



California Dreamin'

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Proskauer»

Introduction and Agenda

- #MeToo-era sexual harassment legislation and training requirements
- Other new legislation
- Recent jury verdicts and arbitration in California
- Wage and hour highlights and developments
- Pay equity issues
- What's new in restrictive covenants
- Paid and unpaid time off
- Criminal history and background checks
- Independent contractors – a dying breed?





The #MeToo Movement



Actress Ashley Judd accuses media mogul **Harvey Weinstein** in a breaking story by *The NYT*.

10/5/17



Accusations by **McKayla Maroney**, Olympic champion, that **Dr. Larry Nassar**, team doctor for the **U.S. Women's National Gymnastics team** and **Olympic team**, molested her.

10/15/17



The first accusation against **Kevin Spacey** lands, with Anthony Rapp claiming that Spacey made sexual advances toward him when he was 14.

10/29/17



Louis C.K. confirms Nov. 9 NYT report about several women who accused him of sexual misconduct: "*These stories are true*"

11/10/17



Today show opens with a stunning revelation that co-host **Matt Lauer** had been fired after NBC received allegations about his sexual misconduct.

11/29/17



At the urging of his party, U.S. **Sen. Al Franken** says he'll resign from Senate amid sexual misconduct allegations.

12/7/17

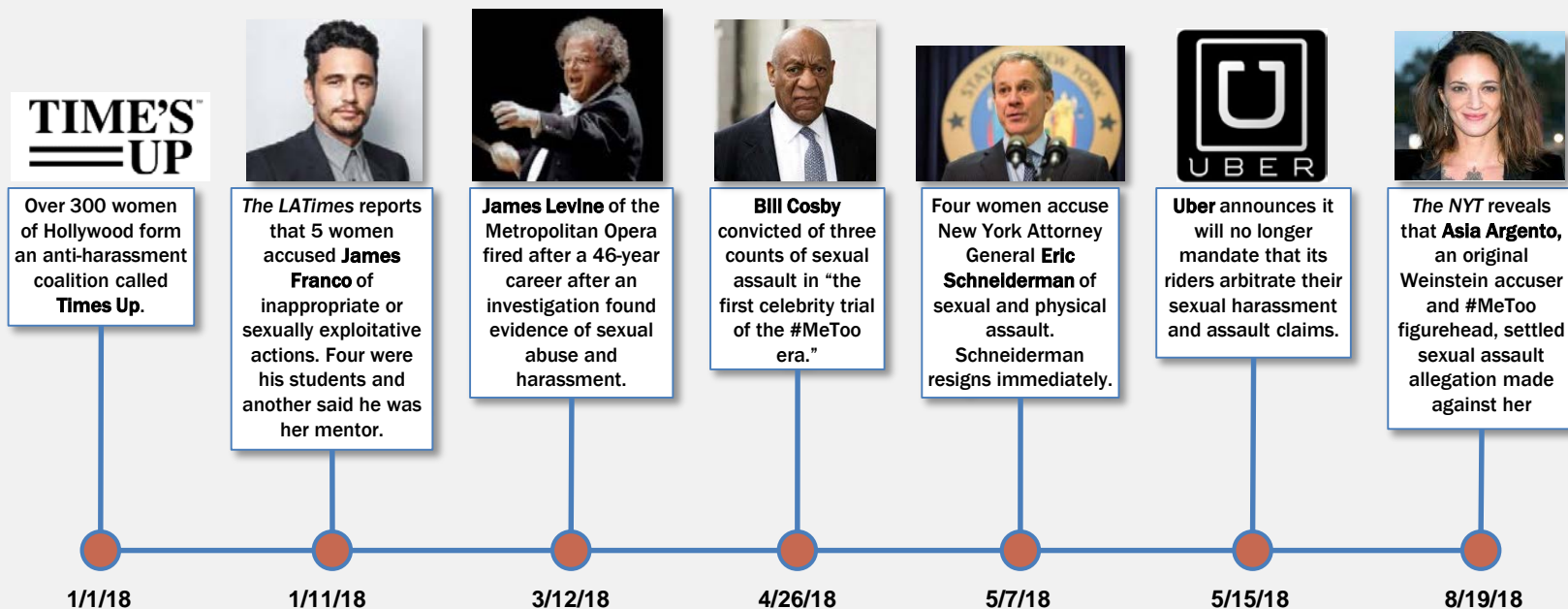


Mario Batali goes on leave from his show and restaurants after four women allege sexual harassment. He offers an apology and says the behavior described in the accusations does "match up" with his actions.

12/11/17

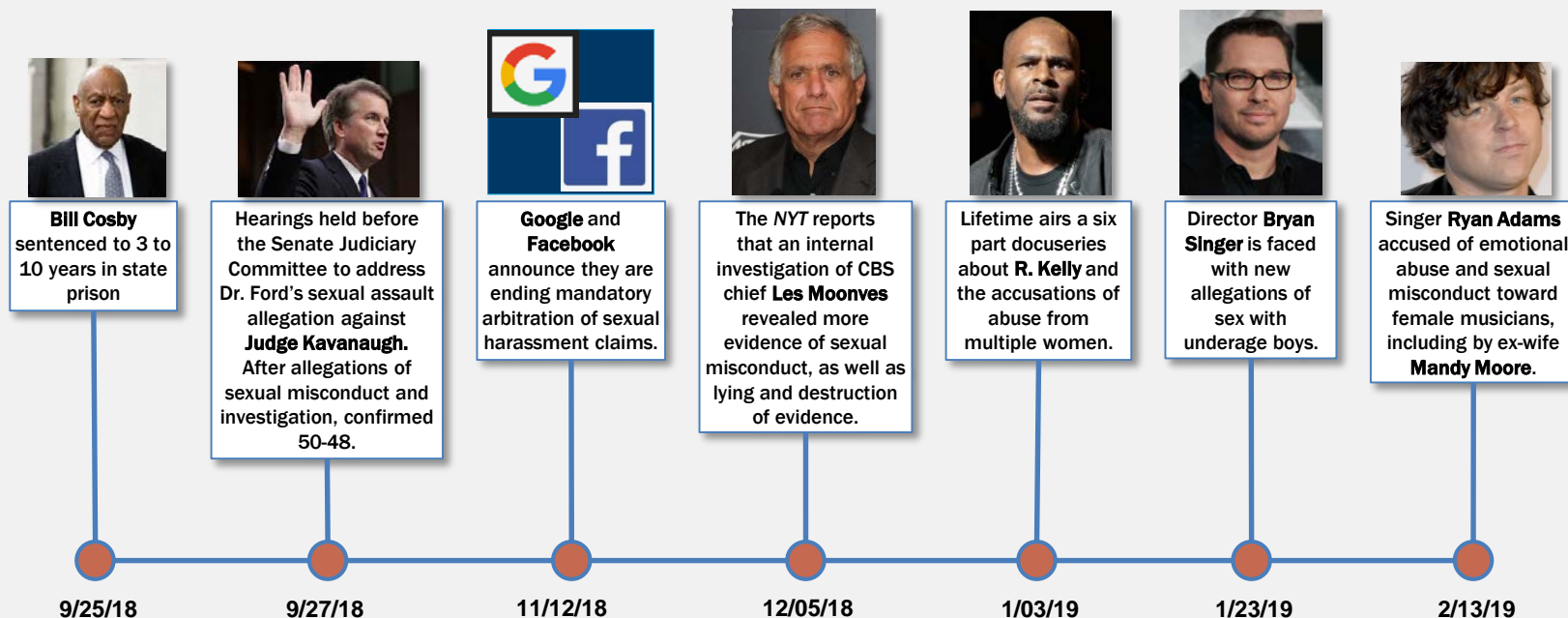


The #MeToo Movement



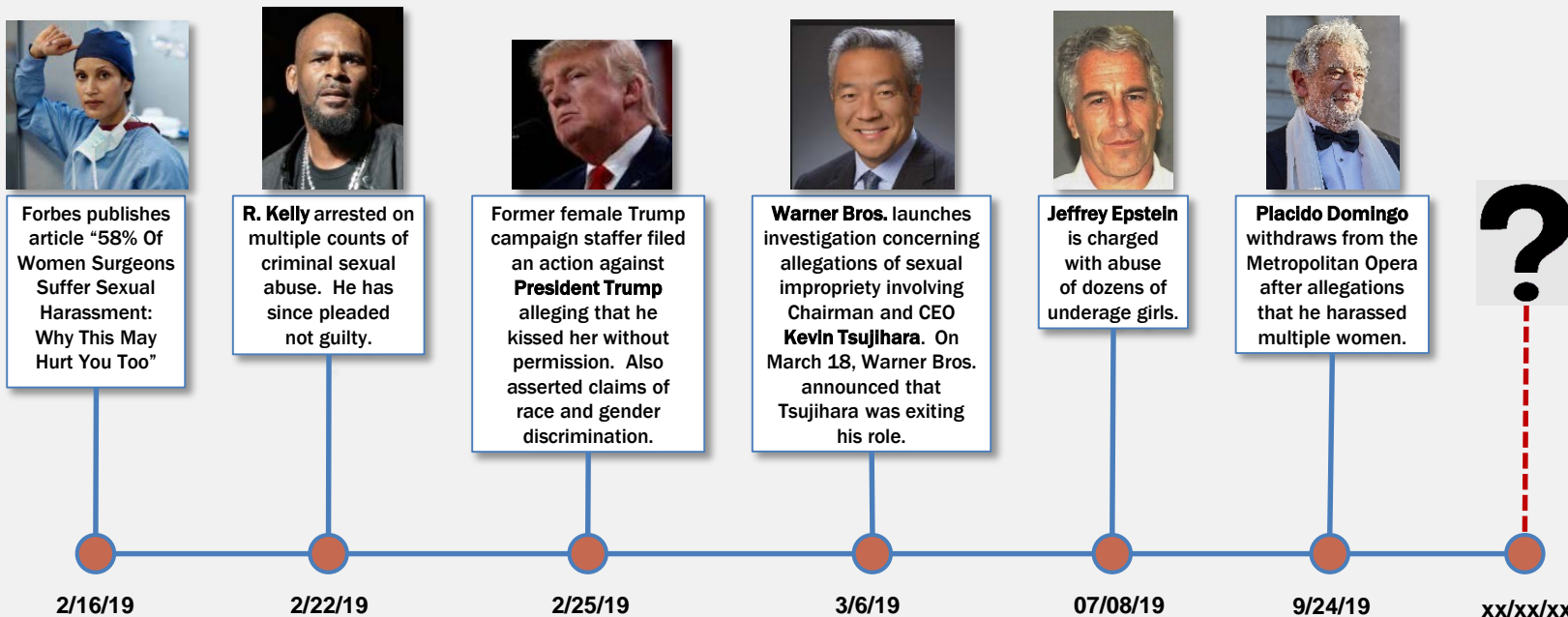


The #MeToo Movement





The #MeToo Movement



Sexual Harassment Training

- Mandatory 2-hour manager training every 2 years (and within 6 months of hire/obtaining supervisory position) for all employers with at least 5 employees
- Training must include:
 - Practical examples of harassment based on gender identity, gender expression, and sexual orientation
 - Abusive conduct/bullying
 - Active bystander training is often included
- Employers must provide 1-hour training for non-managerial employees by January 1, 2020 (compliance date pushed back to 1/1/2021)

Recent Statutory Developments – 2019

- **Senate Bill 1300 – FEHA (Gov’t Code §§ 12923, 12940 *et seq.*)**
 - Prohibits an employer, in exchange for a raise or bonus, or as a condition of employment, from requiring the execution of a release of a claim or right under FEHA or from requiring employee to sign document that purports to deny the employee the right to disclose information about unlawful acts in the workplace
 - A single incident of harassing conduct is sufficient to create a triable issue of HWE if conduct interfered with plaintiff’s work performance or otherwise created a hostile, intimidating, or offensive work environment
 - “Harassment cases are rarely appropriate for disposition on summary judgment”
 - “[T]he Legislature hereby declares its rejection of [...] the 9th Circuit’s opinion in *Brooks v. City of San Mateo* (2000) 229 F.3d 917.”

Recent Statutory Developments – 2019

- **Senate Bill 820 (C.C.P. § 1001 – the “Stand Act”)**
 - Prohibits confidentiality or non-disclosure provisions in settlement agreements that prevent the disclosure of factual information involving allegations of sexual misconduct – unless the party alleging the harm desires confidentiality language to protect his/her identity
 - Does not void or prohibit confidentiality provisions that prevent disclosure of the amount paid in settlement of a claim
 - To be applicable, the claim must have been “filed”

Recent Statutory Developments – 2019

- **Gender Violence (Civil Code § 52.4)** is a form of sex discrimination and means either of the following:
 - An act that constitutes a criminal offense that includes the use of physical force based on gender; or
 - A physical intrusion of a sexual nature under coercive conditions
- Claims are subject to a three-year statute of limitations (longer than the two-year limitations period for sexual assault)

Recent Statutory Developments – 2019

- **AB 1619 (C.C.P. § 340.16):**
 - Expanded SOL of sexual assault from 3 to 10 years
- **SB 826 (Corporations Code §§ 301.3 and 2115.5):**
 - By end of 2019, all California publicly held companies must have a minimum of one female on their board of directors
- **SB 954 (Evidence Code §§ 1122 and 1129):**
 - Mediation Disclosure
 - Requires attorneys to provide an express disclosure (Evidence Code Section 1129(d)) to participate in a mediation

Recent Statutory Developments – 2020

- **SB 188 (Gov't Code § 12926):**

- The “CROWN” (Create a Respectful and Open Workplace for Natural Hair) Act defines “Race,” for FEHA purposes, to include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. Defines “Protective hairstyles” to include, but not limited to, braids, locks, and twists

- **AB 1510 (C.C.P. § 340.16):**

- Revives claims of sexual assault or other inappropriate contact that occurred at a student health center between January 1, 1988 and January 1, 2017 that would otherwise be barred by the statute of limitations

- **AB 241 and AB 242:**

- Requires physicians, nurses, surgeons, lawyers, and court staff to receive “implicit bias” training

Recent Statutory Developments – 2020

- **AB 61 (Penal Code § 18150 *et seq.*):**
 - Grants employers and coworkers the right to petition a court to issue a gun violence restraining order
- **AB 9 (Gov't Code § 12960 *et seq.*):**
 - Extends the statute of limitations period for employees to file claims of discrimination, harassment and/or retaliation with the California Department of Fair Employment and Housing (“DFEH”) from one to three years

Recent Statutory Developments – 2020

- **SB 707 (C.C.P. § 1280 *et seq.*):**
 - Requires an employer to pay arbitration initiation fees within 30 days after the due date or the employer is in breach and employee can litigate in court
- **SB 142 (Labor Code § 1030 *et seq.*):**
 - Expands California's lactation accommodation requirements, including requirements that the lactation room or location be clean, contain a place to sit, and provide access to electricity
- **AB 543 (Education Code § 231.5 *et seq.*):**
 - Requires educational institutions to provide sexual harassment information as part of orientation

Recent Statutory Developments – 2020

- **AB 800 (C.C.P. § 367.3):**
 - Permits a party to a civil action to use a pseudonym and redact any other identifying characteristics from documents filed in court
- **AB 5 (Labor Code § 2750.3):**
 - Tightens restrictions on independent contractors (discussed in more detail later)
- **AB 170 (Labor Code § 2750.3):**
 - Exempts newspaper carriers and distributors from AB 5
- **AB 749 (C.C.P. § 1002.5):**
 - Prohibits the use of no re-hire provisions in settlement agreements (discussed in more detail later)

Recent Statutory Developments – 2020:

Assembly Bill 51 (Labor Code § 432.6)

- Prohibits requiring an applicant or employee, as a condition of employment, continued employment, or the receipt of any employment-related benefit to “consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or [the Labor] code”
- Nothing in this section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the FAA
- Does not apply to post-dispute settlement agreements or negotiated severance agreements



Recent Jury Verdicts for Single-Plaintiff Cases

- August 2019: \$15.4 Million Disability Discrimination
- June 2019: \$15.4 Million Age and Disability Discrimination
- March 2019: \$7 Million Sex Discrimination
- January 2019: \$11 Million Sexual Harassment
- July 2018: \$18.6 Million Wrongful Termination (arrest record)
- June 2018: \$31 Million Age/Sex Discrimination



**California Employment
Law Update**

US Supreme Court



Schein, Inc. v. Archer and White Sales, Inc., 139 S. Ct. 524 (2019)

- When a contract delegates the question of the arbitrability of a particular dispute to an arbitrator, the court must order the matter to arbitration even if it thinks that the argument that the arbitration agreement applies is wholly groundless



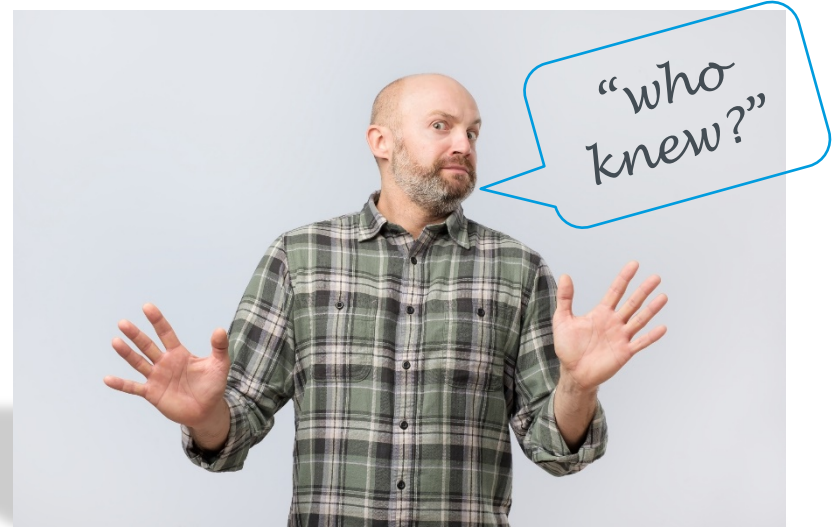
Lamps Plus, Inc. v. Varela, 139 S. Ct. 1407 (2019)

- Supreme Court reaffirms that *class arbitration* may not be ordered unless the arbitration agreement clearly allows for it – silence or ambiguity is not enough



Diaz v. Sohnen Enterprises, **34 Cal. App. 5th 126 (2019)**

- Holding that employee who continued employment after employer implemented arbitration agreement impliedly consented to arbitration, even though the employee did not sign the agreement



Existing Arbitration Agreement Requirements in CA

- *Armendariz v. Foundation Health Psychcare Services, Inc.*
24 Cal. 4th 83 (2000)
 - Requires neutral arbitrators;
 - Must allow for more than minimal discovery;
 - Requires a written decision;
 - Must allow for all types of relief otherwise available in court; and
 - Cannot require employees to pay unreasonable costs or any arbitrator's fees/expenses as condition of access to arbitration process (i.e., employer must pay all costs unique to arbitration)

Arbitration Agreement Considerations

- An agreement must not be procedurally or substantively unconscionable – a “sliding scale” approach is used in determining enforceability
- Per AB-51, incorporate an FAA acknowledgment in arbitration agreement
- California choice of law provisions does not affect enforceability under the FAA. *Bravo v. RADC Enterprises, Inc.*, 33 Cal. App. 5th 920 (2019)
- Considerations when drafting: scope; delegation; location; ADR provider and rules; fee-splitting

Arbitration Agreements



Permissible:

Class action waivers
Collective action
waivers



Impermissible:

PAGA waivers

A Word About the Private Attorneys General Act (“PAGA”)

- PAGA authorizes “aggrieved employees” to file suits to recover civil penalties on behalf of themselves , other employees, and the State of California for Labor Code violations
- Administrative exhaustion prerequisite – Labor and Workforce Development Agency (LWDA)
- Most suits now include PAGA claims, though some are brought as PAGA claims only

A Word About the Private Attorneys General Act (“PAGA”)

- \$100 per violation per pay period per aggrieved employee, for the first violation; \$200 per violation for subsequent violations
 - Of any civil penalties recovered, 75% goes to the LWDA and 25% to the “aggrieved employees”
- Stacking penalties and attorney’s fees
- California Supreme Court recently held that private litigants may not recover unpaid wages of the aggrieved employees in addition to PAGA penalties, significantly reducing the amount of potential exposure employers face. *ZB, N.A. v. Superior Court (Lawson)*, 8 Cal. 5th 175 (2019)

Wage and Hour Highlights

- Heavily litigated CA employment law issue
- Virtually all claims for overtime, meal and rest break penalties, pay stub violations, waiting time penalties are brought as class actions
- Most cases include claims under California's Business & Professions Code section 17200 (UCL), which has 4-year statute of limitations

Overtime

Time Worked	Rate of Pay
Hours worked in excess of 8 but below 12 in a workday	1.5x the employee's regular rate
All hours worked in excess of 12 in a workday	2x the employee's regular rate
The first 8 hours worked on a 7th consecutive day of work in a workweek	1.5x the employee's regular rate
All hours worked in excess of 8 on a 7th consecutive day of work in a workweek	2x the employee's regular rate
All hours worked in excess (40) hours in a workweek	1.5x the employee's regular rate

Overtime

- **Bonus:**
 - nondiscretionary bonuses must be included in overtime calculation (bonus divided by maximum legal regular hours worked in bonus-earning period)
- In calculating overtime for an employee who has earned a flat sum bonus, a California employer must divide the total compensation earned in a pay period by only the non-overtime hours worked (departing from the FLSA approach)

Meal and Rest Period Requirements

- Meal Period/Rest Period Premium – employees entitled to one hour of pay for a missed meal or rest break
- Employers must “provide” meal periods
 - Employees must be relieved of all duties
 - Employers must keep accurate records meal breaks taken
- Rest periods – employer only required to make them available
- Avoid statement requiring employees to remain on premises during breaks. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 272 (2016)

Meal Break Timing

Number of Hours Per Shift	Number of Meal Breaks
Fewer than 5 hours	<ul style="list-style-type: none">• No meal break
5 hours or more but fewer than 10 hours	<ul style="list-style-type: none">• One 30-minute unpaid meal period• Commenced before the end of the 5th hour of work
10 hours or more	<ul style="list-style-type: none">• Two 30-minute unpaid meal periods.• The first meal period must be taken before the end of the 5th hour of work• The second meal period must be taken before the end of the 10th hour of work

Rest Period Timing

Number of Hours Per Shift	Number of Rest Periods
Fewer than 3 ½ hours	No rest period
3 ½ hours or more but fewer than 6 hours	One 10-minute rest period
6 hours or more but fewer than 10 hours	Two 10-minute rest periods
10 hours or more but fewer than 14 hours	Three 10-minute rest periods

Rounding Time Entries

- Employers may round employees' work time, provided employees are fully compensated “over a period of time” (29 CFR § 785.48(b))
- Employers must apply “a consistent rounding policy that, on average, favors neither overpayment nor underpayment.” See's *Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 901 (2012)
- A policy that rounded to the nearest quarter hour that caused the plaintiff to both gain and lose compensation was recently held to be permissible. *Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership*, 821 F.3d 1069, 1077 (9th Cir. 2016)

Itemized Wage Statements

- Labor Code Section 226 requires nine items be present on all wage statements (aka “pay stubs”)
- Wage statements must include all of the enumerated information
 - Employee should not be required to refer to an outside source (a calendar, a work schedule, etc.) to determine how much she/he is owed for a particular pay period
- Penalties are virtually automatic
 - \$50 for the first pay period per employee and \$100 for each subsequent pay period not to exceed an aggregate penalty of \$4,000 plus costs and reasonable attorney’s fees
 - For a large work force, the penalty adds up quickly

Final Payment of Wages Upon Termination

- Terminated employees are entitled to all final wages, including accrued but unused vacation, ***on day of termination***
 - If the employee quits without notice; employees must receive wages within 72 hours
- Commissions – payment depends on whether commissions have been “earned” on or before the date of termination
- Bonuses – depend on terms of plans

Final Payment of Wages Upon Termination (cont'd)

- Waiting time penalties for “willful” failure to pay
 - Wages for up to 30 days
 - Willful = employer acted intentionally (i.e., it intentionally paid the employee or failed to pay the employee in a certain manner, not that it intended to violate the law)
 - “Good faith dispute” that wages are owed is a potential complete defense
 - Very common element in class action suits

Travel Time Compensation

- Must be paid for nonexempt employees when they travel for work
- Requires employers to compensate for (total time traveled) – (time an employee would have regularly spent traveling)
- Employers are permitted to pay a lower wage rate than when employees are performing actual job duties if employees are notified before travel begins



Travel Time Compensation (cont'd)

- In California, travel time can be compensable even if it is not during the employee's normal working hours as long as the employee is subject to the employer's control. According to federal law, travel time outside normal working hours need not be compensated.



Expense reimbursements

- Employers required to reimburse for “all necessary expenditures or losses incurred by the employee” in the course of the job
- This includes when employees must use their personal cell phones for work-related calls. *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137 (2014)
- “Damages, of course, raise issues that are more complicated.” *Id.* at 1145
- Home office expenses may be subject to reimbursement. *Richie v. Blue Shield of California*, 2014 WL 6982943, No. C–13–2693 EMC at *14 (N.D. Cal. Dec. 9, 2014)

California Fair Pay Act

- Standard - **Substantially similar** work, similar working conditions
- Employer has the burden to justify the pay differential – a possible defense includes 4 federal Equal Pay Act factors
- Damages: Difference between the rate paid and what should have been paid; Liquidated damages (100%); Reasonable attorneys' fees
- SOL: 2 years (3 yrs for willful violation)



California Equal Pay Act Litigation

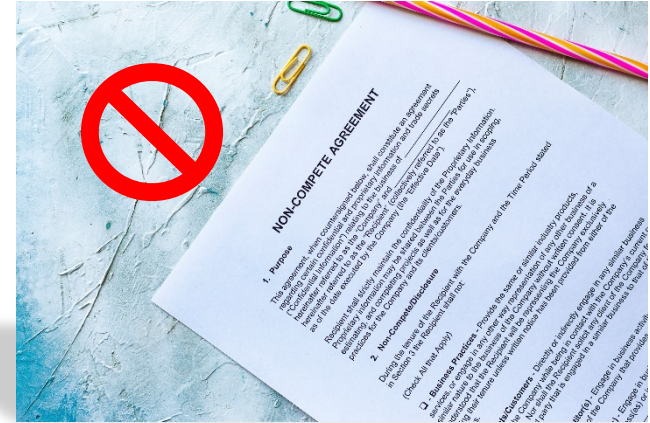
- Many law firms are being hit with gender discrimination and pay equity class action lawsuits
- Farmers Insurance Group agreed to pay \$4 million to approximately 300 employees in 2016
- Uber agreed to pay \$10 million to 420 engineers in 2018
- Google is currently facing a lawsuit and made headlines in March 2019 for its study finding that more men were underpaid than women

Salary History Disclosure

- Employers prohibited from relying on salary history in determining whether to offer employment
- Cannot ask an applicant his or her salary history
- However, an employer may ask about salary expectations
- Prior salary cannot be used to justify a wage differential. *Rizo v. Yovino*, 887 F.3d 453, 456 (9th Cir. 2018), *cert. granted, judgment vacated*, 139 S. Ct. 706 (2019)
- However, because Judge Reinhardt died 11 days before the decision was published, the Supreme Court vacated the decision

Restrictive Covenants

- Generally NOT ALLOWED
- Non-competition agreements are unenforceable
- Non-solicitation agreements regarding customers are **never** enforceable
- Non-solicitation agreements applied to employees likely not enforceable either



Restrictive Covenants Called Into Doubt

- Employee non-solicitation provision was an unenforceable restraint. *AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.*, 28 Cal. App. 5th 923 (2018)
- The Northern District of California relied on *AMN* to invalidate an employee non-solicitation agreement. *Barker v. Insight Glob., LLC*, 2019 WL 176260, Case No. 16-cv-07186-BLF (N.D. Cal. Jan. 11, 2019)
- The Northern District again concluded that a post-termination employee non-solicitation clause was void under California law relying on *Barker* and *AMN*. *WeRide Corp. v. Kun Huang*, 379 F. Supp. 3d 834 (N.D. Cal. 2019)

***Golden v. California Emergency Physicians Med. Grp.*, 896 F.3d 1018 (9th Cir. 2018)**

- No-rehire clause in settlement agreement is an unlawful restraint of trade.
- AB 749 limits the use of no re-hire provisions in settlement agreements
 - Exception: if employer has a legitimate nondiscriminatory or nonretaliatory reason for terminating or refusing to rehire the person or they have committed sexual harassment or assault



Paid Time Off

- Vacation
 - No requirement for an employer to give vacation
 - But once given, it becomes a contractual right
 - Employer may impose reasonable cap (1.5x?) but not yet resolved in court

Paid Time Off

- Sick leave
 - Employees working 30 days or more in a calendar year are entitled to 3 days (24 hours) of paid sick leave
 - In Los Angeles, an employee accrues one PSL hour per 30 hours worked, up to 48 hours
 - But beware! There are numerous cities with their own thresholds and rules
 - Employers not required to provide compensation for accrued but unused paid sick days upon separation



Paid Family Leave

- Requires employers to provide six weeks of paid family leave benefits through California's State Disability Insurance Program
 - To care for a seriously ill child, spouse, parent, grandparent, grandchild or domestic partner; or
 - To bond with a minor child within one year of the birth (or placement)
- Extended to eight weeks effective July 1, 2020
- Leave is not job-guaranteed
- Localities have their own more burdensome laws (e.g., San Francisco)

Unpaid Time Off

- Leave Laws
 - Family and Medical Leave Act (FMLA)
 - Pregnancy Disability Leave Law (PDL)
 - California Family Rights Act (CFRA)
 - New Parent Leave Act (NPLA)
- The convergence of these leave laws must be considered (e.g., PDL counting concurrently for FMLA, but not CFRA – which can potentially create a 7-month job-guaranteed leave)
- Reasonable accommodation requirements (ADA, FEHA) still apply!



Bonding Leave	Pregnancy Disability Leave	Bonding Leave
CFRA	PDL	NPLA
50+ employees in 75 mile radius	5+ employees	20+ employees in 75 mile radius
12 weeks within one year of birth	4 months of leave	12 weeks within one year of birth
Unpaid	Unpaid	Unpaid
Applies to both parents	Applies to parent who has disability relating to pregnancy	Applies to both parents

Background Checks

- California Investigative Consumer Reporting Agencies Act (ICRAA)
 - Disclosure required under the FCRA can not include the disclosure required under ICRAA. *Gilberg v. California Check Cashing Stores, LLC*, 913 F. 3d 1169 (9th Cir. 2019)
- Use of credit reports for employment is generally prohibited. Labor Code 1024.5
- “Ban the box” – California Fair Chance Act
 - Prohibits employers (5 or more employees) from asking about conviction history before making a job offer
 - If revoking job offer based upon background check, employer must conduct an “individualized assessment,” tell the employee in writing, provide a copy of the report and wait five business days

Gig Economy, What Gig Economy?

- Uber, Lyft, etc. not facing favorable climate in CA
- In early 2019, Uber settled CA lawsuit for \$20 million that claimed the ride-sharing company had misclassified its drivers as independent contractors rather than employees
- Increasing number of cases along these lines
- California courts taking broad view of employees



Employee Classification

- *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (2018)
 - Implemented a new ABC standard for classification of an independent contractor
 - The employer must prove that: (A) the worker is free from control and direction; (B) the work he/she does is outside usual course of the business; and (C) the worker is customarily engaged in an independently established trade

Employee Classification (cont'd)

- *Garcia v. Border Transportation Grp., LLC*, 28 Cal. App. 5th 558 (2018) - applied Dynamex only to wage order claims
- *Vazquez v. Jan-Pro Franchising Int'l, Inc.*, 939 F.3d 1045 (9th Cir. 2019)
 - Certified question to the California Supreme Court: Does Dynamex apply retroactively?

Dynamex and AB 5

- California's legislature has now enacted AB 5, which codifies the *Dynamex* ruling
- Extends its application to include state labor, workers' compensation and unemployment insurance laws, effective 1/1/2020
- Uber, Lyft, DoorDash have put \$90 million toward ballot initiative to challenge AB 5
- However, Uber argues that driving is not core to its business and has acknowledged that it won't reclassify drivers as employees

AB 5 – Exceptions

- AB 5 does not apply to certain occupations; instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello:
 - Those licensed by the Department of Insurance;
 - A licensed physician and surgeon, dentist, podiatrist, psychologist, or veterinarian;
 - A licensed lawyer, architect, engineer, private investigator, or accountant;
 - A securities broker dealer;
 - A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code;

AB 5 – Exceptions (cont'd)

- A contract for “professional services”
- Newspaper distributors and carriers (via AB-170 for one year)
- And more
- AB 5 does not apply to a bona fide business-to-business contracting relationship under numerous particular conditions
- Under AB 5, if an entity or individual contracts to supply an employee to perform services for a client or customer, the leasing entity is the employer, not the client

AB 5 – Enforcement

- Potential for class action lawsuits based on misclassification
- In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted by the Attorney General or by a city attorney



Proskauer's Global Presence





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California Employment Law Update

Take That, Employers! California is Done (for Now) with this Year's Legislative Thrashing

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October 14, 2019

Here's a comprehensive list of the new employment-related statutes enacted and signed into law in the Golden State (effective Jan. 1, 2020 unless otherwise specified):

- **AB 5** (Gonzalez, D-San Diego) makes it extremely difficult for most California employers to hire an **independent contractor** and would convert such workers into "employees" in the eyes of the law. Read more [here](#).
- **AB 170** (Gonzalez, D-San Diego) **exempts newspaper distributors and newspaper carriers** until January 1, 2021 from the *Dynamex* provisions in **AB 5**.
- **AB 9** (Reyes, D-Grand Terrace) extends the **statute of limitations** period for employees to file claims of discrimination, harassment and/or retaliation with the California Department of Fair Employment and Housing ("DFEH") from one to three years. Employees would then have one more year (after their receipt of a right-to-sue letter from the DFEH) to file a civil action in court. In short, employers could find themselves defending against claims for workplace incidents that occurred as long ago as four years in the past.
- **AB 25** (Chau, D-Arcadia) exempts employers from compliance with most of the requirements of the **California Consumer Privacy Act** until January 1, 2021. Read more about which provisions employers must comply with even before that date [here](#).
- **AB 51** (Gonzalez, D-San Diego) prohibits "any person" from requiring an applicant for employment or employee to "consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or [the Labor] code," which **purports to make illegal workplace arbitration agreements** that are entered into, modified, or extended on or after January 1, 2020. Although the statute expressly states that the law

does not intend to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act (the “FAA”), chances are that this law will be challenged almost immediately based upon FAA preemption, which is precisely what occurred after a similar law was recently enacted in New York. [See *Latif v. Morgan Stanley & Co.*](#)

- **AB 61** (Ting, D-San Francisco) grants employers and coworkers the right to petition a court to issue a **gun violence restraining order**, which prevents an individual who presents a threat to him/herself or others from “having in [his or her] custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.”
- **AB 241** and **AB 242** (Kamlager-Dove, D-Los Angeles) requires physicians, nurses, surgeons, lawyers, and court staff to receive **implicit bias training**.
- **AB 267** (Chu, D-San Jose) expands certification requirements for **infants working in the entertainment industry** to cover any type of employment in the entertainment industry rather than being limited to infants working “on any motion picture set or location.”
- **AB 673** (Carrillo, D-Los Angeles) authorizes an employee to bring, in a hearing held to recover unpaid wages, an action to recover **specified statutory penalties**. The employee can recover the penalties under this provision or under a specified provision of PAGA, but not both for the same violation.
- **AB 749** (Stone, D-Scotts Valley) prohibits the use of **no re-hire provisions** in settlement agreements to employment disputes unless the employer has a legitimate nondiscriminatory or nonretaliatory reason for terminating or refusing to rehire the person or that person has committed sexual harassment or assault.
- **AB 800** (Chu, D-San Jose) permits a party to a civil action who uses the [address confidentiality program](#) to **use a pseudonym** and redact any other identifying characteristics from documents filed in court.
- **AB 1510** (Reyes, D-Grand Terrace) **revives claims of sexual assault** or other inappropriate contact that occurred at a student health center between January 1, 1988 and January 1, 2017 that would otherwise be barred by the statute of limitations. The damages claimed must be more than \$250,000, and an attorney must have a good-faith belief that the claim value is more than \$250,000. The bill took effect immediately.
- **AB 1554** (Gonzalez, D-San Diego) requires employers to notify an employee (in at least two different prescribed manners) who participates in a **flexible spending account** of any deadline to withdraw funds before the end of the plan year.

- **AB 1805** (Committee on Labor and Employment) expands the **Division of Occupational Safety and Health's authority** by removing the 24-hour minimum time requirement for an illness or injury to qualify as "serious" and thus giving the Division more opportunity to investigate employment accidents and exposures. The bill establishes that a serious violation exists when the division determines there is a "realistic possibility that death or serious physical harm in the future could result from the actual hazard created by the exposure."
- **AB 1820** (Committee on Judiciary) authorizes the **Department of Fair Employment and Housing the authority to bring civil actions** for violations of specified federal civil rights and antidiscrimination laws (e.g., Title VII, ADA, FEHA).
- **SB 41** (Hertzberg, D-Van Nuys) prohibits, in personal injury or wrongful death lawsuit, the **reduction in the calculation of damages** based upon race, ethnicity, or gender.
- **SB 142** (Wiener, D-San Francisco) **expands California's lactation accommodation requirements**, including requirements that the lactation room or location be "safe, clean, and free of hazardous materials" and:
 - Contain a surface to place a breast pump and personal items
 - Contain a place to sit
 - Provides access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump
 - Further, the employer shall provide access to a sink with running water and a refrigerator (or cooling device or cooler) in close proximity to the employee's workspace
- **SB 188** (Mitchell, D-Los Angeles) prohibits employers from **discriminating based upon hairstyle**. Read more [here](#).
- **SB 271** (Wiener, D-San Francisco) regulates what qualifies as "employment" for motion picture production workers in regard to where the services are performed for purposes of unemployment compensation. If the service is localized in California or some of the services are performed in California and the worker's residence is in California, the worker's entire service qualifies as employment.
- **SB 688** (Monning, D-Carmel) authorizes the Labor Commissioner to **issue a citation** to an employer to recover restitution if the Commissioner determines that an employer has paid a wage less than the wage set by contract in excess of minimum wage.

- **SB 707** (Wieckowski, D-Fremont) requires an employer to **pay arbitration initiation fees within 30 days** after the due date. If the employer does not, it is in material breach of the arbitration agreement, in default of the arbitration, and waives its right to compel arbitration. If the employer breaches, the employee can then proceed in a court of appropriate jurisdiction.
- **SB 778** (Committee on Labor, Public Employment and Retirement) extended the deadline for an employer with 5 or more employees to provide **sexual harassment training** to January 1, 2021. The bill took effect immediately.

