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MCLE SELF-STUDY:

THE TOP EMPLOYMENT CASES OF 2024

Another tsunami of employment law cases hit in 2024—with multiple decisions from both the U.S. Supreme Court and the California Supreme Court, in addition to a deluge from state and federal appellate courts. We saw the end of *Chevron* deference. Arbitration remains a hotly litigated topic. Courts rejected challenges to AB 5 and to Proposition 22. And anti-discrimination and anti-retaliation laws are continuing to develop.

UNITED STATES SUPREME COURT

In ***Loper Bright Enterprises v. Raimondo***,[1] the U.S. Supreme Court overruled 40 years of its own precedent regarding *Chevron*[2] deference. It held that federal courts—not administrative agencies—are the final decisionmakers regarding the meaning of otherwise ambiguous statutes, eliminating any "mechanical" judicial deference to an agency's interpretation.

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Three days later, in ***Corner Post, Inc. v. Board of Governors of the Federal Reserve System,***[3] the Court held that a claim challenging a federal regulation accrues when the plaintiff was first injured, not when the regulation was initially promulgated. Because a newly incorporated company may now challenge virtually any regulation to which it is subject, regardless of how long it has been on the books, there is effectively no longer any limitations period for such lawsuits, as Justice Ketanji Brown Jackson wrote in dissent. In combination with *Loper Bright*, *Corner Post* creates the potential for successful challenges not only to new regulations, but also to well-established ones.

The U.S. Supreme Court also handed down two employee-friendly decisions of note in 2024. In ***Muldrow v. City of St. Louis***,[4] it held that an employee alleging a discriminatory job transfer need not show that the transfer caused significant or substantial harm, merely that it caused some harm with respect to an identifiable term or condition of employment. Justice Brett M. Kavanaugh issued a concurring opinion suggesting that "anyone who has been transferred because of race, color, religion, sex, or national origin should easily be able to show some additional harm—whether in money, time, satisfaction, schedule, convenience, commuting costs or time, prestige, status, career prospects, interest level, perks, professional relationships, networking opportunities, effects on family obligations, or the like."[5]

And in ***Murray v. UBS Securities, LLC***,[6] the Court held that a whistleblower bringing a claim under the Sarbanes-Oxley Act[7] need not show that an employer acted with retaliatory intent—only that the protected activity was a contributing factor in the unfavorable personnel action; demonstrating retaliatory animus is just one way of proving that the protected activity was a contributing factor.

CALIFORNIA SUPREME COURT

The California Supreme Court continued its long trend of handing down mostly employee-friendly decisions. For example, in ***Bailey v. San Francisco District Attorney's Office***,[8] the court held that the one-time use of a racial slur "may be actionable if it is sufficiently severe in light of the totality of the circumstances, and that a coworker's use of an unambiguous racial epithet, such as the N-word, may be found to suffice."[9] It further held that an HR manager's intentional obstruction of a complaint is actionable as retaliation.

In ***Quach v. California Commerce Club, Inc.***,[10] the California Supreme Court held that a party arguing waiver with respect to enforcing an arbitration agreement need not show prejudice, bringing California cases in line with the U.S. Supreme Court's 2022 decision in ***Morgan v. Sundance, Inc***.[11]

In a second important arbitration decision, ***Ramirez v. Charter Communications, Inc.,***[12] the state supreme court reversed the court of appeal's decision affirming of the trial court's denial of a motion to compel arbitration in a Fair Employment and Housing Act (FEHA)[13] case, instructing the court of appeal to determine whether multiple unconscionable provisions could be severed.

Two holdings are worth noting:

1. The substantive unconscionability of limitations on discovery is assessed based on circumstances known at the time of the agreement, not at the time of litigation or the facts that are case-specific to the particular plaintiff—overruling years of appellate decisions holding otherwise; and

2. A provision awarding interim attorneys' fees incurred in enforcing an arbitration agreement violates the FEHA.

Huerta v. CSI Electrical Contractors[14] addressed three questions certified by the Ninth Circuit with respect to the term "hours worked" under Wage Order No. 16.

The case addressed:

1. The compensability of time spent on premises "awaiting and undergoing an employer-mandated exit procedure that includes the employer's visual inspection of the employee's personal vehicle" (held: compensable);

2. Time spent traveling between a security gate and a parking lot (held: compensable as "employer-mandated travel" if it is the first location where the presence is necessary for an employment-related reason other than needing to access the worksite); and

3. Whether an employee covered by a collective bargaining agreement providing for an unpaid meal period who is restricted from leaving the premises or a designated area during that meal period has time compensable as hours worked (held: yes).[15]

Naranjo v. Spectrum Security Services, Inc.[16] handed a rare victory to employers with respect to wage statement penalties. It held: "If an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of [California Labor Code] section 226, then it has not knowingly and intentionally failed to comply with the wage statement law."[17]

Castellanos v. California[18] rejected a union-led challenge to Proposition 22, which enacted California Business & Professions Code section 7451 and established that drivers for app-based companies such as Uber, Lyft, and DoorDash are independent contractors, not employees. The court rejected the plaintiffs' argument that the statutory provision conflicted with the legislature's plenary power to create and enforce a workers' compensation system, as the legislature does not have the sole authority to govern workers' compensation.

OTHER COURT HOLDINGS

Other courts also weighed in with some important and surprising decisions in various areas of labor and employment law.

ARBITRATION

Only a few of the many recent key cases involving arbitration are noted here, with a trend showing California courts ruling against enforcing arbitration provisions.

Kadar v. Southern California Medical Center, Inc.[19] held that, for purposes of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFASASHA),[20] a dispute arises when a party first asserts "a right, claim, or demand"—for example, when a Civil Rights Department charge is filed—potentially bringing pre-2022 acts of harassment within the scope of the EFASASHA. Then, ***Doe v. Second Street Corporation***[21] held that where the plaintiff alleged harassment with continuing violations that took place both before and after the effective date of the EFASASHA, the harassment claims were exempt from arbitration, and all of the other claims asserted—even unrelated wage and hour claims—were also exempt because they were deemed part of the same case. Shortly after, ***Liu v. Miniso Depot CA, Inc.*** also held that "the plain language of the EFASASHA exempts a plaintiff's entire case from arbitration where the plaintiff asserts at least one sexual harassment claim subject to the act."[22]

Vazquez v. SaniSure, Inc.[23] held that when an employee signed an arbitration agreement during her first period of employment, stopped working, and later returned to work for the same employer, the arbitration agreement executed during the first period did not automatically apply to claims that arose during the second work period. The court found that the termination of the employment served to revoke the arbitration agreement absent evidence that the parties agreed to arbitrate claims from a subsequent employment period.

Mar v. Perkins[24] held that when an employer communicates that it has modified its policies to require arbitration and that continued employment constitutes an agreement to arbitration, an employee who continues working will be deemed to have agreed to the policy. However, if the employee promptly and clearly states a refusal to agree to the policies but continues working, there is no such agreement.

Ramirez v. Golden Queen Mining Company, LLC[25] held that people are capable of recognizing their own signatures, such that they cannot create a factual dispute as to a signature's authenticity by asserting that they do not remember receiving or signing a document—as opposed to denying that it is their signature. In comparison, ***Garcia v. Stoneledge Furniture, LLC***[26] held that the trial court properly denied defendants' petitions to compel arbitration where the plaintiff flatly denied electronically signing an arbitration agreement and the defendants failed to prove the authenticity of the signature on the agreement.

Cook v. University of Southern California[27] deemed an arbitration agreement substantively unconscionable because, among other things, it was of indefinite duration, covered claims outside of the employment relationship including those related to affiliated entities and people, and lacked mutuality.

Reynosa v. Superior Court of Tulare County[28] held that an employer waived its right to arbitrate pursuant to California Code of Civil Procedure section 1281.98 when it failed to make timely payments twice, and that all parties must explicitly agree to any extension on an arbitration payment due date.

DISCRIMINATION AND HARASSMENT

Both plaintiffs and defendants secured important victories in discrimination and harassment cases.

In ***Okonowsky v. Garland***,[29] the Ninth Circuit held that a co-worker's social media comments posted outside of the place of employment could be considered when assessing the totality of the circumstances in a Title VII harassment claim, "especially in light of the ubiquity of social media and the ready use of it to harass and bully both inside and outside of the physical workplace."[30]

In ***Rajaram v. Meta Platforms, Inc.***,[31] the Ninth Circuit held that 42 U.S. Code section 1981 prohibits discrimination in hiring against United States citizens based on their citizenship.

In ***Paleny v. Fireplace Products U.S., Inc.***,[32] the court of appeal held that a woman who underwent egg retrieval procedures to both donate and freeze her eggs was not protected under the FEHA because she was not pregnant, had no pregnancy-related disability, and her procedures did not qualify as a pregnancy-related medical condition or disability.

In ***Miller v. California Department of Corrections and Rehabilitation***,[33] the court of appeal held that a correctional officer whose disabilities rendered her permanently unable to perform her essential job duties was not subjected to disability discrimination when she was placed on an unpaid leave.

In ***Perez v. Barrick Goldstrike Mines, Inc.***,[34] a Family and Medical Leave Act (FMLA)[35] interference case, the Ninth Circuit held that an employer can contest a doctor's FMLA certification without having to present contrary medical evidence. In this case, the plaintiff was repeatedly caught on video engaging in physical activities that suggested he was faking his injuries and did not have a serious health condition.

In ***Behrend v. San Francisco Zen Center, Inc.,***[36] the Ninth Circuit held that the ministerial exception applied in a disability discrimination case brought by a staff member at a Buddhist temple whose role mostly involved cleaning, cooking, and service work, but who also performed some religious duties, such as meditating, attending talks, and performing ceremonial tasks.

PROCEDURAL DEVELOPMENTS

In ***Kuigoua v. Department of Veteran Affairs***,[37] the court of appeal affirmed the grant of summary judgment where the plaintiff's administrative complaint alleged discrimination based on sex and retaliation, but "he changed horses in the middle of the stream," and his lawsuit alleged discrimination based on sex, race, national origin, and the other characteristics based on different conduct by different people during a different time period.

In ***Jones v. Riot Hospitality Group LLC***,[38] the Ninth Circuit affirmed terminating sanctions against a plaintiff who intentionally deleted text messages with coworkers and coordinated with them to delete messages, as well as the assessment of fees and costs against the plaintiff and her lawyer for failing to provide the defense with recovered messages sent to counsel by an agreed-upon forensic expert.

On its final visit to the court of appeal, in the case of ***Simers v. Los Angeles Times Communications LLC,***[39] the trial court's award of attorneys' fees of about $3.265 million was affirmed—including the award for fees for the second trial even though it ended in a mistrial because of plaintiff's counsel's misconduct during closing argument, as well as for fees incurred during an unsuccessful appeal after the first trial. The court also affirmed the denial of attorneys' fees and costs incurred after the plaintiff rejected a compromise settlement offer[40] and failed to obtain a better result.

In ***Hardell v. Vanzyl***,[41] a case involving an out-of-state sexual assault by two investors against a company CEO, the court of appeal affirmed the individual defendant's successful challenge of California state courts' specific jurisdiction over him on the basis that he lacked sufficient suit-related contacts with the state. However, the trial court was directed to allow limited discovery to address whether it could exercise general jurisdiction over him based on the facts that he previously lived in California and continued to conduct business and activities in the state.

RETALIATION AND WHISTLEBLOWERS

In ***Kama v. Mayorkas,***[42] the Ninth Circuit held that the plaintiff did not show that the TSA's reasons for terminating him were pretextual where the temporal proximity (56 days) was not particularly compelling and was undermined by a close temporal link between his own behavior—failing to cooperate in an investigation, which was the stated reason for termination—and the adverse action.

In ***Vervenka v. Department of Veterans Affairs,***[43] the court of appeal held there is no equivalent to *Harris* "same decision" remedies under California Labor Code sections 1102.5 and 1102.6. A showing that the employer met its burden under section 1102.6 that it would have made the same decision for non-retaliatory reasons bars the plaintiff from all relief.

In ***Daramola v. Oracle America, Inc.,***[44] the Ninth Circuit held that a Canada-based remote employee had no recourse under the Sarbanes-Oxley Act,[45] the Dodd-Frank Act,[46] or California's Whistleblower Protection Act,[47] as those laws do not apply extraterritorially.

TRADE SECRETS/NON-COMPETES

Applied Medical Distribution Corp. v. Jarrells[48] involved an employer who was granted a permanent injunction and awarded prevailing attorneys' fees and costs against its former employee and his subsequent employer for misappropriation of trade secrets—even though a jury had awarded the employer no damages. Before he left, the employee had copied his employer's trade secrets and confidential information to a folder titled "Good Stuff."

Samuelian v. Life Generations Healthcare, LLC[49] held that a noncompete agreement related to the *partial* sale of a

business interest is not per se invalid, but must be evaluated under a reasonableness standard.

WAGE AND HOUR

AB 5 successfully withstood yet another challenge in ***Olson v. California***,[50] in which the Ninth Circuit sitting en banc rejected the plaintiff's equal protection claims, holding that AB 5's differential treatment of app-based work arrangements in the transportation and delivery industry survived rational basis review.

Shah v. Skillz Inc.[51] provides guidance regarding the treatment of stock and stock options as part of the damages in an employment case. Among other things, the court of appeal held that stocks are not wages under the California Labor Code and that, based on equitable considerations, damages from the loss of stocks need not be measured on the date of the breach (termination) when the plaintiff would not have been able to sell, but rather could determine damages based on a later date when the plaintiff could sell the stock without limitations.

ENDNOTES

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3. *Corner Post, Inc. v. Board of Governors of the Fed. Res. Sys.*, 144 S. Ct. 2440 (2024).
4. *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024).
5. *Id.* at 365.
6. *Murray v. UBS Sec., LLC*, 601 U.S. 23 (2024).
7. 116 Stat. 745.
8. *Bailey v. San Francisco Dist. Attorney's Off.*, 16 Cal. 5th 611 (2024).
9. *Id.* at 620.
10. *Quach v. California Com. Club, Inc.*, 16 Cal. 5th 562 (2024).
11. *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022).
12. *Ramirez v. Charter Comm., Inc.*, 16 Cal. 5th 478 (2024).
13. Cal. Gov't Code §§ 12900-12951, 12927-12928, and 12955-12956.1, and 12960-12976.
14. *Huerta v. CSI Electrical Contractors*, 15 Cal. 5th 908 (2024).
15. *Id.* at 915.
16. *Naranjo v. Spectrum Sec. Serv., Inc.*, 15 Cal. 5th 1056 (2024).
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18. *Castellanos v. California*, 16 Cal. 5th 588 (2024).
19. *Kadar v. Southern California Med. Ctr, Inc.*, 99 Cal. App. 5th 214 (2024).
20. 9 U.S.C. §§ 401-402.
21. *Doe v. Second Street Corp.*, 105 Cal. App. 5th 552 (2024).
22. *Liu v. Miniso Depot CA, Inc.*, 105 Cal. App. 5th 791 at 796 (2024).
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24. *Mar v. Perkins*, 102 Cal. App. 5th 201 (2024).
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28. *Reynosa v. Superior Ct. of Tulare County*, 101 Cal. App. 5th 967 (2024).
29. *Okonowsky v. Garland*, 109 F.4th 1166 (9th Cir. 2024).
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31. *Rajaram v. Meta Platforms, Inc.*, 105 F.4th 1179 (9th Cir. 2024).

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

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34. *Perez v. Barrick Goldstrike Mines, Inc.*, 105 F.4th 1222 (9th Cir. 2024).

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36. *Behrend v. San Francisco Zen Ctr., Inc.*, 108 F.4th 765 (9th Cir. 2024).

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41. *Hardell v. Vanzyl* 102 Cal. App. 5th 960 (2024).

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43. *Vervenka v. Department of Veterans Aff.*, 102 Cal. App. 5th 162 (2024), as modified (June 5, 2024); review denied (Aug. 14, 2024).

44. *Daramola v. Oracle Am., Inc.*, 92 F.4th 833 (9th Cir. 2024).

45. *Supra*, note 7.

46. 124 Stat. 1376.

47. Cal. Lab. Code § 1102.5.

48. *Applied Med. Distribution Corp. v. Jarrells*, 100 Cal. App. 5th 556 (2024).

49. *Samuelian v. Life Generations Healthcare, LLC*, 104 Cal. App. 5th 331 (2024).

50. *Olson v. California*, 104 F.4th 66 (9th Cir. 2024).

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