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EMPLOYMENT LAW UPDATE

LEGISLATIVE

California

SB 294
Know Your Rights Notice Now Available

Effective February 1, 2026, employers must provide current employees and new hires with a standalone notice containing: 1) a description of rights relating to worker's compensation, paid sick days, misclassification protections, immigration agency inspections, right to organize and engage in concerted activity, and constitutional rights when interacting with law enforcement at the workplace; 2) a description of new legal developments pertaining to laws enforced by the California Labor and Workforce Development Agency that the Department of Industrial Relations ("DIR") identifies as "material and necessary;" and 3) a DIR created list of the agencies that enforce the laws listed in the notice. It also requires employers to notify an employee's emergency contact if the employee is arrested or detained while at work. These notices are now available through the DIR website: SB294 Know Your Right Notice (English) and Aviso Sobre sus Derechos Conforme a la SB294 (Spanish).

AGENCY

Federal

New 2026 IRS Mileage Reimbursement Rate

Effective January 1, 2026, the federal mileage rate for business use of a car, van, pickup, or panel truck is 72.5 cents per mile (up 2.5 cents from 2025). Under California Labor Code section 2802, employers must reimburse employees for all "necessary business-related expenses," including mileage incurred while using personal vehicles for business purposes. While employers can calculate actual costs, the IRS rate provides a defensible, reasonable approximation of actual expenses.

New EEOC Guidance on National Origin Discrimination

In November 2025, the Equal Employment Opportunity Commission announced updated materials to "advanc[e] robust enforcement and awareness around national origin discrimination and Anti-American bias." The newly-

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Business Litigation

Community Association Litigation

Employment & Labor

Ethics & State Bar Defense

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Trial & Civil Litigation

issued technical assistance document (*Discrimination Against American Workers Is Against The Law*) provides non-binding guidance for employers that Title VII protects all individuals from national origin-based discrimination. The agency also emphasizes that no common business reasons justify illegal national origin discrimination, such as customer or client preference, lower cost of labor, or beliefs that workers of certain national origin groups are more productive or have better work ethics.

JUDICIAL

California

Employee's Adverse Arbitration Findings on Individual Claims Does Not Defeat Employee's Standing under PAGA

In *Prime Healthcare Management, Inc. v. Superior Court*, a former employee of Prime Healthcare Management, Inc. ("Prime Healthcare") brought multiple claims for Labor Code violations and a representative claim under the Private Attorneys General Act ("PAGA"). The employee had signed an arbitration agreement at the start of her employment. Accordingly, all non-PAGA claims were compelled to arbitration, while the PAGA claims (both individual and representative) were stayed. The arbitrator found in favor of the employer on all Labor Code violations, concluding that the alleged violations did not occur.

Thereafter, the Superior Court of San Bernardino County confirmed the arbitrator's award and granted judgment on the pleadings against the employee on her PAGA claim, ruling that the arbitration results established she was not an "aggrieved employee" under PAGA, and therefore lacked standing to pursue the PAGA claim. The Fourth District Court of Appeal affirmed the denial of the employee's motion to vacate the arbitration award but reversed the judgment on the pleadings as to the PAGA claim, holding an adverse arbitration award on an employee's individual Labor Code claims does not bar the employee from pursuing PAGA claims.

After remand, the employer renewed its motion for judgment on the pleadings, arguing intervening authority, including *Adolph v. Uber Technologies, Inc*., undermined the prior decision, but the trial court denied the motion under the law-of-the-case doctrine. The Court of Appeal agreed, concluding that neither *Adolph* nor contrary decisions from other districts overruled or disapproved its earlier holding. Moreover, the court held that because no PAGA claims were submitted to arbitration, the arbitrator's findings had no preclusive effect. Absent the State's consent, arbitration findings cannot be used indirectly to extinguish remaining PAGA claims in Superior Court.

Timely Disclosure of Arbitration Agreements Crucial to Preserving Rights to Arbitrate and Enforce Class Waiver

In *Sierra Pacific Industries Wage & Hour Cases*, the underlying litigation began in October 2018 when a former Sierra Pacific Industries ("Sierra Pacific") employee alleged multiple wage and hour violations on behalf of eight putative classes of current and former nonexempt employees. Although many employees

had signed arbitration agreements, neither of the named plaintiffs, nor other class representatives, had done so. Sierra Pacific initially failed to raise arbitration as an affirmative defense and resisted discovery requests for signed arbitration agreements, despite a court order compelling production in February 2020. Instead, Sierra Pacific continued to withhold the documents for almost three years, while participating in extensive discovery with employees who had signed arbitration agreements. It also produced payroll and timekeeping records for signatory employees, obtained declarations from them, and interviewed them using materials that suggested they might share in any class wide recovery. Sierra Pacific also participated in two mediations aimed at resolving the claims of the full putative class. Sierra Pacific never acknowledged the existence of arbitration agreements or the possibility that the signatory employees' claims might fall outside the litigation entirely.

Class certification was granted in November 2022. Only then did Sierra Pacific produce more than 3,400 signed arbitration agreements. It then moved to compel arbitration as to absent class members who had signed the agreements. Plaintiffs opposed the motion on the ground of waiver and moved separately for evidentiary and issue sanctions based on the years-long failure to comply with the 2020 discovery order.

Applying the waiver principles set forth in *Quach*, the Court of Appeal found clear and convincing evidence that Sierra Pacific intentionally relinquished its right to compel arbitration. The court emphasized that Sierra Pacific demonstrated "markedly inconsistent" conduct with an intent to arbitrate.

The trial court imposed evidentiary and issue sanctions against Sierra Pacific for its repeated failure to comply with discovery orders, specifically its refusal to produce signed arbitration agreements for nonexempt employees. The appellate court concluded the sanctions order was not independently appealable. Unlike monetary sanctions exceeding $5,000, which are expressly appealable under Code of Civil Procedure section 904.1, evidentiary and issue sanctions are not. The court further held that such sanctions are not transformed into appealable orders merely because they relate tangentially to arbitration. Accordingly, the appeal from the sanctions order was dismissed for lack of jurisdiction.

Whistleblower Retaliation Protects Employee's Reasonable, Although Mistaken, Belief of Legal Violation

In *Contreras v. Green Thumb Produce, Inc.*, Manuel Contreras ("Contreras") worked for Green Thumb Produce, Inc ("Green Thumb"), and became aware that he was earning less than other employees performing similar duties, some with less seniority. He repeatedly raised the pay disparity with management, but no action was taken. After speaking with the Labor Commissioner's office and reviewing a FAQ about the California Equal Pay Act ("EPA"), Contreras believed his employer was violating equal pay laws and presented these concerns, along with the FAQ, to human resources. Shortly thereafter, Contreras' employment was terminated, with Green Thumb citing violations of company policy.

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Contreras filed suit in the Superior Court of Riverside County, alleging three causes of action against Green Thumb, including a claim under Labor Code section 1102.5(b) for whistleblower retaliation. At trial, the jury found in Contreras's favor on all claims and awarded damages. Green Thumb moved for partial judgment notwithstanding the verdict ("JNOV") on the whistleblower claim, arguing Contreras' misunderstanding of the EPA. Specifically, Contreras mistakenly believed that the EPA required equal pay for substantially similar work regardless of whether the pay disparity was based on sex, race, or ethnicity. The Superior Court granted the JNOV motion, reasoning that Contreras' belief did not relate to a violation of law.

The Fourth District reversed the JNOV, explaining that section 1102.5 protects employees who reasonably, though mistakenly, believe they are reporting a legal violation, and that an employee's misunderstanding of the law does not defeat a whistleblower claim as a matter of law. The court concluded that the reasonableness of the employee's belief was properly decided by the jury and remanded with directions to reinstate the jury's verdict.

Unconscionable Contract Terms, Which Are Collateral to Arbitration Agreement's Purpose and Claims at Issue, Should be Severed

In *Wise v. Tesla Motors, Inc.,* the Court of Appeal reversed an order denying Tesla's motion to compel arbitration, even while assuming (without deciding) two employee-friendly premises: (1) the arbitration clause and the separate non-disclosure agreement ("NDA") could be read together under Civil Code section 1642; and (2) two NDA provisions were unconscionable.

Civil Code section 1642 is a traditionally applicable contract canon stating that "[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." *Wise* held the Federal Arbitration Act does not preempt section 1642 because it "neither favors nor disfavors arbitration" and simply defines the scope of the parties' agreement under neutral contract principles, explicitly invoking broader "general contract law" framing.

However, the challenged NDA terms were collateral to the arbitration agreement. They did not affect who must arbitrate, what must be arbitrated, or how arbitration would proceed. Given the plaintiff's Fair Employment & Housing Act/public-policy claims actually at issue, there was "no nexus" and "little or no likelihood" that arbitration would be affected.

Applying the Supreme Court's severability analysis in *Ramirez v. Charter Communications, Inc*., the court held that the arbitration agreement was not permeated by unconscionability and should have been enforced with the offending provisions severed.

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The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act Barred Enforcement of Arbitration Agreement

In *Quilala v. Securitas, Security Services*, the Court of Appeal provided guidance on how courts should analyze motions to compel arbitration in cases involving sexual harassment claims. Francisco Quilala ("the Employee") alleged sexual harassment and other causes of action related to his former employment with Securitas Security Services ("the Employer"). The trial court raised The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act ("EFAA") on its own and denied arbitration after finding the Employee had stated a viable sexual harassment claim.

On appeal, the Employer argued that the EFAA did not apply because the Employee had not expressly invoked the statute. The appellate court rejected that argument, holding that an employee does not need to expressly cite the statute to elect a judicial forum and that, when the EFAA applies, arbitration agreements are unenforceable as to the entire case.

This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Christine Clark, Jessica O'Malley, Nicole Allen, Haley Murphy, Celeste Leung, Ethan Anderson, Ruby Carlon, Melina Corona, Alec Dea, Will Dischmann, Kendall Garald, Emma Hill, Kristin Kameen, Gabriella Kelly, Nia Perkins, Mariam Saleh, Shayan Shirkhodai, Jenny Sturman, Jackson Sullivan, or Ben Watson at (858) 755-8500; or Colette Asel, Steven Dawson, Steven Whang, Brett Greenberg, or Alysha Zapata at (310) 649-5772.