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# California Employment Law Notes

**May 2024**

## Employee Need Not Show "Significant Harm" Resulted From Discriminatory Transfer

### *Muldrow v. City of St. Louis*, 601 U.S. ___, 144 S. Ct. 967 (2024)

Sergeant Jatonya Clayborn Muldrow worked as a plainclothes officer in the Intelligence Division of the St. Louis Police Department until she was reassigned to a uniformed job elsewhere in the Department and replaced with a male officer. Although Muldrow's rank and pay remained the same, her responsibilities, perks and schedule changed. Muldrow no longer worked with the high-ranking officials in the Department's Intelligence Division — instead, she was supervising the day-to-day activities of neighborhood patrol officers. Also, she lost access to an unmarked take-home vehicle and had a less-regular schedule involving weekend shifts. Muldrow brought suit under Title VII, challenging the transfer as a discriminatory action based on her sex. The lower court affirmed summary judgment in favor of the City because the allegedly discriminatory transfer "did not result in a diminution to her title, salary, or benefits" and had caused "only minor changes in working conditions." However, in this opinion, the United States Supreme Court vacated the judgment and held that Muldrow could proceed with her claim to the extent she could show that the transfer brought about "some" harm with respect to an identifiable term or condition of employment, even though the harm was not "significant."

## NASA Scientist's Hostile Work Environment Claim Should Not Have Been Dismissed

### *Mattioda v. Nelson*, 98 F.4th 1164 (9th Cir. 2024)

Dr. Andrew Mattioda, a NASA scientist, sued the agency for discrimination and hostile work environment that allegedly began after he informed his supervisors of a disability to his hips and spine and requested upgraded airline tickets for work-related travel. The district court dismissed on summary judgment both the discrimination and hostile work environment claims, but the Ninth Circuit reversed the judgment as to the latter. Dr. Mattioda alleged that after he reported his disabilities to NASA, he received derogatory comments from his supervisors, diminished work opportunities, unwarranted negative job reviews and resistance to his requests for accommodation. After one of his supervisors learned of the cost of the requested travel upgrades, the supervisor openly discussed Dr. Mattioda's disabilities in front of others, compared the alleged disabilities to the supervisor's own hip issues and asked Dr. Mattioda why he could not just "tough it out or suck it up and travel coach." The Ninth Circuit held that Dr. Mattioda had alleged a plausible causal nexus between the claimed harassment and his disabilities. Further, the Court determined that the alleged harassment was sufficiently severe or pervasive to survive summary judgment. Finally, the Court affirmed dismissal of Dr. Mattioda's disability discrimination claim on the ground that NASA's proffered legitimate nondiscriminatory reason for selecting another employee for a promotion instead of Dr. Mattioda was not pretext for discrimination because the other candidate had more relevant experience.

# Court Properly Dismissed Lawsuit Of Employee Who Failed To Exhaust Administrative Remedies

## *Kuigoua v. Department of Veteran Affairs,* 101 Cal. App. 5th 499 (2024)

Arno Kuigoua, who worked as a registered nurse for the Department of Veteran Affairs, alleged in the complaint he filed with the EEOC and the California Department of Fair Employment and Housing (the "DFEH") that he was discriminated against on the basis of his sex (male). He also alleged retaliation for reporting the discrimination. The DFEH found no evidence that Kuigoua had suffered any discrimination on the basis of his gender or of any illegal retaliation and gave him a right-to-sue notice. In his subsequently filed civil suit, Kuigoua alleged he was the victim of harassment and discrimination based upon his gender, sex and/or sexual orientation as well as his race, color and/or national origin. The Department successfully moved for summary judgment on the ground that Kuigoua had failed to properly exhaust administrative remedies in that he asserted claims in his civil suit that were not identified in the DFEH complaint. The Court of Appeal affirmed dismissal because by "changing the facts [Kuigoua] denied the agency the opportunity to investigate the supposed wrongs [he] made the focus of his judicial suit."

# Employer Is Not Liable For Malicious Prosecution Against Former Employee

### *Lugo v. Pixior, LLC,* 101 Cal. App. 5th 511 (2024)

Saide Lugo sued her former employer Pixior and some of its employees for malicious prosecution after Pixior reported Lugo to the police for deleting "valuable computer files" after she "quit in a huff." Lugo was arrested and criminally prosecuted but the prosecutor dismissed the matter after it was discovered that one of Pixior's employee's had lied under oath at a preliminary hearing. In response to Lugo's malicious prosecution action, Pixior filed an anti-SLAPP motion to strike on the ground that by helping to bring a criminal prosecution the company had engaged in protected activity under the applicable statute. The trial court denied the motion to dismiss but the Court of Appeal reversed, holding that Lugo had failed to demonstrate a probability of success on the merits based on the fact that the police conducted an investigation that was independent of Pixior, which "shielded the Pixior parties from liability" for malicious prosecution.

# Stock Options Are Not Wages Under The Labor Code

### *Shah v. Skillz Inc.*, 101 Cal. App. 5th 285 (2024)

Gautam Shah sued his former employer Skillz, Inc. for breach of contract, alleging that Skillz did not have cause to terminate his employment and wrongfully prevented him from exercising the stock options he had earned as a Skillz employee. The company allegedly terminated Shah "for cause" because he had forwarded a confidential business report to his personal email; Shah, on the other hand, alleged he was terminated in retaliation for asserting his right to vested benefits. The jury found Skillz liable and awarded Shah a total of approximately $11.6 million for the loss of his stock options. The trial court conditioned its denial of Skillz's new trial motion on Shah's accepting a remittitur in the amount of $4.4 million; Shah accepted the remittitur before both sides appealed. The Court of Appeal reversed the judgment with directions that the trial court award damages to Shah in the amount of $6.7 million, which was the value of the lost stock options as calculated by Skillz's expert witness using the average price of Skillz stock after the IPO and the six-month lock-up period had ended (three and a half years after Shah's termination in January 2018). The Court further held that stock options are not "wages" under the Labor Code and, therefore, Shah was not entitled to recover any tort damages, including punitive damages or attorney's fees.

## Attorneys Who "Severely Over-Litigated" Wage Claims Were Still Entitled to Reasonable Fees

### *Gramajo v. Joe's Pizza on Sunset, Inc.,* 100 Cal. App. 5th 1094 (2024)

Elinton Gramajo worked as a pizza delivery driver for less than a year and sued his former employer for various Labor Code violations, including minimum and overtime wage claims. After nearly four years of litigation and extensive discovery, a jury awarded Gramajo only $7,659.93 though his attorneys sought approximately $324,000 in prevailing party costs and attorney's fees. The trial court denied the requests for fees and costs in their entirety, finding that plaintiff's counsel severely over-litigated the case and the requested fees and costs were grossly disproportionate to the limited trial success. As an example, Gramajo's counsel propounded 15 sets of written discovery requests and noticed 14 depositions, yet only admitted 12 exhibits at trial. The trial court relied on Code of Civil Procedure section 1033(a), which gives trial courts discretion to deny prevailing plaintiffs their litigation costs when they file their case as an unlimited civil proceeding but only recover an amount available in a limited civil case. The Court of Appeal reversed after concluding that Code of Civil Procedure section 1033(a) and Labor Code section 1194 (which provides a mandatory award of reasonable attorney's fees to employees who prevail in their actions) are in "irreconcilable conflict," but that Labor Code section 1194 ultimately controls because it is the more recently enacted and specific statute of the two. The Court then remanded the matter for the trial court to determine a reasonable fee and cost award.

# California Supreme Court Clarifies Scope of Compensable "Hours Worked"

## *Huerta v. CSI Elec. Contractors*, 15 Cal. 5th 908 (2024)

This decision arose from a class action asserting wage claims on behalf of contractors hired to assist with "procurement, installation, construction, and testing services" at a solar power facility on privately-owned land. The California Supreme Court answered three questions certified by the Ninth Circuit as follows:

- An employee's time spent on an employer's premises awaiting and undergoing an employer-mandated exit procedure that includes a visual inspection of the employee's personal vehicle is compensable as "hours worked";
- The time an employee spends traveling between a security gate and employee parking lots is compensable as "employer-mandated travel" under Wage Order No. 16 (governing the construction industry), if the security gate was the first location where the employee's presence was required for an employment-related reason other than the practical necessity of accessing the worksite; and

- When an employee is covered by a collective bargaining agreement that provides the employee with an “unpaid meal period,” that time is nonetheless compensable as “hours worked” if the employer prohibits the employee from leaving the employer’s premises or a designated area during the meal period and if this prohibition prevents the employee from engaging in otherwise feasible personal activities.

# New Period of Employment Requires New Arbitration Agreement

## *Vazquez v. SaniSure, Inc.*, 101 Cal. App. 5th 139 (2024)

Jasmine Vazquez began working at a pharmaceutical company through a staffing agency and was later hired by the company as an at-will employee. At the time of initial hire, Vazquez agreed that claims she had against the company would be submitted to and determined exclusively by binding arbitration and that she would bring any claim individually, waiving her right to pursue a class or collective action. Two years into her first period of employment she terminated her employment but then returned to the company a few months later and negotiated a new employment agreement. The parties did not discuss whether she would need to sign an arbitration agreement again or whether her claims related to her employment would be subject to arbitration. Her second period of employment with the company ended less than a year later.

After her second period of employment, Vazquez filed a class action in which she alleged the company failed to provide proper wage statements during her second period of employment. The employer moved to compel the complaint to arbitration. The trial court denied the motion to compel arbitration, holding that the parties did not agree to arbitrate claims arising from Vazquez’s second stint of employment, nor did the employer “show the existence of an implied agreement to submit claims arising from that second stint to arbitration; the agreement covering [plaintiff’s] first stint of employment terminated in May 2021, and there was no evidence that the parties intended it to apply thereafter.” The Court of Appeal affirmed the trial court’s decision as the employer “failed to carry its ‘almost impossible’ burden of showing that the trial court erred as a matter of law when it denied the motion to compel arbitration.”

# Employer Waived Its Right To Arbitrate By Litigating Civil Action

### *Semprini v. Wedbush Secs. Inc.*, 101 Cal. App. 5th 518 (2024)

Joseph Semprini originally filed a lawsuit against his employer in 2015, which included individual claims, class action claims and a cause of action under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). Soon after this, Semprini and the employer entered into a stipulation to arbitrate plaintiff's personal claims but have his class and PAGA claims proceed in court. The class was certified in 2017 and trial was scheduled to begin in October 2023. However, five months before trial, the employer attempted to compel the non-representative PAGA claims to arbitration, relying on the Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022) and the fact that class members who still worked for the employer signed new arbitration agreements in September and October 2022. The trial court denied the employer's motion, finding it had waived its right to compel arbitration by entering into the 2015 stipulation.

The Court of Appeal affirmed the trial court's decision to deny the motion to compel arbitration but on a different basis as "a subsequent change in the law may constitute good cause for failure to assert a right to arbitrate earlier." The appellate court held that even if *Viking River* or the 2022 arbitration agreements gave the employer a new right to move to compel certain claims to arbitration, the employer waited too long to make its motion, particularly in light of the looming trial date. "It is well established that a four to six month delay in enforcing the right to arbitrate may result in a finding of waiver if the party acted inconsistently with the intent to arbitrate during that window." *See also Reynosa v. Superior Court*, 2024 WL 1984884 (Cal. Ct. App. 2024) (yet another case holding that an employer waived its right to compel arbitration by failing to timely pay arbitration fees).

## Employee May Proceed With Lawsuit Despite Only Alleging "Representative" PAGA Claims

### *Balderas v. Fresh Start Harvesting, Inc.,* 101 Cal. App. 5th 533 (2024)

Lizbeth Balderas sued her former employer on behalf of 500 other current and former employees of an agricultural company, seeking civil penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"). In her complaint, Balderas stated she was "not suing in her individual capacity; she is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including herself and other aggrieved employees." The trial court struck her complaint based on *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); because she had not filed an individual action seeking PAGA relief for herself, the court found under *Viking River* she lacked standing to pursue representative PAGA claims on behalf of other employees. The Court of Appeal reversed this decision, following the California Supreme Court's decision in *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023). Under *Adolph*, the standing requirements to file a PAGA complaint should be interpreted broadly and Balderas satisfied them (despite only bringing claims in a representative capacity) because she alleged she was an "aggrieved" employee who was subject to one or more of the employer's Labor Code violations.

# Plaintiff's Attorneys Denied Additional Interest On Attorneys' Fees

## *Vines v. O'Reilly Auto Enterprises, LLC,* 2024 WL 1751760 (Cal. Ct. App. 2024)

Renee Vines filed an action against his former employer alleging discrimination and harassment under the Fair Employment and Housing Act ("FEHA") based on his race and age; that he was retaliated against when he was wrongfully terminated after he complained about the discrimination and harassment; and that his employer failed to prevent this discrimination, harassment and retaliation. At trial, Vines only won on his claims for retaliation and failure to prevent retaliation. While the jury awarded plaintiff $70,200 in damages, in September 2019 his attorneys sought $809,681 in attorney's fees. However, the trial court only awarded $129,540 in fees, which Vines successfully appealed. On remand, the trial court awarded Vines $518,162 in fees.

Vines then sought interest on the attorney's fees dating from the 2019 award and applied for and obtained a renewal of the judgment in the amount of $138,454 (i.e., the additional interest). The employer filed a motion to vacate the renewal of judgment, which the trial court denied. The employer successfully appealed from the order denying its motion to vacate the renewal of judgment, challenging only the amount of interest on the award of attorney's fees. Because the Court of Appeal reversed rather than modified the trial court's original award of attorney's fees, the interest on the attorney's fees awarded should have run from the date of reversal, not the original date of the award. "Whether an appellate court's disposition is a modification or a reversal depends on the substance and effect of the order … [b]ecause the effect of our opinion was to remand the matter for further hearing and factfinding necessary to determine an appropriate fee award, [our original opinion] was a reversal, not a modification."

# California Employers Score A Rare Victory On Wage Statement Penalties

## *Naranjo v. Spectrum Sec. Servs., Inc.*, 2024 WL 1979980 (Cal. S. Ct. 2024)

Gustavo Naranjo, a security guard, filed a putative class action against his former employer, alleging violations of California Labor Code section 226 based upon the employer's failure to report missed-break meal premiums on employees' wage statements. Labor Code Section 226 imposes a penalty of up to $4,000 per employee when an employer commits a "knowing and intentional failure … to comply" with the wage statement law. The employer argued that even if it did have an obligation to report premium pay owed on employees' wage statements, this failure was not "knowing and intentional" under Section 226 because up until 2022, it remained an unsettled issue whether wage statements needed to include premium pay for missed meal breaks.

The inaccurate wage statements were issued between June 2004 and September 2007, though the question of whether premium pay had to be recorded on employee wage statements remained unsettled law until 2022 (the first time this employer was before the Court). Thus, the Court held that "[g]iven the uncertainty and confusion, it was not objectively unreasonable for [the employer] to believe [during this period] it had no obligation to report meal premiums as wages. Imposing liability under these circumstances would penalize [the employer] not for failing to apprise itself of its obligations, but for failing to predict how unsettled legal issues would be resolved many years down the line."

The Court held that if an employer "reasonably and in good faith believed" it provided the proper wage statements, it has not violated Section 226. Previously, some California courts had held that a violation is "knowing and intentional" if the employer is aware of the "factual predicate" underlying the violation — for instance, that it has not reported certain information on an employee's wage statement, even if "the employer believed in good faith that it had complied with the law."

**Related Professionals**

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