Proskauer

California Employment Law Notes

November 2026

Ninth Circuit Keeps California's "Captive Audience" Meeting Ban on Hold

***California Chamber of Commerce v. Bonta*, 2026 WL 3255527 (9th Cir. 2026)**

California Senate Bill 399, which took effect on January 1, 2025, prohibits employers from taking or threatening adverse action against an employee who declines to attend an employer-sponsored meeting or to receive communications the purpose of which is to convey the employer's opinion about "religious or political matters" – a term the statute broadly defines to include the decision to join or support a labor organization.

The law imposes a $500 per employee/per violation civil penalty and creates a private right of action. Three industry groups sued, and the district court preliminarily enjoined enforcement of the law. The Ninth Circuit affirmed, holding that at least one plaintiff (the Western Growers Association) had standing because its members hold "all-hands" meetings at which they communicate their views on political matters and face a credible threat of enforcement. The Court rejected the State's argument that SB 399 regulates conduct rather than speech, concluding that the law is both content-based and speaker-based (it is triggered only when the employer communicates its opinion about politics or religion) and, therefore, is subject to strict scrutiny review under the First Amendment.

White Employee's Hostile Work Environment Claim Arising From City's Race-Based DEI Programming Is Revived

***Diemert v. City of Seattle*, 2026 WL 2903699 (9th Cir. 2026)**

Joshua Diemert, a white man who worked in the City of Seattle's Human Services Department, challenged the City's Race and Social Justice Initiative, which required employees to participate in racial justice trainings and events, some of which were limited to employees of particular races; the Initiative also sponsored racially-aligned affinity groups or caucuses. Diemert alleged that the Initiative, together with a series of offensive remarks from coworkers and supervisors, created a racially hostile work environment. After Diemert resigned, he sued the City for violation of the Equal Protection Clause, hostile work environment, constructive discharge, disparate treatment, and retaliation under Title VII and the Washington Law Against Discrimination. The district court granted summary judgment to the City on all claims. The Ninth Circuit reversed as to the hostile work environment claims, holding that the workplace incidents at issue were "sufficiently numerous, frequent, and severe" to create a triable issue of fact. However, the Court affirmed summary judgment on the constructive discharge, disparate treatment, and retaliation claims, and it affirmed dismissal of the equal protection claim on the ground that Diemert lacked Article III standing because he failed to show he was personally injured by any racial classification.

Employee Waived EFAA Protection By Strategically Withholding His Sexual Harassment Claim

***Chin v. DoorDash, Inc.*, 123 Cal. App. 5th 1050 (2026)**

Andrew Chin sued his former employer (DoorDash) for various employment-related claims but, by his own account and "[f]or strategic purposes," did not include a sexual harassment claim in his complaint. When DoorDash moved to compel arbitration in March 2024, Chin opposed the motion on other grounds and neither mentioned a sex-based harassment claim or invoked the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA). After the trial court compelled arbitration, Chin alleged the harassment claim in arbitration and then, nearly a year later, filed a second civil lawsuit and persuaded the trial court to invalidate the arbitration agreement as to all claims under the EFAA. The Court of Appeal reversed, holding that the EFAA applies only "at the election" of the person alleging sexual harassment and that, like other statutory rights, its protections may be waived; here, Chin's deliberate failure to allege the sexual harassment claim and failure to timely invoke the EFAA established waiver by clear and convincing evidence. In dissent, Justice Wiley characterized Chin's conduct as "more like a blunder" than a waiver.

Arbitration Agreement Not Governed By Federal Statute Is Unenforceable Under Labor Code § 432.6

***Molina v. Triumph Residential Servs., Inc.*, 2026 WL 3167633 (Cal. Ct. App. 2026)**

Tiffany Molina signed an arbitration agreement when she was hired by Triumph Residential Services, which indicated that she was “freely and voluntarily” agreeing to arbitrate her employment-related claims. After she filed a wage-and-hour class action, Triumph moved to compel individual arbitration. Because the parties agreed the Federal Arbitration Act (FAA) did not govern the agreement, Molina argued that Cal. Lab. Code § 432.6 (which prohibits employers from requiring employees to sign arbitration agreements as a condition of employment and from requiring employees to take affirmative action to opt out) rendered the agreement unenforceable. Although the Ninth Circuit has held that Section 432.6 is preempted when the FAA applies in *Chamber of Commerce of the U.S. v. Bonta*, 62 F.4th 473 (9th Cir. 2023), the Court of Appeal affirmed the order denying the motion to compel here, holding that an arbitration agreement that is not governed by the FAA is subject to Section 432.6. Further, the employer’s own declaration (which stated that Molina “was free to accept the Arbitration Agreement, attempt to negotiate out of it or look for other employment”) established that the agreement was, in fact, a condition of employment notwithstanding its “voluntary” label.

Employee May Pursue “Headless” PAGA Action That Cannot Be Compelled To Arbitration

***Castillo v. Belkorp AG, LLP*, 2026 WL 3181371 (Cal. Ct. App. 2026)**

Castillo, a former service technician, signed an arbitration agreement with a class and collective action waiver when he was hired by Belkorp. After his termination, he filed a lawsuit asserting a single cause of action under the Private Attorneys General Act (PAGA), which expressly sought "only to prosecute his non-individual PAGA claims" on behalf of other current and former employees. The trial court denied Belkorp's motion to compel arbitration, and the Court of Appeal affirmed. Following its own prior decision in *CRST Expedited, Inc. v. Superior Court*, 112 Cal. App. 5th 872 (2025), *review granted*, and declining to follow *Leeper v. Shipt, Inc.*, 107 Cal. App. 5th 1001 (2024), *review granted*, the Court of Appeal held that an aggrieved employee may bring a PAGA action consisting solely of nonindividual claims under the version of PAGA in effect after the July 1, 2024 amendments. (Note that the California Supreme Court's opinion resolving this conflict is due to be issued by Feb. 1, 2027.) The Court of Appeal reasoned that the amended standing requirement (that the plaintiff "personally suffered each of the violations alleged") addresses who qualifies as an aggrieved employee, not which types of claims the employee must pursue. Because nonindividual PAGA claims are not subject to arbitration, there was nothing to compel to arbitration.

Civil Rights Dept. May Investigate Claims Of Out-Of-State Employee

***Civil Rights Dep't v. Space Exploration Techs. Corp.*, 123 Cal. App. 5th 89 (2026)**

A former SpaceX employee who lived and worked in Washington filed an administrative complaint with the California Civil Rights Department (the CRD) alleging sex discrimination and retaliation under the Fair Employment and Housing Act (FEHA). She alleged that the relevant employment decisions had connections to California, including California-based managers to whom she reported. At SpaceX's request, the CRD narrowed its subpoena to documents bearing on the jurisdictional question of where the relevant decisions were made, approved, or ratified; when SpaceX declined to respond further, the CRD successfully petitioned the superior court to enforce the subpoena. The Court of Appeal affirmed, rejecting SpaceX's position that FEHA can never protect an employee who works outside California as well as its argument that enforcement of the subpoena violated the presumption against extraterritorial application of state law. The Court emphasized that the CRD's authority to investigate is distinct from the ultimate question of whether FEHA's substantive protections apply and that an investigation may be justified by fewer California connections than would be required to establish a FEHA violation.

City Waived Privilege Over Fair Chance Act Assessments Prepared With Assistance Of Counsel

***Civil Rights Dep't v. City of Torrance*, 2026 WL 3215987 (Cal. Ct. App. 2026)**

In September 2022, the City of Torrance rescinded a conditional offer of employment for a custodian position after a background check revealed the applicant's multiple criminal convictions. The applicant filed a complaint with the Civil Rights Department (the CRD) under the Fair Chance Act (Cal. Gov't Code § 12952), and the CRD expanded its investigation to determine whether the City had a pattern of disqualifying applicants (23 in all) without conducting the required "individualized assessments." The City refused to produce its assessment templates and related documents on the ground that an in-house attorney had helped prepare them. The trial court granted the CRD's petition to compel production, and the Court of Appeal affirmed, holding that the City waived the attorney-client privilege by defending itself on the basis of the adequacy of its individualized assessments. As the Court explained, the City "cannot demonstrate it complied with section 12952 without putting at issue the adequacy of the individualized assessments."

Applicant Must Prove Harm From Employer's Procedural Violation Of Fair Chance Act

***McInerney v. Regents of the Univ. of Cal.*, 2026 WL 3059160 (Cal. Ct. App. 2026)**

John McInerney, who had drug-related convictions from 2005 and 2007, received a conditional offer for an office assistant position at UCLA. While his background check was pending, McInerney sent UCLA staff a series of angry emails objecting to the use of his old convictions (including one describing HR employees as "assholes" and "witch hunters"). UCLA sent McInerney a pre-adverse action letter giving him five business days to submit evidence of rehabilitation or mitigating circumstances but then notified him he was ineligible for the job before the five-day period expired. The trial court summarily adjudicated McInerney's FEHA retaliation and failure-to-prevent retaliation claims in UCLA's favor and ruled that UCLA had otherwise complied with the Fair Chance Act; a jury then found that UCLA would have made the same decision even if McInerney had submitted rehabilitation evidence. The Court of Appeal affirmed, holding that an applicant must prove that the employer's violation of the Fair Chance Act's procedures caused him actual harm (nominal damages are not available), that courts should not second-guess an employer's individualized assessment, and that McInerney's insulting emails did not constitute protected activity.

School District Violated Labor Code By Rejecting Applicants Based On Expunged Misdemeanor Convictions

***A.S. v. Los Angeles Unified Sch. Dist.*, 123 Cal. App. 5th 519 (2026)**

Two applicants for employment with the Los Angeles Unified School District (one for a part-time after-school program position and the other for a legal secretary position) were rejected based on their prior misdemeanor convictions (for battery and grand theft, respectively), both of which had been expunged pursuant to Cal. Penal Code § 1203.4. The District contended that its duty to protect students required it to screen out applicants with nearly any criminal conviction, notwithstanding expungement. The trial courts in the two separate actions granted summary judgment to the applicants, and the Court of Appeal affirmed in this consolidated appeal, holding that the District violated Cal. Lab. Code § 432.7, which prohibits employers from asking about or utilizing expunged convictions. The Court further held that the statutory exceptions upon which the District relied did not apply because no law required the District to obtain information about, or prohibited it from hiring individuals with, the particular misdemeanor convictions at issue (misdemeanor battery and misdemeanor grand theft).

Individual Supervisors Cannot Be Held Personally Liable For Retaliation Under Labor Code § 1102.5

***Chaudhry v. State of California*, 123 Cal. App. 5th 690 (2026)**

Farzana Chaudhry, a dental assistant at a California Department of Corrections and Rehabilitation (the CDCR) facility, alleged that after she complained to her supervisor and Cal-OSHA about workplace safety issues, she was subjected to an unwarranted letter of instruction, a one-month unpaid suspension, two terminations (both later overturned or withdrawn), and other obstruction of her work, after which she resigned on her first day back. The trial court granted judgment on the pleadings for the State, the CDCR, and three individual supervisors on her Labor Code § 1102.5 and Whistleblower Protection Act claims. In a matter of first impression in the California courts, the Court of Appeal held that individual managers and supervisors cannot be sued for retaliation under Section 1102.5, notwithstanding the statute's reference to "any person acting on behalf of the employer." The Court relied on *Jones v. Lodge at Torrey Pines P'ship*, 42 Cal. 4th 1158 (2008) (no individual liability for retaliation under FEHA), and on related provisions of the Labor Code (including Section 1102.6) that refer only to "the employer."

However, the Court revived Chaudhry's Section 1102.5 claim against the State and the CDCR on a constructive discharge theory, concluding that a jury could find that two baseless terminations "interspersed with attempts to sabotage the employee's ability to work" were sufficiently intolerable. The Court affirmed dismissal of her Whistleblower Protection Act claim because she filed her lawsuit before exhausting her remedies with the State Personnel Board.

FEHA Does Not Alter Common Law Presumption Of Corporate Separateness

***Villasenor v. Schneiter*, 2026 WL 3205537 (Cal. Ct. App. 2026)**

In this FEHA action for sexual harassment, gender discrimination, and related claims, the plaintiff sought to hold the owner of the defendant corporations liable on an alter ego theory. Applying the common law presumption that a corporation is separate from its owners, the trial court required the plaintiff to prove that the corporations' distinct identities should be disregarded and, finding that she failed to meet that burden, entered judgment in favor of the owner. On appeal, the plaintiff argued that FEHA should displace the presumption in favor of alter ego liability. The Court of Appeal disagreed and affirmed, holding that nothing in FEHA's statutory language, legislative history, or case law clearly and unequivocally reflects a legislative intent to modify or abrogate the presumption of corporate separateness and that neither public policy nor FEHA's remedial purpose requires a contrary presumption.

Prevailing Employer Could Not Recover Costs Absent Finding That Employee's FEHA Claims Were Frivolous

***San Diego-Tomas v. Aspire Bakeries, LLC*, 2026 WL 3181846 (Cal. Ct. App. 2026)**

After Aspire Bakeries prevailed on summary judgment in this FEHA discrimination and retaliation action, the judgment provided that "as the prevailing party," Aspire could recover its costs, and Aspire then filed a memorandum of costs totaling $15,397.96, which the trial court awarded. The former employee, Cecilia San Diego-Tomas, did not challenge the dismissal of her claims but appealed the cost award. The Court of Appeal reversed, holding that the rule that a prevailing FEHA defendant may not recover fees or costs unless the court finds that the plaintiff's action was frivolous, unreasonable, or groundless applies to costs as well as attorney's fees, and that nothing in the record showed the trial court had made such a finding. The Court remanded to permit the trial court to consider whether Aspire should be relieved of the deadline for filing a proper motion and, if so, to apply the correct standard.

Unpaid Leave Was A Reasonable Religious Accommodation For Unvaccinated Teacher

***Smith v. Burbank Unified Sch. Dist.*, 123 Cal. App. 5th 1172 (2026)**

Douglas Smith, a high school chemistry teacher who had worked for the Burbank Unified School District since 1992, refused on religious grounds to comply with the District's COVID-19 vaccination mandate. The District granted Smith's request for a religious exemption but placed him on unpaid leave (rather than permitting him to continue teaching with masking and PCR testing, as he requested) after concluding it could not otherwise accommodate unvaccinated teachers without undue hardship; Smith remained on leave until he was invited to return for the 2024-25 school year. Smith sued for religious discrimination, failure to prevent discrimination, and retaliation under FEHA, and the trial court granted summary judgment to the District. The Court of Appeal affirmed, rejecting Smith's argument that involuntary and indefinite unpaid leave can never be a reasonable accommodation and holding that the District met its burden of establishing that unpaid leave was the only accommodation it could offer unvaccinated teachers without undue hardship, given its obligation to protect health and safety in indoor classrooms during the pandemic.

Nurse's Religious Exemption Letter Should Have Been Considered On Motion To Dismiss

***Ridings v. PeaceHealth*, 2026 WL 2871881 (9th Cir. 2026)**

Karly Ridings, a registered nurse who was pregnant at the relevant time, sent a letter to her employer (the PeaceHealth hospital system in Oregon) requesting a religious exemption from its COVID-19 vaccination policy, citing her Christian beliefs and her religious objection to the use of fetal cell lines derived from abortions in vaccine development. PeaceHealth placed her on indefinite unpaid leave without benefits during her third trimester. The district court dismissed her Title VII and state-law failure-to-accommodate claims without leave to amend, finding her complaint too conclusory because it did not attach or describe the exemption letter in detail. The Ninth Circuit reversed, holding that the letter was incorporated by reference into the complaint because it was central to her claim and that, considering the letter, Ridings "easily satisfie[d]" the plausibility threshold for a prima facie religious discrimination claim.

Hospital Established Undue Hardship In Denying Nurse's Religious Exemption From Vaccine Mandate

***MacDonald v. Oregon Health & Sci. Univ.*, 2026 WL 2966688 (9th Cir. 2026)**

Brittany MacDonald, a registered nurse who provided hands-on care to pregnant mothers, newborns, and immunocompromised patients at Oregon Health and Science University (OHSU), was terminated after OHSU denied her request for a religious exemption from the State's COVID-19 vaccine mandate for healthcare workers. MacDonald sued individual OHSU officials for violating the Free Exercise Clause and sued OHSU for failure to accommodate under Title VII. In a 2-1 decision, the Ninth Circuit affirmed the dismissal of the Free Exercise claim on qualified immunity grounds, holding that in 2021 there was no clearly established law that denying such an exemption to a healthcare worker in close contact with vulnerable patients during a pandemic was unconstitutional (Judge Tung dissented on this point). The Court also affirmed summary judgment for OHSU on the Title VII claim, holding under *Groff v. DeJoy*, 600 U.S. 447 (2023), that OHSU established undue hardship based on the health, safety, operational, and financial costs of accommodating an unvaccinated nurse, and that there is no basis for importing a "pretext" analysis into the undue hardship inquiry.

$7.8 Million Verdict For Employees Who Were Denied Religious Accommodation From Vaccine Mandate Is Affirmed

***Lewis-Williams v. San Francisco Bay Area Rapid Transit Dist.*, 191 F.4th 981 (9th Cir. 2026)**

After the San Francisco Bay Area Rapid Transit District (BART) concluded that it could not accommodate any of the 70 employees found eligible for a religious exemption from its COVID-19 vaccine mandate without undue hardship, six former employees who lost their jobs sued under Title VII and FEHA. A jury rejected BART's undue hardship defense and awarded the six employees a total of $7,824,580. The Ninth Circuit affirmed the denial of BART's motions for judgment as a matter of law and for a new trial, holding that under *Groff v. DeJoy*, 600 U.S. 447 (2023), BART had to show that alternatives to vaccination would be less safe "by a 'substantial,' 'excessive,' or 'unjustifiable' margin." Although employers may ordinarily rely on public health guidance, that guidance is not conclusive, and BART did not introduce the guidance it relied on into the record. The Court distinguished the healthcare and firefighting employers in *Williams v. Legacy Health*, 174 F.4th 1201 (9th Cir. 2026), and *Petersen v. Snohomish Reg'l Fire & Rescue*, 150 F.4th 1211 (9th Cir. 2025), noting that BART is in the transportation business and the six employees' jobs (e.g., utility worker, customer service clerk behind a bullet-proof window, and storekeeper) required minimal close contact with others.

PREP Act Bars Employee's Challenge To City's COVID-19 Testing And Masking Policy

***Schmidt v. City of Pasadena*, 2026 WL 2980130 (9th Cir. 2026)**

Jonathan Schmidt, a forensic specialist in the Pasadena Police Department, received a religious exemption from the City's COVID-19 vaccination policy but, as a condition of the exemption, was required to undergo weekly testing and to wear a mask in shared spaces. After being placed on unpaid leave for refusing to test and mask, Schmidt agreed to comply and returned to work in November 2021, but he contended that the requirements revealed his unvaccinated status and created a hostile work environment. The district court dismissed his lawsuit, and the Ninth Circuit affirmed, holding that the City and the individual defendants were immune from all of Schmidt's federal and state claims under the federal Public Readiness and Emergency Preparedness (PREP) Act because they were "covered persons," the COVID-19 tests and masks were "covered countermeasures," and Schmidt's alleged physical, emotional, and property injuries arose from the administration of those countermeasures. The Court clarified that the PREP Act's causation requirement turns on the type of injury alleged, not the legal theory pleaded.

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