CA Employment Law Update

Kristen Nesbit
Co-Regional Managing Partner,
Fisher Phillips
knesbit@fisherphillips.com
213-330-4455

June 30, 2025

- **2,189 bills introduced in 2024!**
- Busiest legislative session in California history.
- More than 10% increase from last legislative session.

Minimum Wage Increases on the Horizon

- Statewide minimum wage for all employers increased to **$16.50** per hour on January 1, 2025
- What is the impact of a $16.50 state minimum wage?
  - Minimum salary for exempt employees rises from $66,560 to $68,640.
  - Minimum hourly rate for inside sales exemption rises from $24 per hour to $24.75 per hour.
  - Tool rate increases from $32 per hour to $33 per hour.
  - July 1, 2025 increases
    - Los Angeles - $17.87/hr.
    - L.A. County - $17.81/hr.
    - Pasadena - $18.04/hr.
    - Santa Monica - $17.81/hr.

*Los Angeles Hotel and Airport Workers - $22.50/hr.

*Santa Monica Hotel Workers - $22.50/hr.

AB 2288/SB 92 – PAGA Reform

- Legislation came after months' long negotiation between business community and labor leaders, and as part of a larger negotiation involving various propositions on the ballot.
- Multiple changes to PAGA that impacts how we prevent and respond to PAGA claims.
  - Penalty modification
  - Restricting scope of claims to those that the plaintiff suffered.
  - Implementing manageability standards in litigation.
  - Cure provisions

AB 2288/SB 92 – PAGA Reform

- Perhaps the greatest benefit is an employer's ability to reduce penalties by up to 85% percent to the extent it regularly takes "reasonable steps" to ensure wage-hour compliance. Reasonable steps include, but are not limited to, the following:
  - Conducting payroll audits;
  - Updating employee handbook and stand-alone policies and procedures;
  - Training managers on wage-hour requirements and consideration of extending it to non-managerial employees as well.
  - Taking corrective action against managers who violate policy/wage-hour law.

AB 1034 – PAGA Exemption for Unionized Construction

- Extends a PAGA exemption for employers in the construction industry covered by a collective bargaining agreement until **2038**

- The CBA must:
  - Prohibit all violations of the Labor Code that would fall under PAGA and a grievance and arbitration process to resolve those violations
  - Expressly waive PAGA in clear and unambiguous terms
  - Authorize the arbitrator to award all remedies available under PAGA

SB 399 – Employer Communications

- Prohibits threatening to discharge, discriminate, retaliate against, or carry out those actions against employees who decline to attend an employer-sponsored meeting, or who decline to participate in, receive, or listen to, communications regarding an employer's opinions on religious or political matters.
- The new law defines religious matters as matters "relating to religious affiliation and practice and the decision to join or support any religious organization or association." Political matters are defined as matters "relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization."
- Would have a major impact on employers facing union campaigns.
- Follows similar enactment in about 10 other states and likely will be immediately challenged as violating First Amendment and preempted by NLRA

AB 2299 – Whistleblower Posting Requirement

- Under existing law, California employers are required to post notice containing employee rights and responsibilities under the state's whistleblower laws, including the telephone number of the state whistleblower hotline.

- AB 2299 requires the Labor Commissioner to develop a model posting that complies with these requirements. This template is required to be posted on the Labor Commissioner's website.

- AB 2299 provides that an employer who posts the Labor Commissioner's model template shall be deemed in compliance with the legal requirement to provide a workplace posting.

- *www.dir.ca.gov/dlse/whistleblowersnotice.pdf*

AB 2499 – Victims of Violence

- **This new law strengthens the protection of victims of crimes by identifying it as a protected category under FEHA and allowing for claims under FEHA to be brought for adverse employment actions taken against a victim of a crime.**
  - Domestic violence, sexual assault, stalking, acts that cause bodily injury or death, acts in which a firearm or other dangerous weapon is used or brandished, and acts in which an individual uses or threatens to use force against another individual to cause physical injury or death.
  - Reasonable accommodations for victims of domestic violence, sexual assault and stalking.
  - July 1, 2025- Notice Must Be Provided to Employees
    - CRD to publish a form notice regarding employee protections under AB2499
    - https://www.dir.ca.gov/dlse/victims_of_domestic_violence_leave_notice.pdf

AB 2499 – Victims of Violence

- Includes a new posting notice.
- Expands the definition of “family member” from an immediate family member to the expansive definition of “family member” under the California Family Rights Act (“CFRA”), including a “designated person”.
- Entitles employees working for an employer with 25 or more employees who has a family member who is a victim of a qualifying act of violence to certain protections, including:
  - Taking time off work to assist a family member to obtain relief (such as a temporary restraining order).
  - Taking time off work to assist a family member to obtain victim services (such as medical attention, psychological counseling, and safety planning).

AB 2499 – Victims of Violence

- **Extends the obligation to provide reasonable accommodations to an employee whose family members is a victim of a qualifying act of violence who requests an accommodation for the safety of the employee while at work.**

- **Establishes various limitations on leave provisions, including the following:**
  - Allows employers to limit the total amount of leave taken to 12 weeks (which runs concurrently with CFRA and FMLA leave).
  - Provides that if the employee's family member is a victim who is not deceased (and the employee is not a victim) leave for specific purposes may be limited to 5 days.
  - Provides that if the employee's family member is a victim who is not deceased (and the employee is not a victim) total leave may be limited to 10 days.

AB 2123 – Paid Family Leave

- Employers will now be prohibited from requiring employees to take up to two weeks of earned but unused vacation before receiving benefits under California's paid family leave program.
- Law will likely result in the need to amend Paid Family Leave policies in employee handbooks.

SB 1100 – Employment Discrimination: Driver's Licenses

- **Makes it unlawful for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license unless both of the following are satisfied:**
    - The employer reasonably expects driving to be one of the job functions for the position; and
    - The employer reasonably believes that satisfying the job function using an alternative form of transportation (such as ride hailing, taxi, carpooling, bicycling, walking) would not be comparable in travel time or cost to the employer.

SB 988 – Freelance Worker Protection Act

- Applies to independent contractors hired to provide "professional services" (LC 2778) for $250 or more.
- "Professional services" includes marketing, human resources, travel agents, graphic designers, grant writers, fine artists, photographers, videographers, writers, editors, content creators, barbers, cosmetologists, and more.
- Contract must be in writing (and maintained for 4 years)
- Contract must state:
  - Name and address of each party
  - Itemized list of all services to be provided (including value of services and rate/method of compensation)
  - Date by which freelancer must submit list of service rendered

SB 988 – Freelance Worker Protection Act

- Freelancer must be paid by contract date (or 30 days after services rendered if not specified)
- **Private civil enforcement (lawsuit):**
  - If worker requests but is refused a written contract – **amount of compensation determined by rate the freelancer reasonably understood to apply to the work.**
  - If worker requests but is refused a written contract – **additional $1000.**
  - If fail to pay on time – **twice the amount of unpaid compensation at the time compensation was due.**
  - Any other violation – **damages equal to the value of the contract or work performed (whichever is greater).**
- **Plus attorney's fees and costs, injunctive relief**

SB 3234 – Social Compliance Audits

- **Requires public posting of information related to voluntary "social compliance audits".**
- **A "social compliance audit" is a voluntary assessment of an employer's operations or practices to evaluate compliance with state and federal labor laws, including wage and hour, health and safety, and child labor.**
- **If employer conducts a "social compliance audit" to determine child labor law compliance, must post a report on its website detailing findings including:**
  - When the audit was conducted and whether the audit was conducted during the day or night shift
  - Whether the employer did or did not engage in in the use of child labor
  - A copy of any written policies regarding child labor
  - Whether children were exposed to hazardous or unsafe conditions
  - Whether children worked during school hours or during night hours

Other Legislation Signed Into Law

- **AB 1815** - CROWN Act amendments (eliminates "historically" from protective hairstyles and race; adds protections to Unruh Civil Rights Act)
- **AB 1976** – Requires Cal/OSHA to propose rule requiring first aid kits to include Narcan
- **AB 1996** – Requires Narcan at stadiums, concert venues and amusement parks
- **AB 1870** – Requires workers' compensation poster to advise employees of their ability to consult with a licensed attorney
- **AB 2975** – Requires Cal/OSHA to amend the hospital workplace violence prevention standard to include metal detectors and security guards at hospitals
- **SB 1137** – Amends FEHA to protect discrimination on the bass not just of individual protected traits, but also on the basis of combination of two or more protected traits ("intersectionality"). Will require update to EEO and Anti-harassment policies.

Vetoed And Stalled Bills

Vetoed or Stalled Bills

- **SB 1022** – Increase Statute of Limitation for Group FEHA Claims With CRD To 7 Years (Vetoed)
- **SB 1299** – Worker's Compensation Presumption for Heat Illness and Farm Workers (Vetoed)
- **SB 1345:** Prohibition of using criminal history in making employment decisions. (Stalled)
- **AB 2751** – Right to Disconnect. This bill grants employees the right to ignore work communications outside of work hours, except in emergencies or for schedule changes within 24 hours. (stalled)

Vetoed or Stalled Bills

- **AB 3058** – Universal Basic Income for AI Job Loss. This bill creates the California Unconditional Benefit Income (CalUBI) Pilot Program to provide monthly financial assistance to individuals unemployed due to automation or AI after exhausting their unemployment benefits. (Stalled)
- **SB 1434** – Massive UI Tax Increase. This bill raises the wage base and maximum weekly unemployment benefits by up to 55%, adjusts tax percentages for employer to be taxed at and provides new eligibility for unemployment insurance. (Stalled)
- **AB 2930** – Role of AI in employment and notifications to employee and applicant if AI is involved in decision-making process. (Stalled)

Case Law Update

Turrieta v. Lyft, Inc.
16 Cal. 5th 664 (2024)

Turrieta v. Lyft

Key Facts

- In the case at issue, multiple California plaintiffs filed separate PAGA claims against the rideshare company Lyft alleging similar legal violations of the state's Labor Code. One plaintiff, Tina Turrieta, reached a settlement in her representative PAGA action, and the court scheduled a settlement approval hearing.
- Two other plaintiffs, Brandon Olson and Million Seifu, had each filed their own separate representative PAGA lawsuits alleging overlapping or similar PAGA violations. They attempted to intervene in Turrieta's PAGA action, objected to her settlement, and filed motions to vacate the final judgment. The trial court rejected the attempted intervention, and a Court of Appeal affirmed.

Turrieta v. Lyft

Holding

- The California Supreme Court held that a plaintiff in one representative PAGA action does not have a right (1) to intervene in another PAGA action that includes overlapping or similar claims, (2) to object to a proposed settlement in that other PAGA action, or (3) to move to vacate a judgment in that other PAGA action.
- The court's decision reaffirms that PAGA actions are disputes between the employer and the state, with the PAGA plaintiff acting as a proxy on behalf of the government. PAGA actions are intended to benefit the state and the general public, the court reaffirmed, not the individual plaintiffs or their attorneys who are bringing the representative PAGA action.

Huerta v. CSI Electrical Contractors
319 Cal. Rptr. 3d 376 (2024)

Huerta v. CSI Electrical Contractors:

Wage & Hour Laws for Onsite Occupations

Key Facts

- George Huerta, the plaintiff, worked for CSI Electrical Contractors and the case focused on whether certain time spent on the employer's premises is compensable under Wage Order No. 16.
- The court concluded that time spent on employer-mandated exit procedures and during meal periods where employees cannot leave the premises is compensable.
- Huerta filed a class action for unpaid wages, and the case was moved to the U.S. District Court, which granted class certification and partial summary judgments in favor of CSI, leading to Huerta's appeal to the Ninth Circuit.

Holding: ***Employee time compensable***

- The holding determined that time spent on employer premises for exit procedures and travel between security gates and parking lots is compensable as "hours worked" under Wage Order No. 16.
- Case remanded for lower court to determine if this is "employer-mandated travel"

Bailey v. San Francisco Dist. Attorney's Office
16 Cal.5th 611 (2024)

Bailey v. San Francisco Dist. Attorney's Office

Issue

- Twanda Bailey, an African-American clerk in the San Francisco District Attorney's Office, sued her former employer for racial discrimination and harassment, retaliation, and failure to prevent discrimination in violation of California's Fair Employment and Housing Act. The claims stem from a single incident in which one of Bailey's co-workers with whom she shared an office called her the "N-word." The trial court granted, and the Court of Appeal affirmed summary judgment for the employer, concluding that no trier of fact could find severe or pervasive racial harassment based on being "called a '[N-word]' by a co-worker [rather than a supervisor] on one occasion."

Bailey v. San Francisco Dist. Attorney's Office

- California Supreme Court held that one comment could serve as the basis for a hostile work environment claim and that trial was required.
  - A jury could find it "degrading and humiliating in the extreme."
  - An employee may be unable to distance themselves from the alleged harasser.
  - Could impact the overall work environment to the point of making it hostile to a reasonable man or woman.

Bailey v. San Francisco District Attorney's Office:
Summary Judgment Reversed in Harassment Case

Key Facts

- Twanda Bailey, an African-American employee, filed a lawsuit against the office, former District Attorney George Gascon, and the City and County of San Francisco under the California Fair Employment and Housing Act.
- Bailey alleged racial harassment by coworker Saras Larkin, who used a racial slur, and retaliation by HR manager Evette Taylor-Monachino after reporting the incident.
- The trial court initially granted summary judgment for the City, but the California Supreme Court reversed it, identifying triable issues regarding harassment and retaliation claims.
- The court examined whether a single racial slur could create a hostile work environment and if obstructing harassment reporting constitutes retaliation.
- Bailey reported feeling ostracized by Taylor-Monachino, leading to anxiety and depression, but an investigation into Taylor-Monachino's conduct was "not-sustained."

Holding: ***Harassment claims context-dependent***

- The case was remanded for further proceedings to determine if Bailey experienced an adverse employment action.
- The court held that isolated harassment acts might be actionable if severe, considering the totality of circumstances, and emphasized the need to evaluate harassment claims contextually.

Bailey v. San Francisco District Attorney's Office:
Summary Judgment Reversed in Harassment Case

Why is this Case Important: ***FEHA harassment and retaliation***

- The case is significant for addressing FEHA issues, including the severity of isolated racial slurs and retaliatory conduct obstructing harassment reporting, leading to the reversal of the Court of Appeal's judgment.
- The case emphasizes evaluating the work environment by considering the totality of circumstances and the perspective of a reasonable person in the plaintiff's position.
- It highlights the importance of assessing the severity and pervasiveness of harassment, regardless of whether the harasser is a coworker or supervisor.
- The standards for employer liability are discussed, stressing the necessity for immediate and appropriate corrective action when harassment is reported.
- The concept of retaliation under California FEHA is examined, clarifying what constitutes an adverse employment action.
- The context and impact of alleged retaliatory acts are considered crucial in determining retaliation claims.

Okonowsky v. Garland
109 F.4th 1166 (2024)

Okonowsky v. Garland

- Lindsay Okonowsky, a former staff psychologist at the Federal Correctional Complex at Lompoc, discovered that a corrections lieutenant (Steven Hellman) with whom she worked and who was responsible for overseeing the safety of guards, prison staff, and inmates had created an Instagram page that contained multiple posts that were overtly sexist, racist, anti-Semitic, homophobic, and transphobic.
- Approximately 100 of Okonowsky's co-workers followed the page, which explicitly or impliedly referred to the prison, prison staff, and inmates. Additionally, some of the posts contained derogatory images resembling Okonowsky

Okonowsky v. Garland

- The issue here was that five posts relating to the plaintiff's sex "occurred entirely outside of the workplace" because the posts were made on a staff member's personal Instagram page and none of the five posts was ever sent to Okonowsky, displayed in the workplace, shown to Okonowsky in the workplace, or discussed with Okonowsky in the workplace without her consent. The lower court found in favor of the prison.
- The Ninth Circuit reversed, concluding that "offsite and third-party conduct [like the co-worker's Instagram page] can have the effect of altering the working environment in an objectively severe or pervasive manner."

Paleny v. Fireplace Products U.S., Inc.
103 Cal. App. 5th 199 (2024)

Paleny v. Fireplace Products U.S., Inc.

- Erika Paleny informed her manager at Fireplace Products that she would be undergoing oocyte retrieval procedures so she could donate and freeze her eggs for potential future use.

- Paleny alleged that her manager disapproved of her reproductive choices and harassed her for requesting the time off. After asking for additional time off for appointments related to her medical procedures, Paleny was terminated.

- Paleny's complaint alleged several FEHA violations, including harassment and discrimination based on sex (pregnancy), disability discrimination, and failure to accommodate.

Paleny v. Fireplace Products U.S., Inc.

- The trial court granted Fireplace Products' motion for summary judgment on the ground that egg retrieval and freezing procedures do not qualify as a "pregnancy-related medical condition or disability" and accordingly, are not protected by FEHA.
- The court of appeal affirmed the trial court's decision, noting that the provisions of FEHA are "narrowly drawn to cover only the period of *actual physical disability* on account of pregnancy, childbirth, or related medical conditions."
- Therefore, because Paleny was not pregnant or disabled by pregnancy or suffering from a medical condition related to pregnancy, she was not protected by FEHA.
- This case establishes that reproductive procedures that are not directly associated with pregnancy or childbirth (such as oocyte retrieval) are not protected by FEHA.

Cadena v. Customer Connexx LLC, 2024 WL 3352712 (9th Cir., July 10, 2024)

Cadena v. Customer Connexx LLC

Issue

- Customer Connexx operates a call center for an appliance recycling business, and plaintiffs Cariene Cadena and Andrew Gonzales worked as call center agents for the company.
- Agents used electronic timekeeping software to track their hours, but the call center computers allegedly needed frequent restarting during the workday. Cadena and Gonzales filed a collective action under the Fair Labor Standards Act (FLSA), claiming Connexx owed them unpaid overtime for time spent restarting computers before clocking in and out.
- In 2022, the Ninth Circuit in this case ruled that time spent restarting computers was compensable under the FLSA as an "integral and indispensable" duty. The case was remanded to the trial court to determine if the time spent was *de minimis* and therefore not compensable overtime.

Cadena v. Customer Connexx LLC

- Following remand, the district court granted summary judgment to Connexx, finding that the time spent restarting the computer was *de minimis*. Plaintiffs filed an appeal which brought the case back to the Ninth Circuit.
- In its latest decision, the Ninth Circuit affirmed that the *de minimis* doctrine is still valid but determined that summary judgment was inappropriate at this stage. When the summary judgment record was viewed in the light most favorable to plaintiffs, "the regularity of the work and the lack of practical difficult in recording the time favor a conclusion that the time at issue is not *de minimis*."
- The Ninth Circuit then remanded the case to the district court, stating a trial is needed to resolve disputed fact issues.

Garcia v. Stoneledge Furniture LLC
102 Cal. App. 5th 41 (2024)

Garcia v. Stoneledge Furniture LLC

- On her first day of work, Isabel Garcia completed all onboarding paperwork electronically. A few years later, when she sued her employer for sexual harassment under FEHA, the employer moved to compel arbitration pursuant to the arbitration agreement.

- However, Garcia claimed she never signed the arbitration agreement. The trial court denied the motion to compel arbitration because the employer failed to affirmatively prove the authenticity of the employee's signature.

- Specifically, the employer did not show that *only* Garcia could have executed the electronic signature on the arbitration agreement.

Garcia v. Stoneledge Furniture LLC

- The court noted that the party seeking to compel arbitration carries the burden of proof to establish the authenticity of the signatures. Here, the employer could have met this burden by presenting stronger evidence "that the signatory was required to use a unique, private login and password to affix the electronic signature, along with evidence detailing the procedures the person had to follow to electronically sign the document."
- Instead, the employer merely submitted conclusory evidence in a declaration that Garcia signed the arbitration agreement.
- This case is an important reminder that employers bear the burden of establishing the authenticity of an employee's signature on an arbitration agreement. Employers cannot merely conclude that an electronic signature is valid merely because it is present.

Vazquez v. SaniSure
No. 56-2022-00571632-CU-OE-VTA

Vazquez v. SaniSure:

Court Denies Arbitration Due to Lack of Agreement

Key Facts

- Vazquez was employed through a staffing agency in July 2019 and then hired directly as an at-will employee in November 2019, signing arbitration agreements before resigning in May 2021.
- Vazquez was rehired by SaniSure, Inc. four months after her initial employment without signing new arbitration agreements.
- Vazquez filed a class action complaint against SaniSure, alleging failure to provide accurate wage statements during her second employment period.
- SaniSure's motion to compel arbitration was denied because they could not prove that the arbitration agreements from Vazquez's first employment period applied to her second.

Vazquez v. SaniSure:

Court Denies Arbitration Due to Lack of Agreement

Holding: *Denied arbitration*

- The trial court's decision to deny the motion to compel arbitration was affirmed on appeal.
- The court held that SaniSure failed to provide evidence of an agreement to arbitrate claims from Vazquez's second employment period.

Why is this Case Important: *Arbitration agreement applicability*

- The case emphasizes the importance of ensuring arbitration agreements are explicitly applicable to each separate employment period, especially when there is a break in employment.

Quach v. California Commerce Club, Inc., 16 Cal.5th 562 (2024)

Quach v. California Commerce Club, Inc.

Facts

- An arbitration agreement was in place, binding arbitration for employment disputes.
- Commerce Club filed a motion to compel arbitration 13 months after Quach filed his lawsuit.
- From the time the lawsuit was filed to the time the MTCA was filed Commerce Club had did the following:
  - filed an answer,
  - engaged in discovery,
  - attended a case management conference where a trial date was set, and
  - took Quach's deposition

Quach v. California Commerce Club, Inc.

Holding

- No, there is no need to prove prejudice when a party claims the other waived their right to arbitrate. Commerce Club waived its right to arbitrate the dispute.

Key Takeaways

- The court abrogated the "prejudice" requirement under the CAA.
- The Supreme Court's guidance outlined in *Morgan v. Sundance, Inc.* applies to CA arbitration cases.
- Arbitration agreements should be enforced just as any other contract is enforced (the law of waiver applies to both).

Ramirez v. Charter Communications, Inc., 16 Cal.5th 478 (2024)

Ramirez v. Charter Communications, Inc.

Facts

- Charter moved to compel arbitration pursuant to an agreement between Ramirez and Charter.
- The trial court found the arbitration agreement was one of adhesion and was substantively unconscionable.
- The Court of Appeal affirmed.

Ramirez v. Charter Communications, Inc.

Holding Related to Unconscionability

- The court found the provision that limited the number of permitted depositions was not unconscionable. The court explained that, despite the limitations set forth in the agreement, the arbitrator had authority to order discovery that is appropriate to facilitate a fair arbitration of the claims.

Holding Related to Severability

- The CA Supreme Court only found three of four provisions the Court of Appeal found unconscionable as unconscionable.
- The court explained that "the appropriate inquiry is qualitative"

Ramirez v. Charter Communications, Inc.

Key Takeaways

- There is no bright line rule that requires a court to refuse enforcement if a contract has more than one unconscionable term.
- A court is not required to sever or restrict an unconscionable term if an agreement has only a single unconscionable term.

Questions?

Kristen Nesbit
Co-Regional Managing Partner,
Fisher Phillips
knesbit@fisherphillips.com
213-330-4455