Podcast

2023 Mid-Year Report: California Litigation Trends

By Michael D. Thomas & Mia Farber

July 24, 2023

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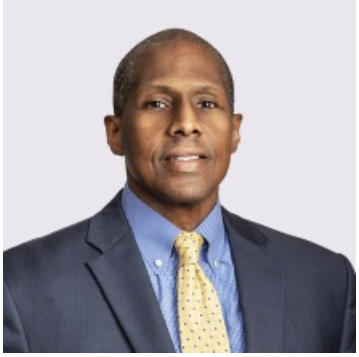

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July 24, 2023

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Transcript

Alitia Faccone:

No matter the month or year, employers can count on one thing, changes in workplace law. Having reached the midway point of the year, 2023 does not look to be an exception. What follows is one of a collection of concise programs, as We Get Work™ the podcast provides the accompanying voice of the Jackson Lewis 2023 Mid-Year Report. Bringing you up-to-date legislative, regulatory, and litigation insights that have shaped the year thus far and will continue to do so. We invite you and others at your organization to experience the report in full on JacksonLewis.com, or listen to the podcast series on whichever streaming platform you turn to for compelling content. Thank you for joining us.

Mia Farber:

Welcome to this podcast episode. My name is Mia Farber, and I'm a principal in the Los Angeles office.

Michael Thomas:

And I am Michael Thomas, and I'm a principal in our Orange County office.

Mia Farber:

Michael and I are here today to talk to you about some recent decisions. As you may have noticed, over the past six months, the California Supreme Court, as well as the state appellate courts have published a number of important decisions and granted review in a number of important decisions affecting wage and hour in particular. Today, we want to highlight for you a few of those decisions that are

currently up for review before the California Supreme Court. I will kick it off with a discussion of Iloff v. LaPaille.

There the issues on review before the California Supreme Court are first, must an employer demonstrate that it took affirmative steps to ascertain whether its pay practices complied with the Labor Code and the wage orders in order to establish a good faith defense to liquidate damages under Labor Code Section 1194.2 subdivision B. And then second, may a wage claimant prosecute a paid sick leave claim under Section 248.5 subdivision B of the Healthy Workplace Healthy Families Act of 2014 in a de novo wage claim trial conducted pursuant to Labor Code Section 98.2.

And just as a reminder, Labor Code Section 98.2 is the section of the Labor Code that allows a party who has lost a hearing before the DLSE to appeal that determination to the trial court, and then the trial court reviews the matter de novo. Basically the issue here is their private right of action under the Healthy Workplace Healthy Families Act of 2014. Just quickly, in Iloff, the plaintiffs filed wage claims with the Division of Labor Standards Enforcement or DLSE against defendant Cynthia LaPaille and Bridgeville Properties Inc. for unpaid wages in violation of the Labor Code.

They received a favorable ruling from the Labor Commissioner after hearing, and the respondents, LaPaille and BPI, appealed that determination to the Superior Court. In the subsequent Superior Court action, the employees were represented by the Labor Commissioner's Office. There was a trial de novo before the trial court on the wage claims. The trial court found the plaintiffs were entitled to unpaid wages and certain penalties, but rejected the plaintiffs' claims under the Unfair Competition Laws under 17200 of the Business and Professions Code.

The trial court also declined to award the plaintiffs liquidated damages, penalties for violations of the sick leave notice requirements, and also did not impose personal liability on Cynthia LaPaille, who was BPI CEO. The Court of Appeal then reversed in part holding that Cynthia LaPaille may be held personally liable due to her management role with BPI under Labor Code Section 558.1, which expressly permits personal liability for individuals "acting on behalf of an employer."

The Court of Appeal, however, affirmed the denial of liquidated damages for failure to pay minimum wage under Labor Code Section 1194.2A. There is an affirmative defense to the statute which allows the court to reduce or eliminate such damages where the employer shows it acted in good faith with reasonable grounds for believing it did not violate the law. In this particular case, because the plaintiffs had initiated the idea of working for BPI in exchange for rent rather than wages as basically independent contractors.

And due to the unsettled status of the law on the subject at the time, the trial court was found to have acted within its discretion in determining the defendants had acted in good faith. The Court of Appeal similarly affirmed the denial of the awards under the Unfair Competition Law. The Court of Appeal found that because the Unfair Competition Law only provides for equitable relief, the trial court had the discretion as to whether or not to award additional sums in the interest of justice even where there was a finding of a violation of the Labor Code.

The court found that the trial court was justified in exercising its discretion to not award additional monies. In reaching this conclusion, the Court of Appeal noted the parties appeared to lack understanding as to what the plaintiff's actual entitlement to wages were for services they performed. Therefore, as I said, the trial court was found to not have abused its discretion. And then finally, the Court of Appeal held plaintiffs did not have a private right of action for sick leave penalties because that private right of action only existed to the Labor Commissioner or the Attorney General's Office.

The fact that the plaintiffs were represented by the Labor Commissioner did not convert that into an action by the Labor Commissioner or Attorney General's Office. And with that, I will turn it over to you, Michael.

Michael Thomas:

Thanks, Mia. It's a lot of helpful information. I'm going to talk about two cases. First, Estrada v. Royalty Carpet Mills, and then second, Quach v. Cal. Commerce Club, Inc. Starting off with Estrada, the issue on review is whether trial courts have inherent authority to ensure that claims under PAGA will be manageable at trial and to strike or narrow such claims if they cannot be managed. For those of you that do PAGA litigation, you know that there are not many defenses in a PAGA case, not many affirmative defenses.

While class certification requirements like manageability are technically not required in PAGA cases, at least one district in the Court of Appeal dismissed a PAGA claim outright when the claims or defenses were too numerous, complex and/or individualized to be litigated or tried at an efficient manager, so relying on manageability. What were the facts of Estrada? In Estrada, plaintiffs brought a PAGA claim and class action claims primarily based on purported meal and rest period violations. The trial court dismissed the PAGA claim as unmanageable due to the number of individualized issues.

The Court of Appeal actually disagreed and found that courts do not have the discretion to strike a PAGA claim based on manageability. The Court of Appeal held doing so would also interfere with PAGA's purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that are not placed on the state. Estrada was actually decided after this other district in the California Court of Appeal held really just the opposite, that the court did have that inherent authority to narrow or strike PAGA claims based on manageability.

The California Supreme Court's decision in Estrada will really remedy the split between districts. If the court overturns Estrada, it will provide employer defendants with a powerful tool in PAGA actions. As I mentioned before, there really are not a lot of affirmative defenses in PAGA cases. That would be really beneficial for employers. The second case is Quach v. Cal. Commerce Club.

The issue on review here is whether California's tests were determining whether a party has waived its right to compel arbitration by engaging in litigation remains valid after the United States Supreme Court's decision in Morgan v. Sundance, Inc. In Morgan v. Sundance, Inc., the Supreme Court held there is no longer a prejudice required in order to find waiver of arbitration, meaning delay of arbitration could

mean the defense disappears. A showing of prejudice is not required. What were the facts of Quach?

At the trial level, the defendant, California Commerce Club, filed a petition to compel arbitration after 13 months of discovery. Quach argued that Commerce Club had waived its right to arbitrate by waiting 13 months to move to compel arbitration. And by engaging in extensive discovery during that period, Quach claimed the delay prejudiced him by forcing him to expend time and money preparing for litigation.

The trial court agreed with Quach, finding Commerce Club had waived the right to arbitrate by propelling a large amount of written discovery, taking Quach's deposition, and expending significant time meeting and conferring. The Court of Appeal actually disagreed with the trial court, stating that the California Supreme Court has made clear that participating in litigation alone cannot support a finding of waiver and fees and costs incurred in litigation alone will not establish prejudice on the part of the party resisting arbitration.

The decision in Quach will provide some clarity on the waiver issue and on the application of Morgan in state courts whether this predicate showing of prejudice is required or not. Mia, I know there's at least one other case that you wanted to discuss, so I'll turn it back to you to briefly discuss Bailey.

Mia Farber:

Thank you, Michael. Bailey v. San Francisco District Attorney's Office dealt with a case in which a former employee alleged hostile work environment based on race, retaliation, the failure to prevent discrimination, harassment, retaliation. And in this case, the San Francisco District Attorney's Office was successful in obtaining summary judgment. How did they do that?

Well, in this case, the employee based all of the claims of discrimination, harassment, et cetera, upon a single incident with a coworker, in which that coworker allegedly used highly offensive language and in particular a highly offensive racial slur. The trial court found that the district attorney's office was entitled to summary judgment because it ruled that a single incident by a non-supervisory employee was not severe or pervasive under the law, and therefore, it was not severe or pervasive enough to permit the plaintiff's claims to proceed at trial.

The California Court of Appeal affirmed that decision, but the California Supreme Court has taken it up on review on the narrow issue of whether the Court of Appeal properly affirmed summary judgment based on a single incident not being severe or pervasive. Michael, I know there's one last case you'd like to touch on.

Michael Thomas:

Sure. That's Kuciemba v. Victory Woodworks, and this actually involves two questions from the Ninth Circuit. The first is, if an employee contracts COVID-19 at his workplace and brings the virus home to his spouse, who does not work for the employer, does California's derivative injury doctrine bar the spouse's claim against the employer? The derivative injury doctrine bars third party torque claims

if they're collateral to or derivative of the employee's workplace injury, such as barring an errors claim for an employee's wrongful death.

That was the first question that came from the Ninth Circuit. The second question is, under California law, does an employer owe a duty to the household of its employees to exercise ordinary care to prevent the spread of COVID-19? What are the facts of this case? Mr. and Mrs. Kuciemba both tested positive and were hospitalized for COVID-19. Though Mr. Kuciemba was no longer an employee of Victory Woodworks, at the time he tested positive, he claimed that he contracted the virus from his former work site and filed a workers' compensation claim.

Now, Mrs. Kuciemba also filed a lawsuit against Victory woodworks on various negligence theories. Again, Mrs. Kuciemba is not an employee. The district court rejected Mrs. Kuciemba's argument finding that she failed to plead a plausible claim. Specifically, the court found the employer's duty was only to provide a safe workplace to its employees. The court found this duty did not extend to non-employees who are later found to have contracted a viral infection away from the workplace.

What does this really mean for employers? As the California Court of Appeal recently decided in a separate, but similar case, an employer may be sued for an employee's exposure to COVID-19 in the workplace. The decision by the California Supreme Court in Kuciemba will clarify employer's potential liability to not only employees, but their households for exposure to COVID-19 in the workplace.

It's a challenge for employers in California to stay on top of recent development in labor and employment law and also run a business, which is why we at Jackson Lewis look forward to keeping you informed on major updates. Mia, it is always a pleasure to work with you.

Mia Farber:

Thank you, Michael. It's always a pleasure to work with you as well. We all hope you enjoyed this podcast. Thank you for listening.

Alitia Faccone:

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