the Court of Appeal to issue a peremptory writ of mandate directing the trial court to vacate its ruling and require a curative notice informing the employees that if they rescinded their ISAs to join the class action lawsuit, they would be required to immediately return the settlement payment they had received. The Court of Appeal granted the writ but required a curative notice that employees who rescinded their ISAs could be responsible for repayment of the settlement proceeds at the conclusion of the litigation, subject to the trial court's discretion to "adjust the equities between parties."

Employer Waived Arbitration by Litigating in Court For More Than Four Years

Sierra Pac. Industries Wage & Hour Cases, 116 Cal. App. 5th 1038 (2025)

For more than four years, Sierra Pacific defended against this wage and hour class action, "remaining silent on the subject of arbitration and refusing to produce arbitration agreements signed by putative class members, despite being ordered to do so." Only after eight plaintiff classes were certified did Sierra Pacific produce more than 3,000 signed arbitration agreements and then move to compel arbitration. The trial court denied the motion to compel arbitration based on waiver and granted plaintiffs' motion for evidentiary and issue sanctions, precluding Sierra Pacific from presenting evidence of the arbitration agreements or arguing that class members had signed such agreements. The Court of Appeal affirmed the trial court's order denying the motion to compel arbitration and also dismissed the employer's appeal from the sanctions order on the ground that it was not independently appealable.

Motion to Compel Arbitration Was Improperly Denied

Wise v. Tesla Motors, Inc., 2025 WL 3707196 (Cal. Ct. App. 2025)

Talia Shayla Alexis Wise sued her former employer (Tesla) for disability discrimination and related claims. In response, Tesla filed a motion to compel arbitration, which the trial court denied after determining that the arbitration agreement should be read together with a nondisclosure agreement (NDA), which contained unconscionable terms that permeated the arbitration agreement. On appeal, Tesla argued that the Federal Arbitration Act (FAA) preempts Cal. Civ. Code § 1642 (requiring that the agreements should be read together) and that in any event the unconscionable terms should have been severed so that the arbitration agreement could be enforced. The Court of Appeal disagreed with Tesla that the FAA preempted California law but agreed that the unconscionable provisions of the NDA were severable and that the arbitration agreement should have been enforced. *See also Tuufuli v. West Coast Dental Admin. Services, LLC*, 2026 WL 92021 (Cal. Ct. App. 2026) (arbitration agreement was governed by FAA because the parties expressly agreed that it would regardless of the existence of interstate commerce).

Arbitrator's Error in Awarding Attorney's Fees Did Not Warrant Vacatur

VIP Mortg. Inc. v. Gates, 162 F.4th 1010 (9th Cir. 2025)

The district court confirmed an arbitration award in favor of Jennifer Gates under the Fair Labor Standards Act and Arizona state law, and denied VIP Mortgage's petition to vacate the award of unpaid overtime wages, attorneys' fees and liquidated damages. The Ninth Circuit affirmed the district court's orders. VIP contended the arbitrator erred in awarding attorneys' fees because the arbitrator had previously approved the parties' stipulation to dismiss VIP's counterclaims, which included a provision that the parties would bear their own fees and costs on the counterclaims. The arbitrator apparently "forgot" about the stipulation, but the parties failed to remind her about it when they briefed the attorneys' fees issue over a year later. The Court held that vacatur was properly denied because the error "was [not] so obvious and undisputed that the arbitrator must have known about it when she decided the legal issue."

Miscellaneous PAGA Developments

- *LaCour v. Marshalls of CA, LLC*, 2025 WL 3731034 (Cal. Ct. App. 2025) (Arbitration agreement that existed before *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022) could not result in compelled arbitration of employee's "individual PAGA claim" because that concept did not exist prior to *Viking River* opinion).
- *Brown v. Dave & Buster's of Cal., Inc.* 116 Cal. App. 5th 164 (2025) (claim preclusion barred PAGA claim based on settlement of earlier-filed PAGA action).
- *Dieves v. Butte Sand Trucking Co.*, 116 Cal. App. 4th 1129 (2025) (truck driver's PAGA claim could be preempted by the Federal Motor Carrier Safety Administration's 2018 decision barring meal and rest break claims under California law; trial court lacks authority to dismiss PAGA claims on manageability grounds).
- *Prime Healthcare Mgmt., Inc. v. Superior Court*, 2025 WL 3640781 (Cal. Ct. App. 2025) (trial court's previous ruling that an arbitration award did not bar former employee's PAGA claim was law of the case, and subsequent contrary appellate opinions did not constitute intervening controlling law).

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