

CALIFORNIA PRACTICE GUIDE EMPLOYMENT LITIGATION 2026 UPDATE

This 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most important developments of the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail.

Check for Case/Statutory/Rules Developments: This Update went to press in March 2026. Some new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative or rules changes taking effect after our press date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

As usual, it has been a busy year for employment law, with many significant developments on such topics as: sanctions available for improper use of AI to generate a brief and new California regulations governing use of AI to make employment decisions; the EEOC's rescission of a major Employer Guidance; a comprehensive reorganization of State Leave Laws; many arbitration and preemption decisions; and several grants of review by the California Supreme Court on PAGA and other employment issues.

Thank you! Your comments and suggestions are greatly appreciated. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 1

INTRODUCTION

[1:6.1] **President’s Power to Fire NLRB and Other Federal Officials:** [See *Trump v. Wilcox* (2025) 145 S.Ct. 1415 (suggesting provisions in the NLRB and MSPB requiring “cause” for removal of members are inconsistent with President’s powers over officers of executive branch); see also *Space Exploration Technologies Corp. v. NLRB* (5th Cir. 2025) 151 F4th 761, 766-767—NLRB’s “for cause” removal provisions unconstitutional and violate separation of powers]

CHAPTER 2

PROFESSIONAL RESPONSIBILITY

[2:4.3] **Financial Institution’s Duty to Collect Information on Lawyer Trust Accounts:** Commencing January 1, 2026, when a new client trust account associated with a licensed California attorney is opened, the financial institution must collect and retain specified information for every client trust account associated with an attorney’s State Bar license number. [Bus. & Prof.C. §6091.3]

[2:303] **Attorney’s Improper Use of Privileged Information:** [See *Johnson v. Department of Transp.* (2025) 109 CA5th 917, 944, 330 CR3d 811, 835—employee’s attorney and experts properly disqualified where attorney used privileged information inadvertently sent by employer’s counsel, and shared it with experts despite court protective order prohibiting use or dissemination]

[2:470] **Court Policies and Rules Governing Use of Generative AI:** The California Judicial Council adopted a rule effective Sept. 1, 2025 requiring Superior Courts, Courts of Appeal, and the Supreme Court to either prohibit or regulate the use of generative AI by court staff and judicial officers, with policies to be in place by Dec. 15, 2025. [CRC 10.430]

[2:470.1] **Remedies for Improper Use of AI to Generate Briefs:** [See *Noland v. Land of the Free, L.P.* (2025) 114 CA5th 426, 430-431, 444-449, 336 CR3d 897, 901, 912-915 (awarding \$10,000 in sanctions for frivolous appeal, reporting counsel to State Bar for filing appellate briefs containing numerous fabricated case quotations, and for citing cases that did not stand for the propositions stated or that “do not exist at all,” without reading the cases cited)]

CHAPTER 3

INSURANCE AND INDEMNIFICATION

[3:2] **Duty to Indemnify Employees Under Labor Code §2802:** Section 2802 of the Labor Code does not apply to public entity employers. [*Krug v. Board of Trustees of Calif. State Univ.* (2025) 110 CA5th 234, 258-259, 331 CR3d 358, 376-377]

[3:549] **Penalties for Employer’s Serious and Willful Misconduct (Lab.C. §4553):** [See *Department of Corrections & Rehabilitation v. WCAB* (2025)]

17 C5th 515, 516, 329 CR3d 800, 801 (describing how §4553 penalty calculated and what is included)]

CHAPTER 4

EMPLOYMENT CONTRACT CLAIMS

[4:146.1] **Hospital Peer Review—Hearing on Bus. & Prof.C. §805 Report:** [See *Lin v. Board of Directors of PrimeCare Med. Network, Inc.* (2025) 108 CA5th 1163, 1187-1189, 330 CR3d 102, 120-121—hospital board members who were not licentiates or agreed to by both parties acted outside their jurisdiction by exercising independent review to disagree with peer review body’s factual findings]

CHAPTER 5 PART I

EMPLOYMENT TORTS AND RELATED CLAIMS

[5:131] **California Employee Leave Laws:** See ¶12:2165 ff. of these Highlights.

[5:471, 5:612] **Review Granted—Defamation Related to Employment Termination:** The California Supreme Court will decide whether a terminated employee may bring a defamation claim against a former employer when the defamation allegedly contributed to the reasons for the termination, or if such a claim may only be pursued under a wrongful discharge theory. [*Hearn v. Pacific Gas & Elec. Co.* (2025) 108 CA5th 301, 329 CR3d 213, rev.grntd. 5/14/25 (Case No. S289581)]

[5:923] **Privacy Protection for Personnel Files:** Courts may safeguard employee information by judicially-created limitations on disclosure of confidential personnel files when the relevance of the information sought is minimal and the employee’s privacy concerns are substantial. [*Schneider v. Sup.Ct. (Los Angeles County Sheriff’s Dept.)* (2025) 111 CA5th 613, 630, 332 CR3d 918, 931-932 (interpreting scope of disclosure of law enforcement officer’s personnel file)]

[5:1195] **Polygraph Exams (Lab.C. §432.2):** A violation of Lab.C. §432.2 supports a tort cause of action for wrongful discharge. [*McDoniel v. Kavry Mgmt., LLC* (2025) 114 CA5th 949, 963, 337 CR3d 516, 529]

[5:1261] **Employer Imposing Driver’s License Requirement:** Employers may not include a statement in a job advertisement, posting, or application requiring that an applicant have a driver’s license unless the employer reasonably expects driving to be a function of the position and reasonably believes that satisfying the job function through alternative forms of transportation would not be comparable in travel time or cost to the employer. [New Gov.C. §12940(q)]

[5:1411.1] **Workplace Violence—Employer May Seek Temporary Restraining Order:** An employer may seek a temporary restraining order on behalf of employees who have suffered workplace harassment, unlawful violence, or a credible threat of violence under specified conditions. [Amended CCP §527.8]

CHAPTER 5 PART II

RETALIATION CLAIMS

[5:1635] **Federal Railroad Safety Act (FRSA) Retaliation Claims:** [See *Parker v. BNSF Ry. Co.* (9th Cir. 2025) 137 F4th 957, 961-962 (upholding trial court’s finding that employer offered clear and convincing evidence of several instances of employee’s job inefficiency, insubordination, and dishonesty under FRSA’s anti-retaliation provision)]

[5:1741.2, 5:1748.1] **Elected Officials Not Protected by Lab.C. §1102.5:** Elected officials are not “employees” for purposes of whistleblower protection under Lab.C. §1102.5 and therefore are not entitled to its protections. [*Brown v. City of Inglewood* (2025) 18 C5th 33, 37-38, 334 CR3d 1, 4]

[5:1742] **Employer “Same Decision” Defense (Lab.C. §1102.5):** If the employer establishes the same decision defense, the employee is not entitled to recover attorney fees for bringing a “successful action” under section 1102.5 of the Labor Code, or costs as a prevailing party under CCP §1032. [*Lampkin v. County of Los Angeles* (2025) 112 CA5th 920, 926, 334 CR3d 681, 684]

[5:1763.2] **State’s Exhaustion of Remedies Requirement May be Preempted by 42 USC §1983:** Courts may not deny claims made under 42 USC §1983 on the ground that a state exhaustion requirement functionally immunizes state officials from such claims. A state law that immunizes government conduct otherwise subject to suit under §1983 is preempted. [*Williams v. Reed* (2025) 604 US 168, 174, 145 S.Ct. 465, 470]

[5:1772] **California False Claims Act (CFCA):** [See *Ryan v. County of Los Angeles* (2025) 109 CA5th 337, 363, 330 CR3d 382, 400—employee’s claim that County employer retaliated for his investigating County’s alleged reporting of falsified medical records to medical authority not actionable under CFCA, since any false claim action necessarily would have named County as a defendant, not as a plaintiff]

[5:1778] **Health & Saf.C. §1278.5:** Under §1278.5, an adverse or retaliatory employment action is one that was material and had a detrimental effect on plaintiff’s employment or privileges. [*Slone v. El Centro Regional Med. Ctr.* (2024) 106 CA5th 1160, 1168, 327 CR3d 541, 550]

[5:1779] **Health Care Facilities Operated by Public Entities May be Liable under Health & Saf.C. §1278.5:** Section 1278.5 applies to public entities, including county-operated hospitals. Such public entity employers can be liable for unlawful discrimination or retaliation under the statute. [*Ryan v. County of Los Angeles* (2025) 109 CA5th 337, 368-369, 330 CR3d 382, 404-405]

CHAPTER 6

LAYOFFS AND PLANT CLOSINGS

[6:771, 6:825] **California WARN Act—Content of Notice:** The statute requiring employers to give notice prior to a mass layoff, relocation, or termination was amended effective January 1, 2026 with respect to the content of the notice. [Amended Lab.C. §1401]

CHAPTER 7

EMPLOYMENT DISCRIMINATION—IN GENERAL

[7:135] **Ministerial Exception—Effect of Using “Primarily Religious” Standard to Decide Religious Charity’s Tax-Exempt Status:** In determining whether a religious nonprofit organization qualifies for exemption from state unemployment taxes for organizations “operated primarily for religious purposes,” the State must maintain “neutrality.” Distinguishing among religions based on theological differences in their provision of charitable services would impose an impermissible “denominational preference” and therefore is subject to strict scrutiny. [*Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industrial Review Comm’n* (2025) 605 US 238, 252-254, 145 S.Ct. 1583, 1593-1595]

[7:136] **Title VII—Who Qualifies as a “Minister” for Purposes of Ministerial Exception:** [See *McMahon v. World Vision Inc.* (9th Cir. 2025) 147 F4th 959, 966 (applying exception to remote customer service agent whose duties included communicating employer’s religious mission, praying with donors and supporters by phone, and providing opportunity to join employer’s mission)]

[7:202] **FEHA—New Regulations on Employer Use of Automated-Decision Systems and AI:** Regulations effective October 1, 2025 formally integrate AI-assisted employment decisionmaking into the FEHA analytical framework. The regulations protect against potential employment discrimination as a result of the use of artificial intelligence, algorithms, and other “automated-decision systems.” It is unlawful for an employer or other covered entity “to use an automated-decision system or selection criteria . . . that discriminates against an applicant or employee or a class of applicants or employees on a basis protected by the [FEHA].” [New 2 CCR §11008 et seq.]

[7:232] **Title VII Protections Not Limited to Minorities:** “Race” and “color” protections are not limited to groups traditionally perceived to be minorities. Title VII prohibits discrimination against Whites as well as Blacks, Hispanics or Asians, and discrimination against males as well as females. [*Ames v. Ohio Dept. of Youth Services* (2025) 605 US 303, 304, 145 S.Ct. 1540, 1542]

[7:252a] **FEHA—Discrimination Against Noncitizens:** [See *Munoz v. Regents of Univ. of Calif.* (2025) 113 CA5th 466, 469-471, 335 CR3d 468, 470—university’s employment policy, that prohibited hiring undocumented workers who lacked federal work authorization, facially discriminated based on immigration status and not justified by fear that federal government would initiate enforcement action against university]

[7:262a] **EEOC Rescinds Workplace Harassment Guidance:** In early 2026, the EEOC Commission voted to rescind its Enforcement Guidance on Harassment in the Workplace. [See <https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance>]

[7:262b] **Discrimination Based on Gender Identity:** [See *United States v. Skrametti* (2025) 605 US 495, 510-516, 145 S.Ct. 1816, 1829-1831—state law prohibiting “certain medical care for transgender minors” constitutional under 14th Amendment’s Equal Protection Clause and subject to rational basis review as an age and medical use regulation]

[7:611, 7:621] **Title VII and U.S. Constitution—Religious Belief:** An employee’s sincerely-held religious belief is protected even if the belief is not reflected in a biblical passage or scripture. [*Damiano v. Grants Pass School Dist. No. 7* (9th Cir. 2025) 140 F4th 1117, 1155-1156]

[7:1481] **Labor Code §1197.5 (Discrimination in Pay)—Definitions of “Wages” and “Wage Rates”:** See ¶11:1077.6 of these Highlights.

CHAPTER 8

AGE DISCRIMINATION

[8:112.2, 8:120] **Prima Facie Case under ADEA—Substantial Age Difference Presumption:** Evidence that the Employer made remarks that an older worker was “out of touch,” “too old for this business,” “should start thinking about retiring,” and Employer “wanted only younger people with MBAs,” created a fact issue on whether the employer considered “age in general to be significant in making its promotion decisions.” This was sufficient to establish a prima facie case of age discrimination. While 10 years is the presumptive threshold for a substantial age difference, plaintiff overcame the presumption with evidence of these remarks. [*Caldrone v. Circle K Stores Inc.* (9th Cir. 2025) 156 F4th 952, 958-959]

[8:215] **Plaintiff’s Burden to Show Employer’s Reasons Pretextual:** [See *Caldrone v. Circle K Stores Inc.* (9th Cir. 2025) 156 F4th 952, 958-961—triable issue on pretext where evidence showed employer deliberately did not advertise regional director opening, a deviation from its standard policy, in order to promote younger employee, and made ageist remarks; plaintiff excused from applying for position since employer did not advertise it]

[8:740.1] **New California Regulations on Employment Discrimination in Use of Automated-Decision Systems and AI:** See ¶7:202 of these Highlights.

CHAPTER 9

DISABILITY DISCRIMINATION

[9:37] **Rehabilitation Act Private Right of Action—Confidentiality Requirements:** Employees may have a private right of action under the Rehabilitation Act for the employer’s violating the Act’s confidentiality requirements irrespective of whether employee is disabled. [See *Mullin v. Secretary of U.S. Dept. of Veterans Affairs* (11th Cir. 2025) 162 F4th 1296, 1308-1310]

[9:586] **Retirees As “Qualified Individuals” within Scope of ADA:** [See *Stanley v. City of Sanford, Fl.* (2025) 606 US 46, 65, 145 S.Ct. 2058, 2071—retiree who does not hold or seek a job at time of alleged disability discrimination not a qualified individual under Title I of ADA]

[9:814] **ADA Restriction on Employer’s Requiring Medical Examinations and Inquiries:** The ADA’s restriction on employers’ requiring medical examinations and making medical inquiries applies to all employees, even if they are not disabled, and an improper medical inquiry may qualify as discrimination on account of disability for which an award of back pay might be available. [*Nawara v. Cook County* (7th Cir. 2025) 132 F4th 1031, 1037-

1038—employer violated ADA for requiring employee on leave for nonmedical reason to undergo fitness for duty examination and sign medical information release forms]

[9:885] **ADA and Rehabilitation Act—Adverse Employment Actions, Harm Required:** To plead an “adverse employment action” under the ADA and the Rehabilitation Act, the employee need plead only some harm concerning an identifiable term or condition of employment. Though the adverse action must have left plaintiff worse off, the employee is not required to show a significant change or harm. [*Palmer as Trustee of Robert L. Palmer & Tamara C. Palmer v. Union Pac. R.R. Co.* (8th Cir. 2025) 139 F4th 970, 973; *Scheer v. Sisters of Charity of Leavenworth Health System, Inc.* (10th Cir. 2025) 144 F4th 1212, 1216]

[9:894] **Harm Required under Rehabilitation Act—Reassignment:** Reassigning an employee from a supervisory to a nonsupervisory role, even with no diminution in pay grade, salary, or benefits, may qualify as an adverse employment action. [*Herkert v. Bisignano* (4th Cir. 2025) 151 F4th 157, 164-165]

[9:925.5] **Persons Protected by ADA—Employer’s Medical Inquiries:** The employer may violate §12112(d) regarding medical examinations and inquiries “irrespective of [the employee’s] disability status,” where, for example, the employee shows the employer made an unlawful inquiry or violated confidentiality requirements after making a proper inquiry, and the employee suffered a tangible injury from the unlawful inquiry or disclosure. [*Mullin v. Secretary of U.S. Dept. of Veterans Affairs* (11th Cir. 2025) 162 F4th 1296, 1308-1310 (Rehabilitation Act case)—statute recognizes private right of action that protects employees regardless of their disability status; *Nawara v. Cook County* (7th Cir. 2025) 132 F4th 1031, 1037-1038 (ADA case)—employer’s making non-job related or business necessitated medical examinations and inquiries can “count as discrimination on account of disability even absent evidence that [plaintiff] had a disability or a perceived disability”]

[9:925.6] **Rehabilitation Act—Inquiring about Employee’s Medical Condition on FMLA Leave Form:** Requiring an employee to disclose medical information on an FMLA leave form is an “inquiry” by the employer within meaning of Rehabilitation Act. The restriction on medical inquiries cannot be avoided simply because the employer’s demand for information is “embedded in the mechanics of leave approval.” [*Mullin v. Secretary of U.S. Dept. of Veterans Affairs* (11th Cir. 2025) 162 F4th 1296, 1308-1310]

[9:1024] **ADA—Aiding Another Employee’s Request for Reasonable Accommodation Protected:** The ADA’s anti-retaliation provision protects employees who aid other employees in the exercise of their statutory ADA rights. [*Gray v. State Farm Mutual Automobile Ins. Co.* (6th Cir. 2025) 159 F4th 1024, 1033]

[9:1270.1] **ADA—Delay in Providing Accommodation may Qualify as Failure to Accommodate:** An employer’s unreasonable delay in providing the requested accommodation “may show a lack of good faith in the interactive process” and amount to a failure to provide reasonable accommodation. [*Strife v. Aldine Independent School Dist.* (5th Cir. 2025) 138 F4th 237, 246—employer delayed 6 months in providing requested accommodation]

and granted it only after employee initiated litigation]

[9:1547.1] **DOL Proposed Revisions to Rehabilitation Act Regulations:** The Department of Labor has proposed significant revisions to its implementing regulations for Section 503 of the Rehabilitation Act, including eliminating utilization goal requirements. [90 Fed.Reg. 28494 (7/1/25)]

[9:2159.6] **Retirees Not Protected by FEHA:** An employer’s denial of disability retirement benefits is not an adverse employment action under the FEHA. Disability retirement payments serve as income replacement for an employee who can no longer work. They do not facilitate a qualified employee’s continued employment, job performance, or opportunity for advancement. [*Lowry v. Port San Luis Harbor Dist.* (2025) 109 CA5th 56, 64-68, 330 CR3d 342, 347-349]

[9:2173.4a] **FEHA—Minor Vaccine Reaction Not a Disability:** A minor reaction to the Tdap vaccine almost 10 years before COVID-19 vaccines were available “does not show that [employee’s] decision not to receive a COVID-19 vaccine was a disability” under the FEHA. [*Allos v. Poway Unified School Dist.* (2025) 112 CA5th 822, 836-838, 334 CR3d 425, 437-438—court not bound to accept employee’s subjective belief she is disabled]

[9:2213.1] **FEHA—Employer’s Engaging in Interactive Process Re Possible Accommodation not an Admission it “Regarded” Employee as Disabled:** That the employer engaged in an interactive process regarding possible accommodations to evaluate an asserted disability is not an admission it regarded the employee as disabled. Any other conclusion would be contrary to public policy. [*Allos v. Poway Unified School Dist.* (2025) 112 CA5th 822, 837-838, 334 CR3d 425, 438]

[9:2247.12] **FEHA “Essential Functions”—Application:** During the pandemic, Employer hired Actor for a television role on condition he be vaccinated for COVID-19. Actor then sought an exemption from Employer’s mandatory vaccination policy, citing his history of blood clots, claiming vaccination would increase the risk of recurrence and Employer denied the exemption. Actor’s failure to accommodate claim failed because he was required to show he was qualified for the position, but by making a conditional offer of employment, Employer identified being vaccinated as a job requirement, and therefore Actor was not qualified. [*Sexton v. Apple Studios LLC* (2025) 110 CA5th 183, 206-207, 331 CR3d 337, 355-356]

CHAPTER 10

HARASSMENT

[10:8] **EEOC 2024 Guidance on Harassment in the Workplace Rescinded:** In January of 2026, the EEOC rescinded its 2024 Guidance on Harassment in the Workplace. [See <https://www.eeoc.gov/newsroom/eeoc-commission-votes-rescind-2024-harassment-guidance>]

[10:126.9, 10:186] **FEHA—Application—Plaintiff’s Secondhand Knowledge of Sexual Harassment:** Distributing a false sexualized image of plaintiff may constitute severe or pervasive harassment for purposes of creating a hostile work environment based on plaintiff’s secondhand knowledge that a topless photo purporting to depict her was widely circulated in the workplace and her employer failed to take immediate and ap-

propriate corrective action. [*Carranza v. City of Los Angeles* (2025) 111 CA5th 388, 403-405, 332 CR3d 778, 790-792]

[10:404 ff., 10:481.3] **Employer’s Response to Complaint of Harassment may be Actionable under FEHA and Gov.C. §12940 Despite Failure of Underlying Harassment Claim:** An employer is not liable when the coworker’s harassment occurs offsite and is not work-related. However, when the employer’s response to plaintiff’s complaint of coworker harassment is to take no action, a hostile work environment sexual harassment claim may be viable against the employer on the theory that the response “altered plaintiff’s work environment in an objectively severe manner.” A derivative claim under Gov.C. §12940(k), for failing to take reasonable steps to prevent the harassment, also may be available. [*Kruitbosch v. Bakersfield Recovery Services, Inc.* (2025) 114 CA5th 200, 207, 213-225, 336 CR3d 815, 820, 825-835]

[10:527.1, 10:529] **EFAA Preemption of Sexual Harassment Disputes:** See ¶18:311.4 of these Highlights.

CHAPTER 11

COMPENSATION

[11:153] **Employer’s Burden of Proof on FLSA Exemption:** The preponderance of the evidence standard applies when an employer seeks to show that an employee is exempt from the FLSA’s minimum wage and overtime pay provisions. [*E.M.D. Sales, Inc. v. Carrera* (2025) 604 US 45, 54, 145 S.Ct. 34, 41]

[11:167.1] **Department of Labor EAP Rules:** In light of a district court’s order staying and vacating the DOL’s 2024 EAP rules, the DOL is currently enforcing the 2019 rules. [See https://www.dol.gov/agencies/wh/d/overtime/rulemaking/faqs?utm_source=openai]

[11:674.1a] **Labor Commissioner’s Authority to Investigate Gratuity Violations:** Effective January 1, 2026, the Labor Commissioner may investigate employers, issue a citation, or file a civil action for gratuities taken or withheld in violation of Lab.C. §351. [New Lab.C. §351(b)]

[11:829.20] **Meal Breaks—Waiver on Long and Short Shifts:** Prospective revocable meal waivers signed by employees are enforceable “in the absence of any evidence the waivers are unconscionable or unduly coercive.” [*Bradsbery v. Vicar Operating, Inc.* (2025) 110 CA5th 899, 904-905, 332 CR3d 73, 77]

[11:1077.6] **Equal Pay Act—“Wages” and “Wage Rates” Defined:** The terms “wages” and “wage rates” include “all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.” However, these definitions do not apply to any other provision of the Labor Code. [New Lab.C. §1197.5(l)(3)]

[11:1086] **Equal Pay Act Statute of Limitations:** Effective January 1, 2026, the statute of limitations was extended to three years after the last date a violation occurred, allowing employees to recover for up to six years of violations. [Amended Lab.C. §1197.5(i)]

[11:1425.6] **Fees and Costs Available Where Employee Successfully Appeals Commissioner’s Ruling:** Though Lab.C. §98.2(c) does not authorize a fee award where the employee “appeals” an adverse ruling by the Labor Commissioner and prevails, the employee may be able to recover fees under other provisions of the Labor Code that authorize prevailing plaintiffs to recover fees and costs in civil actions involving wages, such as §218.5, §226, and §1194. [*Villalva v. Bombardier Mass Transit Corp.* (2025) 108 CA5th 211, 220-223, 227-228, 329 CR3d 478, 484-487, 491]

[11:1442.2] **Lab.C. §1194.2—Statutory Liquidated Damages Claims:** See ¶17:383.1 of these Highlights.

[11:1447] **“Headless” PAGA Claims—Review Granted:** See ¶17:779.6 of these Highlights.

CHAPTER 12

LEAVES OF ABSENCE

[12:56] **California Paid Family Leave (PFL) Benefits:** Beginning July 1, 2028, PFL eligibility will be expanded to allow employees to take time off to care for a “designated person,” defined as “any care recipient related by blood or whose association with the individual is the equivalent of a family relationship.” [New Unemp.Ins.C. §§3301, 3302, 3303]

[12:2165 ff.] **Witness/Victim Testimony Leave (Gov.C. §12945.8):** The California Legislature has reorganized the statutes that prohibit employers from discharging, discriminating or retaliating against employees who take time off for jury service, court appearances, or in circumstances related to qualifying acts of violence or crime. Provisions formerly in the Labor Code were moved into the FEHA (Gov.C. §12945.8) and are now enforced by the CRD rather than the DLSE. The reorganization also expanded protections in some circumstances, including for obtaining or seeking crime-related relief. [Amended Gov.C. §12945.8; repealed & reenacted Lab.C. §§230, 230.1]

[12:2345.7c] **Calculating Paid Sick Leave—“Exempt Employees” Includes Outside Salespersons:** The “exempt employee” calculation method set forth in Lab.C. §246(l)(3) applies to outside salespersons. [*Hirdman v. Charter Communications, LLC* (2025) 113 CA5th 376, 382-388, 335 CR3d 394, 398-404]

CHAPTER 13

WORKPLACE SAFETY

[13:321] **Cal OSHA Reporting—“Serious Injury or Illness”:** For Cal OSHA reporting purposes, the term “serious injury or illness” now includes silicosis and silica-related lung cancer. [Amended Lab.C. §6302(h)]

[13:509.1] **App-Based Drivers as Independent Contractors—Proposition 22:** [See *In re Uber Technologies, Inc.* (Cal-OSH App.Bd.) 2025 WL 356236—Prop. 22 does not conclusively classify drivers as independent contractors as a matter of law, and therefore Appeals Board must resolve fact issues on whether it has jurisdiction over employer to issue citations]

[13:712] **Good Cause for Late Appeal to Cal-OSHA Appeals Board:** [See

CHAPTER 14 UNFAIR COMPETITION

[14:136] **Trade Secrets:** A limited liability company's member list was a trade secret, even as to another member, where the list contained names, addresses, contributions, shares in profits and losses, and was the result of the company's significant expenditure of time and money to identify potential investors. [*Perry v. Stuart* (2025) 111 CA5th 472, 505-508, 333 CR3d 472, 502-504]

CHAPTER 15 PREEMPTION DEFENSES

[15:504.10b] **No Preemption of State Statute Governing Payment of Arbitration Fees:** The FAA does not preempt CCP §1281.98. [*Hohenshelt v. Sup.Ct. (Golden State Foods Corp.)* (2025) 18 C5th 310, 322-323, 335 CR3d 532, 538-539—failure of arbitration agreement's drafter to timely pay arbitration fees may be excused where nonpayment due to "good faith mistake, inadvertence, or other excusable neglect," and when statute is so interpreted it is not preempted]

[15:504.12] **Preemption by EFAA (Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act):** See ¶18:311.4 of these Highlights.

[15:504.12a] **What Constitutes Sexual Harassment Dispute under EFAA:** [See *Lee v. Marriott Int'l, Inc.* (ND CA 2025) 2025 WL 2689263, *9-12—EFAA applied even where plaintiff did not expressly plead sexual harassment but her complaint contained broader allegations of pregnancy and gender discrimination; and see *Anderson v. Louis Vuitton North America, Inc.* (CD CA 2025) 2025 WL 1591800, *4]

[15:509] **Lab.C. §4553's Increased Award for "Serious and Wilful" Misconduct:** [See *Department of Corrections & Rehabilitation v. Workers' Compensation App. Bd.* (2025) 17 C5th 510, 522-523, 329 CR3d 800, 806-807—"compensation" under §4553 does not include industrial disability leave or enhanced industrial disability leave]

CHAPTER 16 OTHER DEFENSES

[16:263.3] **Timeliness of CRD complaint:** [See amended Gov.C. §12960(f)(1)—tolling provision applies retroactively but not intended to revive already-lapsed claims]

[16:301] **CRD Issuance of Right-to-Sue Notice:** [See amended Gov.C. §12965(c)(1)(A)]

[16:683.3] **PAGA—Effect of Arbitration Finding on Employee's Standing to Pursue PAGA Claim:** [See *Gavriiloglou v. Prime Healthcare Mgmt., Inc.* (2025) 83 CA5th 595, 603-607, 299 CR3d 34, 39-42—arbitrator's finding that plaintiff did not suffer Labor Code violation did not preclude her from qualifying as aggrieved PAGA plaintiff]

[16:874] **Effect of Civ.C. §1668 on Release of Ordinary Negligence**

Claims: Section 1668 of the Civil Code does not necessarily apply to invalidate releases of conduct amounting to ordinary negligence. [*New England Country Foods, LLC v. VanLaw Food Products, Inc.* (2025) 17 C5th 703, 709-710, 331 CR3d 890, 893-894]

CHAPTER 17 REMEDIES

[17:383.1] **Statutory Liquidated Damages—Employer’s Good Faith Defense (Lab.C. §1194.2):** To avoid imposition of liquidated damages, the employer must show it “made a reasonable attempt to determine the requirements of the law governing minimum wages and a good faith effort to comply with it.” The employer’s failure to do so means the court must award liquidated damages. [*Iloff v. Lapaille* (2025) 18 C5th 551, 561-568, 335 CR3d 718, 722-728]

[17:610] **Attorney Fees—Prevailing Plaintiffs:** [See *Alvarado v. Wal-Mart Assocs., Inc.* (9th Cir. 2025) 156 F4th 917, 926-927 (applying Calif. law)—trial court abused its discretion for failing to provide “concise but clear” explanation for its fee award (reversing award for reconsideration where basis for calculation unclear)]

[17:621.1] **Attorney Fees in Class Settlements—Federal Courts:** The district court must consider whether the attorney fees awarded in a settlement agreement are unreasonably high when compared to the amount to be received by class members. [*In re California Pizza Kitchen Data Breach Litig.* (9th Cir. 2025) 129 F4th 667, 670-671, 674 (reversing fee award where district court did not assess actual value of settlement and compare it to fees requested)]

[17:648] **Standards for Prevailing Plaintiff Fees/Costs Award:** [See *Howell v. State Dept. of State Hospitals* (2024) 107 CA5th 143, 159, 327 CR3d 745, 758 (noting counsel not entitled to compensation for work merely because it was performed)]

[17:650] **PAGA Fees (CCP §1021.5):** The burden of demonstrating that all elements of CCP §1021.5 have been met is on the party seeking such fees. [*McDoniel v. Kavry Mgmt., LLC* (2025) 114 CA5th 949, 977, 337 CR3d 516, 539-540]

[17:651] **Availability of Fees under CCP §1021.5 in Employment Litigation:** [See *McDoniel v. Kavry Mgmt., LLC* (2025) 114 CA5th 949, 977-978, 337 CR3d 516, 539-540—employee must show litigation costs sought transcend employee’s personal interest)]

[17:662.1] **Fees Available on Review of Adverse Ruling by Labor Commissioner:** [See *Villalva v. Bombardier Mass Transit Corp.* (2025) 108 CA5th 211, 222, 329 CR3d 478, 486—employee who brought successful de novo claim in trial court after Commissioner denied employee’s claims may recover attorney fees]

[17:722] **Review Granted—Court Discretion to Reduce Attorney Fees:** The California Supreme Court has granted review on: (1) whether the trial court’s across-the-board fee reduction triggers heightened scrutiny of its fee order on appeal; and (2) did the trial court commit reversible error in reducing the fee request on an across-the-board basis. [*Cash v.*

County of Los Angeles (2025) 111 CA5th 741, 332 CR3d 934, rev.grntd. 8/20/25 (Case No. S291827)]

[17:772] **Review Granted—PAGA Statute of Limitations:** [*Williams v. Alacrity Solutions Group, LLC* (2025) 110 CA5th 932, 942, 331 CR3d 877, 885, rev.grntd. 7/9/25 (Case No. S291199)]

[17:779.6] **Review Granted—“Headless” PAGA claims:** The California Supreme Court has granted review to decide the following issues related to “headless” PAGA claims: (1) whether a PAGA action necessarily includes both individual and nonindividual PAGA claims, regardless of whether the complaint specifically alleges individual claims; and (2) may a plaintiff choose to bring only a nonindividual PAGA action. [*Leeper v. Shipt, Inc.* (2024) 107 CA5th 1001, 328 CR3d 632, rev.grntd. 4/16/25 (Case No. S289305) (lead case)]

[17:835.1] **PAGA—Costs Not Recoverable Against LWDA unless it Participated in Litigation:** A prevailing defendant cannot recover costs against the Labor and Workforce Development Agency if the agency did not participate in the litigation. [*Rose v. Hobby Lobby Stores, Inc.* (2025) 111 CA5th 162, 172-176, 332 CR3d 657, 664-666]

CHAPTER 18

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

[18:158.2] **Settlement Payments:** [See *Thomas v. Corbyn Restaurant Develop. Corp.* (2025) 111 CA5th 439, 453, 332 CR3d 839, 850—risk of loss from imposter’s fraudulent diversion of settlement wire transfer borne by party in best position to prevent the fraud; trial court must consider extent to which each party exercised ordinary care and may apportion loss accordingly]

[18:311.1, 18:626] **Requiring Employee to Sign Arbitration Agreement:** Requiring a prospective employee to sign a form arbitration agreement as a condition of employment may render that agreement unenforceable due to unconscionability. [*Fuentes v. Empire Nissan, Inc.* (2026) __ C5th __, __, 341 CR3d 186, __ (2026 WL 265574, *5)]

[18:311.4] **EFAA Preemption of Sexual Harassment Disputes:** Parties cannot contract around the EFAA to avoid its application by stating in their agreement that its construction and application is to be governed by state law. And plaintiffs in a sexual harassment dispute need not expressly invoke the EFAA in order to avoid arbitration. Conduct clearly indicating a desire to do so is sufficient. [*Casey v. Sup.Ct. (D.R. Horton, Inc.)* (2025) 108 CA5th 575, 583, 587, 329 CR3d 518, 524, 527; *Quilala v. Securitas Security Services, USA, Inc.* (2025) 117 CA5th 75, 87-88, 340 CR3d 89, 98-99]

[18:342] **Certiorari Granted—Federal Arbitration Act:** The U.S. Supreme Court will decide whether workers who deliver locally goods that travel in interstate commerce, but who do not transport the goods across borders nor interact with vehicles that cross borders, are “transportation workers” “engaged in foreign or interstate commerce” for purposes of ¶1 of the FAA. [*Flower Foods, Inc. v. Brock* (10th Cir. 2024) 121 F4th 753, cert.grntd. 10/20/25 (Case No. 24-935)]

[18:364] **Review Granted—PAGA and Arbitration:** [See *Osuna v.*

Spectrum Security Services, Inc. (2025) 111 CA5th 516, 524-526, 529, 332 CR3d 863, 871-872, 874, rev.grntd. 7/30/25 (Case No. S291614)]

[18:410.2] **Effect of Provider Rules on Who Decides Arbitrability:** [*Villalobos v. Maersk, Inc.* (2025) 114 CA5th 1170, 1186-1188, 337 CR3d 617, 626-628—incorporation by reference of provider rules in employment or consumer context does not clearly and unmistakably give arbitrator power to decide arbitrability]

[18:513.1] **ERISA—Employee Consent to Arbitrate:** An employer cannot create a valid arbitration agreement by unilaterally modifying its ERISA plan to add an arbitration provision after the employee has joined the plan. [*Platt v. Sodexo, S.A.* (9th Cir. 2025) 148 F4th 709, 714-715]

[18:620.2b ff.] **Arbitration—Construing Multiple Agreements/Documents Together for Unconscionability:** [See *Silva v. Cross Country Healthcare, Inc.* (2025) 111 CA5th 1311, 1328-1331, 334 CR3d 74, 89-92; *Wise v. Tesla Motors, Inc.* (2025) 117 CA5th 325, 337-341, 340 CR3d 291, 301-305; *Gurganus v. IGS Solutions LLC* (2025) 115 CA5th 327, 336-340, 338 CR3d 36, 43-47]

[18:740.6] **Waiver of Right to Arbitration for Failure to Pay Fees:** The drafting party’s failure to pay arbitration fees and costs within 30 days of the due date may constitute a waiver of the employer’s right to proceed in arbitration unless its failure was the result of good faith mistake, inadvertence or other excusable neglect. [*Hohenshelt v. Sup.Ct. (Golden State Foods Corp.)* (2025) 18 C5th 310, 323, 335 CR3d 532, 538]

[18:740.7] **CCP §1281.98 Not Preempted by FAA:** Section 1281.98 of the CCP, when “properly construed” as only mandating loss of the contractual right to arbitrate for nonpayment of arbitration fees when the nonpayment was wilful, grossly negligent, or fraudulent, is not preempted by the FAA. [*Hohenshelt v. Sup.Ct. (Golden State Foods Corp.)* (2025) 18 C5th 310, 323, 335 CR3d 532, 538]

[18:781.1] **Who Must Commence Arbitration:** When an arbitration agreement requires the “party asserting the claim” to “commence the arbitration,” the party asserting the legal claim must commence the arbitration proceeding, even though the opposing party is the one that wishes to proceed in arbitration. Therefore, a defendant’s failure to initiate the proceeding after successfully moving to compel arbitration is not a waiver of its right to arbitration. [*Arzate v. ACE American Ins. Co.* (2025) 108 CA5th 1191, 1201-1202, 329 CR3d 828, 835-836]

[18:824] **Costs in PAGA Actions:** See ¶17:835.1 of these Highlights.

[18:826] **Review Granted—Simultaneous CCP §998 Offers:** The California Supreme Court will decide whether the cost-shifting provision of CCP §998 is triggered where two independent §998 offers were made at the same time and one was invalid for lack of specificity and certainty. [*Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 CA5th 913, 326 CR3d 309, rev.grntd. 1/15/25 (Case No. S287946); *Zavala v. Hyundai Motor America* (2024) 107 CA5th 458, 328 CR3d 147, rev.grntd. 3/19/25 (Case No. S289000)]

[18:856] **Res Judicata/Collateral Estoppel Effect of Arbitration Award:** [See *Hansen v. Musk* (9th Cir. 2024) 122 F4th 1162, 1166, 1173-

1174—though an arbitrator’s decision can never preclude a Sarbanes-Oxley claim, a confirmed arbitral award can sometimes preclude relitigation of the issues underlying that claim]

CHAPTER 19

PRACTICE AND PROCEDURE

[19:770a] **Review Granted—“Headless” PAGA Claims:** See ¶17:779.6 of these Highlights.

[19:795.19] **FLSA—Effect of Arbitration Agreement on Requirement of Giving Opt-in Notice to Prospective FLSA Class Plaintiffs:** Prospective FLSA plaintiffs bound by valid arbitration agreements must arbitrate their claims. If there are triable issues with respect to the validity of their agreements, notice of the right to opt-in may be given to prospective plaintiffs even if they might be subject to arbitration under those agreements, but if the validity of the arbitration agreement is not in dispute, the district court abuses its discretion by authorizing notice to prospective plaintiffs who are subject to arbitration. [*Harrington v. Cracker Barrel Old Country Store, Inc.* (9th Cir. 2025) 142 F4th 678, 683-686]