California Employment Law Notes

March 2025, Vol. 24, No. 2

By Anthony J. Oncidi

California Employment Law Blog

For the latest news, insights and analysis of California employment law, please visit our blog at http://calemploymentlawupdate.proskauer.com. To subscribe, enter your email address in the "Subscribe" section.

$2.16 Million Defamation Verdict Is Voided On Appeal

Hearn v. Pacific Gas & Elec. Co., 108 Cal. App. 5th 301 (2025)

In this case, the Court of Appeal reaffirmed the principle that an employee's tort claim is not separately actionable against an employer when it is premised upon the same conduct that gave rise to the termination of employment and where the damages sought are solely related to the loss of employment. The Court relied upon case law going back as far as *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654 (1988), which delineates the ability of an employee to recover tort damages.

Todd Hearn went to trial on claims for (1) retaliation in violation of section 1102.5 of the California Labor Code and (2) defamation. Hearn's former employer (PG&E) terminated Hearn based on findings from an investigation into various violations of the employee code of conduct. At trial, the jury found against Hearn on the retaliation claim but found in his favor on the defamation claim, awarding him $2.16 million in compensatory damages. The jury specifically found that the investigative report that resulted in Hearn's termination was the source of the purportedly defamatory statements. PG&E moved for JNOV on the ground that Hearn had conceded that his damages for the alleged defamation were simply his termination-related damages – *i.e.*, that he had suffered no distinct reputational harm or other damages specifically attributable to the allegedly defamatory conduct. The trial court denied PG&E's JNOV motion.

In a 2-to-1 ruling, the Court of Appeal reversed the trial court's judgment entered in Hearn's favor on the defamation cause of action, agreeing with PG&E that Hearn could not pursue a tort claim against PG&E based on the same conduct and seeking no distinct damages from his unsuccessful wrongful termination claim. In so ruling, the Court reaffirmed the long-standing principle against an employee bringing a duplicative tort claim against an employer which is simply a wrongful termination claim by another name.

Anthony J. Oncidi is a partner in the firm's Los Angeles office and Chair of the West Coast Labor & Employment Group of Proskauer Rose LLP, where he exclusively represents employers and management in all areas of employment and labor law. His telephone number is +1.310.284.5690 and his email address is aoncidi@proskauer.com.

If you would like to subscribe to *California Employment Law Notes*, please send us an email. We also invite you to visit our website Proskauer.com to view all Proskauer publications.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

© 2025 PROSKAUER ROSE LLP
All Rights Reserved.

USPS Employee's Hostile Work Environment Claim Can Proceed

Lui v. DeJoy, 129 F.4th 770 (9th Cir. 2025)

Dawn Lui, the former postmaster of the United States Post Office in Shelton, Washington, alleged she was targeted because of her race, sex and national origin. Lui alleged disparate treatment and retaliation in violation of Title VII. The district court granted summary judgment to the Postmaster General, but the Ninth Circuit reversed in part, holding that Lui's disparate treatment claim should not have been dismissed. The Court concluded that Lui had satisfied the *McDonnell Douglas* test for establishing a prima facie case by showing she was removed from her position as Postmaster, demoted and replaced by a white man. The Court further held that there is a genuine dispute of material fact about whether the decisionmaker's decision to demote Lui was independent or influenced by a biased subordinate and that Lui had properly exhausted her administrative remedies. As for Lui's claim of retaliation, the Court affirmed summary judgment on the ground that Lui failed to establish a causal connection between any protected conduct and the demotion decision.

Employer Did Not Violate FEHA By Denying Employee Disability Retirement Benefits

Lowry v. Port San Luis Harbor Dist., 109 Cal. App. 5th 56 (2025)

John Lowry was employed as a harbor patrol officer before suffering a permanently disabling on-the-job injury. His treating psychiatrist concluded that Lowry suffered from PTSD as a result of the accident and was not fit to return to work and instead should be "medically retired." Lowry was subsequently terminated because he could not perform the essential job duties of Harbor Patrol Officer III with or without accommodation. Lowry sued for disability discrimination under the FEHA based on the District's denial of disability retirement benefits. The trial court granted summary judgment to the District on the ground that disability retirement "does not qualify as a term, condition, or privilege of employment." The Court of Appeal affirmed. *See also Mandell-Brown v. Novo Nordisk Inc.*, 2025 WL 718890 (Cal. Ct. App. 2025) (trial court properly granted employer's motion for summary after plaintiff failed to file an opposition after receiving two continuances to do so).

Employee's Attorney And Expert Witnesses Were Properly Disqualified For Use Of Employer's Privileged Information

Johnson v. Department of Transp., 2025 WL 829714 (Cal. Ct. App. 2025)

After Christian L. Johnson sued his employer (Caltrans), an attorney for Caltrans sent a confidential email about the litigation to Nicholas Duncan (Johnson's supervisor). Duncan then sent an image of the email to Johnson who shared it with his attorney and several retained experts and other individuals. The trial court granted Caltrans's request for a protective order on the ground that the email was covered by the attorney-client privilege. The trial court also ordered Johnson and his attorney to destroy or return all copies of the email and to refrain from any further dissemination of the email. The trial court subsequently granted Caltrans's motion to disqualify Johnson's attorney and retained experts with whom the email had been shared based upon various violations of the protective order. The Court of Appeal affirmed the order. *See also Cahill v. Insider Inc.*, 2025 WL 838264 (9th Cir. 2025) (district court had authority to order media organizations to return or destroy confidential documents that had been inadvertently disclosed).

Sexual Harassment Lawsuit Cannot Be Compelled To Arbitration

Casey v. Superior Court, 108 Cal. App. 5th 575 (2025)

Kristin Casey, a former employee of D.R. Horton, Inc., sued the company and one of its employees, Kris Hansen, for sexual harassment, sex discrimination, retaliation and failure to prevent discrimination and harassment in September 2023. D.R. Horton attempted to enforce an arbitration agreement in Casey's employment contract, which included a choice-of-law provision applying California law. Casey opposed arbitration, arguing that the federal Ending Forced Arbitration Act (the EFAA) gave her the right to pursue her claims in court.

The EFAA, enacted in 2022, provides that a "person alleging conduct constituting a sexual harassment dispute" may elect that "no predispute arbitration agreement . . . shall be valid or enforceable with respect to the case filed under federal, tribal or state law and relates to the sexual harassment dispute." The trial court upheld the arbitration agreement, enforcing the terms to which Casey had agreed. But on a writ petition, the Court of Appeal reversed, holding that the EFAA preempts state law so long as the employment relationship involves interstate commerce (a low hurdle). The court further determined that an employer cannot rely on a choice-of-law clause to avoid the effect of the EFAA.

Arbitration Agreement Was Not Substantively Unconscionable

Vo v. Technology Credit Union, 108 Cal. App. 5th 632 (2025)

Thomas Vo sued his former employer (TCU) for violations of the FEHA; TCU responded with a motion to compel arbitration. The trial court denied TCU's motion on the ground that that it was unconscionable due to the arbitrator's inability to compel prehearing third-party discovery. The Court of Appeal held because there was only a "minimal degree of procedural unconscionability" associated with the "standard pre-employment paperwork," the arbitration agreement was not

invalid on that ground. As for whether the agreement was substantively unconscionable, the Court held that "the JAMS Rules incorporated into the arbitration agreement here provide an arbitrator the authority to permit nonparty discovery to allow fair arbitration of Vo's statutory claims." Consequently, the agreement was not substantively unconscionable, and the motion to compel arbitration should have been granted.

FAA Does Not Preempt California Anti-Arbitration Statute

Colon-Perez v. Security Indus. Specialists, 108 Cal. App. 5th 575 (2025)

The employer in this case (SIS) challenged Cal. Code Civ. Proc. § 1281.98 (requiring an employer to pay arbitration fees within 30 days or waive the right to arbitrate) on various grounds, including that the statute is preempted by the Federal Arbitration Act (FAA). This issue is currently pending before the California Supreme Court in *Keeton v. Tesla, Inc.*, 103 Cal. App. 5th 26, *rev. granted* (2024). In this case, the Court of Appeal held "we are not persuaded to depart from our conclusions in *Keeton*" that the FAA does not preempt the state statute. The Court further held that Cal. Code Civ. Proc. § 473(b) (excusable neglect of counsel) was inapplicable to remedy the failure to comply with Section 1281.98. *See also Arzate v. ACE Am. Ins. Co.*, 108 Cal. App. 5th 1191 (2025) (plaintiff not defendant was required to initiate arbitration after trial court granted defendant's motion to compel arbitration).

District Court Improperly Remanded Action That Was Removed Under CAFA

Perez v. Rose Hills Co., 2025 WL 811096 (9th Cir. 2025)

Elizabeth Perez sued her former employer (Rose Hills) in this putative class action involving alleged violations of various California wage and hour laws. Rose Hills removed the action to federal court under the Class Action Fairness Act (CAFA), but the district court remanded the action on the ground that Rose Hills had failed to satisfy CAFA's $5 million amount-in-controversy requirement. The Ninth Circuit vacated the remand order and remanded the case to the district court for further consideration, holding that the removing defendant was permitted to rely on a chain of reasoning that includes reasonable assumptions to calculate the amount in controversy, including a computation based on the wage rate at which the employer is alleged to have committed various violations (citing *Arias v. Residence Inn by Marriott*, 936 F.3d 920 (9th Cir. 2010)).

Employees Who Recovered $140,000 Were Entitled To $200,000 In Fees/Costs

Villalva v. Bombardier Mass Transit Corp., 108 Cal. App. 5th 211 (2025)

Mark Villalva and Bobby Jason Yelverton are train dispatchers who sued their employer (Bombardier) for allegedly unpaid wages. Rather than filing their claims in court, the employees first sought relief from the California Labor Commissioner, using the so-called "Berman" hearing process pursuant to Cal. Lab. Code § 98, *et seq*. After the labor commissioner denied their claims, the employees filed a request for de novo hearing in the superior court where they prevailed in a bench trial and received an award of $140,000 in back wages and penalties. The trial court also granted the employees' motion for attorneys' fees and costs in the amount of $200,000. On appeal, Bombardier asserted that the employees were not entitled to recover their fees and costs because Labor Code § 98.2(c) only authorizes an award of fees and costs against an unsuccessful appellant in a de novo superior court trial. The Court of Appeal disagreed and held that "nothing in section 98.2 suggests that the Legislature intended to make this remedy unavailable to employees who first attempt to obtain relief from the labor commissioner through the expedited Berman hearing." *Compare In re Kirsten v. California Pizza Kitchen Inc.*, 129 F.4th 667 (9th Cir. 2025) (court approves $950,000 class action settlement but remands case for district court to determine the settlement's actual value to class members before approving an award of $800,000 in attorney's fees).