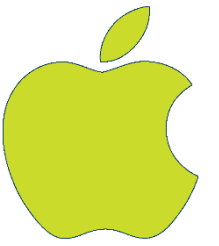




Top Cases of 2020 for California Employers

Daniel E. Eaton, Esq.
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Apple Watching



1. *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038

Issue

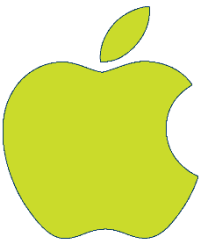
Must a California employer pay its employees for time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, etc. brought to work purely for their personal convenience?

Holding

Yes. Workers in that scenario are under the employer's control and therefore entitled to be paid:

- Employees subject to discipline for failing to comply with bag-check policy
- Employees confined to premises waiting for and during exit search
- Employees must do specific tasks in the process, including locating a manager, unzipping bags, and removing Apple devices for inspection

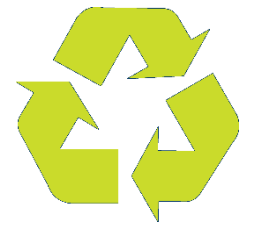
Apple Watching (cont'd)



What's an employer to do?

- Instead of exit search, consider imposing reasonable restrictions on the size, shape, or number of bags that its employees may bring to work or requiring employees to store their personal belongings in offsite locations, such as lockers or break rooms.

Recycled PAGA



2. *Kim v. Reins Internat. California., Inc.* (2020) 9 Cal.5th 73

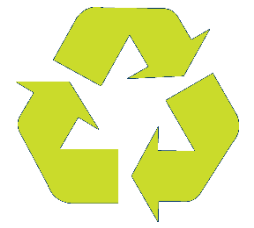
Issue

Does settlement of employee's individual claim of labor violations strip employee's standing as an "aggrieved employee" to pursue PAGA remedies?

Holding

No. Standing to bring a PAGA claim requires only two things. The plaintiff: (1) must have been employed by the alleged violator; and (2) must have been the victim of at least one of the alleged violations. (Lab. Code § 2699(c).) "The Legislature defined PAGA standing in terms of violations, not injury. {Plaintiff} became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him. Settlement did not nullify these violations." (*Id.* at p. 1129, citation omitted.)

Recycled PAGA (cont'd)



What's an employer to do?

- Settlement of PAGA claims requires court approval. Make sure PAGA claims are explicitly extinguished in settlement agreement, including payment of some part of the settlement to the LWDA after agency opportunity to review, and object to, the terms of the settlement.
- Consider requiring plaintiff to submit an amended claim letter to the LWDA to give the agency notice of the claim asserted and by extension, when LWDA is notified of the impending settlement, the claims to be extinguished.
- Bottom line: Without more guidance from court, no guaranteed way to extinguish risk of recycled PAGA claim.

Not So Friendly Skies



3. *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732

Issue

Do California wage and hour rights extend to non-resident employees who perform most of their work in this state or are based here?

Holding

Yes. Cal. Labor Code § 226 entitling an employee to an itemized wage statement applies to interstate transportation workers and others who do not work more than half of the time in one state if the worker performs some work in California and “is based in California, meaning that California serves as the physical location where the worker presents himself or herself to begin work.”

Not So Friendly Skies (cont'd)



What's an employer to do?

- An employer operating in multiple states, including California, should apply California wage and hour rules to employees who spend most of their working time in the state or who are based in the state.

Flight Planning



Oman v. Delta Air Lines, Inc. (2020) 9 Cal.5th 762

Issue

Does employer violate California's prohibition on borrowing wages from one period of compensation to meet the employer's duty to pay the minimum wage in other periods of compensation where employer does not guarantee a set hourly wage, but instead compensates its employees by the rotation worked rather than by particular hours worked?

Holding

No, such a wage scheme complies with California law where all hours are compensated at or above the minimum wage.

- Court affirmed California prohibition on “wage borrowing” to meet an employer’s obligation to pay at least the minimum wage for all hours worked.
- “State law prohibits borrowing compensation contractually owed for one set of hours or tasks, regardless of whether the average of paid and unpaid (or underpaid) time exceeds the minimum wage.”
- Having stated rule, court held that the airline’s compensation scheme met it. Airline’s wage framework doesn’t promise particularly hourly pay per hour worked. Instead, offered guaranteed level of compensation for each *duty period* and each *rotation*.

Flight Planning (cont'd)



What's an employer to do?

- Employers have latitude within this framework to adopt pay formulas toward ensuring employees receive at least the minimum wage for all hours worked.
- Don't set a minimum wage floor by agreeing to make up the difference if an employee's promised pay, averaged over all hours worked, falls below the applicable minimum wage.

Endless Summer



5. *McPherson v. EF Intercultural Found., Inc.* (2020) 47 Cal.App.5th 243

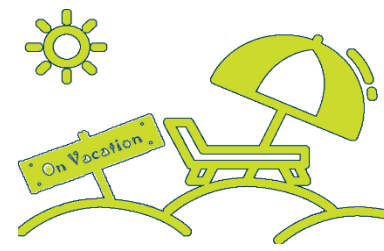
Issue

Is an employer excused from its obligation to pay departing employees the value of accrued but unused vacation time under Labor Code section 227.3 where the employer adopts an “unlimited vacation” policy that imposes practical limits on available time off?

Holding

No. The employer may not avoid that obligation where: (1) it fails to tell its employees they could take unlimited vacation time; (2) fails to put the policy in writing; (3) tells the employees only that they may take time off with pay and that they did not accrue vacation days; but (4) strongly discourages, though not prohibiting, its employees from vacationing during the employer’s peak season, practically limiting their available vacation time.

Endless Summer (cont'd)



What's an employer to do?

- Put policy in writing.
- Clearly say paid time off is not part of an employee's compensation.
- Identify the rights and obligations of both employee and employer and the consequences of failing to schedule time off.
- Allow sufficient opportunity for employees to take time off, or work fewer hours in place of taking time off.
- Administer policy fairly so that it becomes neither a de facto "use it or lose it" policy" nor results in such unfairness as one employee working many hours and taking minimal time off, while another works fewer hours and takes more time off.

Confidential Limits



6. *Brown v. TGS Management Co., LLC* (2020) 57 Cal.App.5th 303

Issue

Must an arbitration award be vacated where arbitrator enforced a former employee's post-employment confidentiality duty that narrowed his ability to pursue his profession?

Holding

Yes. While courts generally give great deference to arbitration awards – even an award with errors of fact and law that result in substantial injustice to the parties -- a court will not grant finality to an award by an arbitrator who exceeds his powers “by issuing an award that violates a party’s unwaivable statutory rights or that contravenes an explicit legislative expression of public policy.”. The confidentiality provision at issue in this action was so broad it effectively barred plaintiff, a securities professional who specialized in statistical arbitrage, from working in the securities industry. That offended B&P § 16600.

Confidential Limits (cont'd)



What's an employer to do?

- Make sure your confidentiality provision doesn't sweep so broadly that it effectively prohibits former employee from engaging in his or her chosen profession.
- Overly broad confidentiality provision not saved by exceptions for information known to the employee before his employment or information that becomes publicly known.
- Consider limiting the scope of the prohibition on an employee's use of confidential information to information covered by the Uniform Trade Secrets Act (Civ. Code § 3426, et seq.)

Minister Matters



7. Our Lady of Guadalupe School v. Morrissey-Berru (2020) 140 S.C. 2049

Issue

Does “ministerial exception” to Title VII bar age and disability claims by two elementary school teachers at Roman Catholic schools, even where those teachers were not formally ministers?

Holding

Yes. “When a school with a religious mission entrusts a teacher with the responsibility of educating and forming students in the faith, judicial intervention into disputes between the school and the teacher threatens the school’s independence in a way that the First Amendment does not allow.”

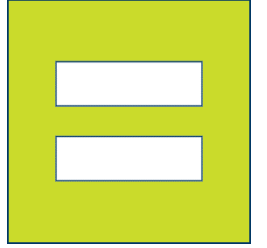
Minister Matters (cont'd)



What's an employer to do?

- Ensure that ministerial employees, both in their job descriptions and in practice, have one or more duties aimed at advancing the faith of the sponsoring religion.
- With limited exceptions, California's FEHA categorically excludes from its definition of a covered "employer" subject to the act any "religious association or corporation not organized for private profit." It precludes discrimination claims by any employee, not just those charged with carrying out the employer's religious mission.
- High court's ruling narrowed the gap between federal and California law in the scope of that immunity.

Textual Equality



8. *Bostock v. Clayton County Georgia* (2020) 140 S.Ct. 1731

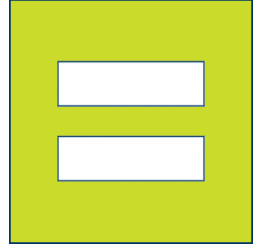
Issue

Does Title VII of the federal Civil Rights Act of 1964 prohibit sexual orientation and transgender discrimination in the workplace?

Holding

Yes. Writing for a six-Justice majority, Justice Neil Gorsuch explained “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.”

Textual Equality (cont'd)



What's an employer to do?

- Ruling brings federal workplace discrimination law into alignment with longstanding California workplace discrimination law. The ruling makes it essential that discrimination policies expressly apply to these classifications.

The Technician's Tools



9. *Oliver v. Konica Minolta Business Solutions U.S.A., Inc.* (2020) 51 Cal.App.5th 1

Issue

Do California's wage and hour laws summarily disentitle an office machine service technician to pay for time spent driving from home to the first customer and driving home after their last assignment of the day, even where technician claimed volume of parts and tools had to carry during commute precluded using his time as he chose?

Holding

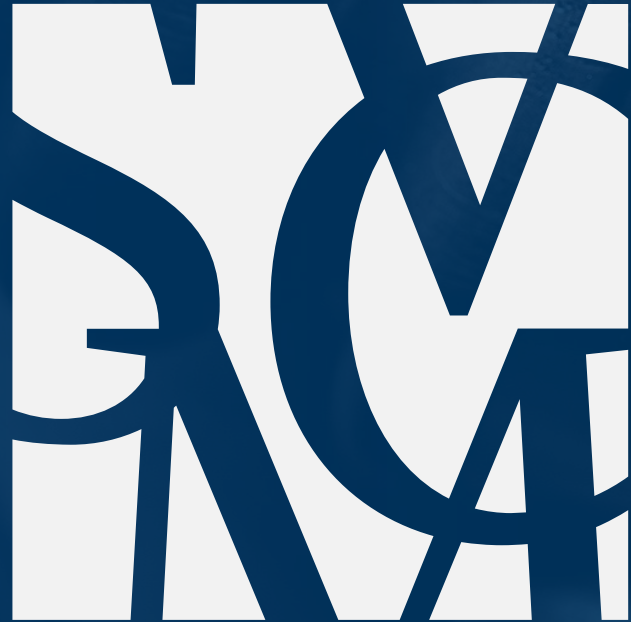
No. The appellate court did not rule summarily in the technicians' favor. Rather, court concluded that the workers were entitled to try to prove at trial they were effectively under Konica Minolta's control during their commute. "[I]f a service technician was required during the commute to carry a volume of tools and parts that did not allow the service technician to use the time effectively for the service technician's own purposes, then the technician would be subject to" Konica Minolta's control and entitled to be paid for that time.

The Technician's Tools (cont'd)



What's an employer to do?

- To avoid having to pay employees for their commuting time, make sure that company policies and performance standards do not effectively restrict how employees may use that time.



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