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California Supreme Court Employment Law Decisions: 2008-2009 Term

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Every year, the California Supreme Court decides cases that affect the workplace. Here are some of the most important employment law opinions since our last update in July 2008.

“Limited” Noncompete Agreements Rejected: *Edwards v. Arthur Andersen*

California law generally prohibits agreements that limit a departing employee’s freedom to compete with an employer. In *Edwards v. Arthur Andersen*, the California Supreme Court considered whether an employer could require an employee to refrain from working for a limited number of competitors.

Raymond Edwards was a tax manager for Arthur Andersen LLP. Following the Enron scandal, HSBC hired Edwards’ practice group. Before Edwards could accept a position with HSBC, he had to be released from a noncompete agreement he had signed with Andersen. Andersen would release Edwards from the noncompete agreement only if he signed a “Termination of Noncompete Agreement” (“TONC”), containing a general release of Andersen. Edwards refused to sign the TONC, Andersen terminated his employment, and HSBC refused to hire him.

The Supreme Court rejected any limited exception to California’s prohibition on noncompete

agreements. Andersen’s noncompete agreement was invalid because it restrained Edwards in his ability to practice his profession. Separately, the Court decided that the release of “any and all” claims did not invalidate the TONC, even though some types of claims, including indemnification rights, cannot be waived.

Administrative Procedures “Stop the Clock” for Filing a Lawsuit: *McDonald v. Antelope Valley Community College District*

An employee believed she was being discriminated against, so she complained to her employer. The employer began an internal process for investigating the complaint, but told the employee she could file a complaint with the Department of Fair Employment and Housing (“DFEH”) at any time. While the employer’s internal process was underway, the employee filed a claim with DFEH. But the employer claimed she was too late, because the law required her to bring her complaint to DFEH within one year of the allegedly discriminatory act.

The Supreme Court in *McDonald* applied the principle of “equitable tolling,” essentially “stopping the clock” on the statute of limitations while the employee pursued her internal complaint. Employers in cases like this are not harmed, the Court reasoned, because they are on notice of the claim and can gather

and preserve evidence—the principal policy behind the statute of limitations. Not allowing equitable tolling in these situations would “create procedural traps for the unwary” and encourage plaintiffs to duplicate complaints, to preserve their rights in different systems.

Public Employees Must Cooperate in Internal Investigations: *Spielbauer v. County of Santa Clara*

Public employees may be disciplined for refusing to cooperate in internal investigations, the Court ruled in *Spielbauer v. County of Santa Clara*. A deputy public defender refused to answer questions during an internal investigation. He invoked his Fifth Amendment right against self-incrimination. The investigator, a supervising attorney in the office, informed him that his cooperation would not be used against him in a criminal proceeding. He still refused to participate, and was fired.

The employee argued he was entitled to a formal grant of immunity before talking. The Supreme Court rejected that argument. The employer did not have the authority to confer that kind of immunity. The federal and state Constitutions allow the employer to discipline an employee for not cooperating in an investigation, so long as the employee is not required to surrender his right against self-incrimination. A public employer, in its administrative capacity, may

promptly and freely investigate and remedy misconduct. The decision also means public employees may not “refuse with impunity” to account for their performance on the public payroll.

State Employed Whistleblowers Can Go Straight to Court: State Board of Chiropractic v. Superior Court

State employees who bring “whistleblower” lawsuits first must file a complaint with the State Personnel Board (“SPB”). The SPB may conduct an investigation and issue “findings.” The employee may sue in superior court after participating in the SPB process, or if SPB does not respond in the time allowed.

In this case, the SPB issued findings adverse to the employee. She did not wish to appeal those findings before filing a complaint in court. The Supreme Court ruled she did not have to. Nothing in the statute required the employee to request a hearing before an administrative law judge before filing her lawsuit.

Union Can Be Prohibited from Putting Campaign Pamphlets in School Mailboxes: San Leandro Teachers Association v. San Leandro Unified School District

A teachers’ union distributed literature endorsing school board candidates in teachers’ mailboxes. The Supreme Court ruled the school district could prevent the use of mailboxes for this purpose. The district had a legitimate interest in not allowing mailboxes “to become venues for one-sided endorsement of political candidates by those with special access.”

Employees Seeking Penalties for Others Need Not File Class Actions: Arias v. Superior Court

When Jose Arias sued his former employer, some of his claims were based on two laws that allowed him to sue on behalf of other employees: California’s unfair competition law (“UCL,” Business & Professions Code section 17200) and the Labor Code Private Attorneys General Act of 2004 (“PAGA,” California Labor Code section 2698).

The UCL allows an employee to bring a lawsuit against an employer for an unlawful, unfair, or fraudulent business practice that actually injured the employee. An employee suing on behalf of others under the UCL must meet the certification requirements of a class action lawsuit, establishing that there are numerous, sufficiently similar claims such that they should be resolved in one case.

In Arias, the Supreme Court decided that PAGA claims can be brought as representative actions. A “representative action” is different from a class action. In a representative action, the plaintiff does not have to establish the class action pre-requisites (commonality, numerosity, typicality, etc.). PAGA was enacted to help enforce state labor laws by allowing “aggrieved employees” to act as “private attorneys general,” seeking only penalties (not wages or other damages) for violation of the Labor Code. So in PAGA cases, it is easier for employees to bring actions on behalf of others because they do not have to meet the class certification requirements of the UCL.

Unions Can Not Bring Associational UCL or PAGA Claims: Amalgamated Transit v. Superior Court

Decided in conjunction with the Arias case, Amalgamated Transit addresses whether unions may bring claims under the UCL and PAGA on behalf of their members, even when the unions are not the parties

harmed. This is called “associational standing” and is allowed in some types of cases. However, the Court decided unions could not bring associational standing claims under either the UCL or PAGA. Under the UCL, unions did not suffer from “injury in fact,” as the law requires. It was their members, not the unions themselves, allegedly harmed by any unlawful, unfair, or fraudulent business practices. And, PAGA requires that the individual bringing the claim be an “aggrieved employee.” Again, the union did not meet that definition.

Pending Cases:

Below are some important cases still pending before the Court:

- International Association of Firefighters v. Public Employee Relations Board.: (1) Is the decision by the Public Employee Relations Board not to issue an unfair labor practices complaint under the Meyers-Milias-Brown Act (California Government Code section 3500 et seq.) subject to judicial review? (2) Is a decision to lay off firefighters for fiscal reasons a matter that is subject to collective bargaining under the Act?
- Reid v. Google, Inc.: (1) Should California law recognize the “stray remarks” doctrine, which permits the trial court in ruling on a motion for summary judgment to disregard isolated discriminatory remarks or comments unrelated to the decision-making process as insufficient to establish discrimination? (2) Are evidentiary objections not expressly ruled on at the time of decision on a summary judgment motion preserved for appeal?
- Roby v. McKesson HBOC: (1) In an action for employment discrimination and hostile work

environment harassment, does Reno v. Baird (1998) 18 Cal.4th 640 require that the harassment claim be established entirely by reference to a supervisor's acts that have no connection with personnel management, or may such management-related acts be considered as part of the totality of the circumstances allegedly creating a hostile work environment? (2) May an appellate court determine the maximum constitutionally permissible award of punitive damages when it has reduced the compensatory damages, or should the court remand for a new determination of punitive damages in light of the reduced compensatory damages?

- McCarthy v. Pacific Telesis Group: (1) Does California Labor Code section 233, which mandates that employees be allowed to use a portion of "accrued and available sick leave" to care for sick family members, apply to employer plans in which employees do not periodically accrue a certain number of paid sick days, but are paid for qualifying absences due to illness? (2) Does California Labor Code section 234, which prohibits employers from disciplining employees for using sick leave to care for sick family members, prohibit an employer from disciplining an employee who takes such "kin care" leave if the employer would have the right to discipline the employee

for taking time off for the employee's own illness or injury?

- Hernandez v. Hillside, Inc.: May employees assert a cause of action for invasion of privacy when their employer installed a hidden camera to investigate whether someone was misusing an office computer, only operated the camera after normal working hours, and did not actually capture any video of the employees who worked in the office?
- Schachter v. Citigroup: Does an incentive compensation plan's forfeiture provision, which provides that employees forfeit the compensation both the stock and the money used to purchase it if they resign or are terminated for cause within a two-year period, violate California Labor Code sections 201 or 202?
- Pearson Dental Supplies, Inc. v. Superior Court: (1) What standard of judicial review applies to an arbitrator's decision of an employee's claim under the Fair Employment and Housing Act (California Government Code section 2900 *et seq.*)? (2) Can a mandatory arbitration agreement restrict an employee from seeking administrative remedies for violations of the Act?
- Brinker Restaurant Corp. v. Superior Court: This case presents issues concerning the proper interpretation of

California's statutes and regulations governing an employer's duty to provide meal and rest breaks to non-exempt workers.

- Harris v. Superior Court: Do claims adjusters employed by insurance companies fall within the "administrative exemption" (California Code of Regulations, Title 8, section 11040) to the requirement that employees are entitled to overtime compensation?
- Lu v Hawaiian Gardens Casino Inc.: Does California Labor Code section 351, which prohibits employers from taking "any gratuity or part thereof that is paid, given to, or left for an employee by a patron," create a private right of action for employees?

Pineda v. Bank of America: (1) When a worker files an action to recover penalties for late payment of final wages under California Labor Code section 203, but does not concurrently seek to recover any other unpaid wages, is the statute of limitations the one-year statute for penalties under California Code of Civil Procedure section 340, subdivision (a), or the three-year statute for unpaid wages under California Labor Code section 202? (2) May penalties under California Labor Code section 203 be recovered as restitution in an Unfair Competition Law action (California Business and Professions Code section 17203)?

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