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PERSPECTIVE

California's employment protection landscape faces pending cases

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The new year opens with a full docket of employment law cases pending before the California Supreme Court.

Hours worked

Certified by the 9th Circuit to the California Supreme Court, *Huerta v. CSI Elec. Contractors, Inc.*, S275431/9th Circ. No. 21-16201, asks what constitutes "hours worked." The question is whether time spent on an employer's premises in a personal vehicle while waiting to scan an identification badge, having security guards peer into the vehicle, and exiting a Security Gate, subject to certain employer rules, are compensable as "hours worked" or "employer-mandated travel" under Wage Order No. 16. A related question asks whether an unpaid "meal period" under a qualifying collective bargaining agreement is compensable as "hours worked" under that Wage Order or Labor Code Section 1194.

Time rounding

In *Camp v. Home Depot U.S.A., Inc.*, S277518/H049033, the court will consider whether employers are permitted to use neutral time-rounding practices (i.e., to the nearest 1/10 of an hour) to calculate employees' work time for payroll purposes.

Incarcerated labor

In *Ruelas v. County of Alameda*, S277120/9th Cir. No. 21-16528, the 9th Circuit certified to the California Supreme Court the question of whether non-convicted incarcerated individuals, who perform services in county jails for a for-profit company, have a claim for minimum wages and overtime under Labor Code Section 1194.

PAGA

Questions persist on the Private Attorney General's Act, Labor Code Section 2698 et seq. In *Estrada v. Royalty Carpet Mills, Inc.*, S274340/G058397/G058969, the issue is whether trial courts have the inherent authority to ensure that claims under PAGA will be manageable at trial, and to strike or narrow such claims if they cannot be managed.

In *Turrieta v. Lyft, Inc.*, S271721/B304701, the court will consider whether a plaintiff in a representative action filed under PAGA has the right to intervene, object to, or move to vacate a judgment in a related action that purports to settle the claims plaintiff has brought on behalf of the state.

In *Stone v. Alameda Health System*, S279137/A164021, the court will decide whether all public entities are exempt from Labor Code obligations regarding meal and rest breaks, overtime, and payroll records. The alternative question is whether only those public entities that satisfy the "hallmarks of sovereignty" are exempt (i.e., "municipal corporation" or "governmental entity" exemptions under Labor Code Sections 220 and 226). The court will also rule on whether the civil penalties available under PAGA apply to public entities.

Proposition 22

In *Castellanos v. State of California*, S279622/A163655M, the issue is whether Proposition 22 is invalid because it conflicts with article XIV, section 4 of the California Constitution, which declares the Legislature's plenary power to create a system of workers' compensation.

Affirmative defenses

Three appellate cases address employers' good faith defenses. First, in *Iloff v. LaPaille*, S275848/A163504, the court will decide whether an employer must demonstrate that it affirmatively took steps to see if its pay practices comply with the Labor Code and Wage Orders in order to establish a good-faith defense to liquidated damages.

The court will also consider whether a wage claimant may prosecute a paid sick leave claim under Labor Code Section 248.5(b) of the Healthy Workplaces, Healthy Families Act of 2014.

Second, on penalties, in *Naranjo v. Spectrum Security Services, Inc.*, S279397/B256232, the issue is whether an employer's good faith belief that it complied with Labor Code Section 226(a) precludes a finding that its failure to report wages earned was "knowing and intentional."

Third, in *Rattagan v. Uber Techs.*, S272113/9th Circ. No. 20-16796, the 9th Circuit certified to the court the question of whether claims for fraudulent concealment are exempt from the economic loss rule under California law.

Form arbitration agreements

In *Fuentes v. Empire Nissan*, S280-256/B314490, the court will decide whether the form arbitration agreement that employers required prospective employees to sign as a condition of employment is unenforceable due to unconscionability. A similar question in *Basith v. LAD Carson-Nm LLC*, S280258/B316098, is deferred pending the decision in *Fuentes*.

Compelling arbitration

Three cases concern the parameters of compelling arbitration. In *Morgan v. Sundance, Inc.*, 142 S.Ct. 1708 (2022), the U.S. Supreme Court held that arbitration rights can be waived if an employer does not diligently pursue arbitration. In *Quach v. Cal. Commerce Club, Inc.*, S275121/B310458, the state high court will decide whether California's test for determining whether a party has waived its right to compel arbitration by engaging in litigation remains valid post-Morgan.

Second, in *Ramirez v. Charter Communications, Inc.*, S273802/B309408, the question is whether a provision of an arbitration agreement allowing for recovery of interim attorney's fees after a successful motion to compel arbitration was so substantively unconscionable that it rendered the arbitration agreement unenforceable.

Third, in *Zhang v. Superior Court*, S277736/B314386, the court will consider when an employer moves to compel arbitration in a non-California forum pursuant to a contractual forum-selection clause, and an employee raises a defense under Labor Code Section 925, whether that court is one of "competent jurisdiction," such that the motion to compel requires a mandatory stay of the California proceedings.

Discrimination, harassment and retaliation

In *Bailey v. San Francisco Dist. Attorney's Office*, S265223/A153520, the court will determine whether the Court of Appeal properly affirmed summary judgment in favor of defendants on plaintiff's claims of hostile work environment based on race, retaliation, and failure to prevent discrimination, harassment and retaliation.

Whistleblower

Finally, in *Brown v. City of Inglewood*, S280773/B320658, the question before the court is whether elected officials are employees for purposes of whistleblower protection under Labor Code Section 1102.5(b).

With the foregoing pending cases, 2024 promises to be a substantive session on employment law before the California Supreme Court.

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