EMPLOYMENT
LAW UPDATE

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AGENCY

Federal

USPS Revised Postmark Rule Could Reflect Untimely Final Pay

Effective December 24, 2025, the U.S. Postal Service ("USPS") has instituted a revised postmark rule which has the potential of negatively impacting the timeliness of final pay checks, increasing risk of waiting time penalties. This revised rule redefines the meaning of a postmark, the date printed or stamped on mailed items. Previously, the postmark indicated the date USPS **received** the item. Under this revised rule, the postmark has been clarified to mean the date that USPS **processes** the item, meaning the postmark date may occur days after depositing the mail with USPS, which could reflect untimely mailing of time sensitive items, such as final pay checks. To mitigate liability, employers should calculate in extra time when mailing final pay checks, or use an alternate carrier that provides expedited and tracked delivery.

JUDICIAL

Federal

District Courts Have Broad Authority to Deny Enforcement of Arbitration Agreement Based on Defendant's Unfair Conduct in Class Action Process

In *Avery V. TEKsystems, Inc.*, Bo Avery and co-workers filed a class action for wage theft against their employer, TEKsystems, Inc. ("TEKsystems"). The class action alleged that TEKsystems misclassified class members as exempt from overtime to underpay them.

Shortly after class certification briefing closed, TEKsystems required a new **mandatory** arbitration agreement with a class waiver. TEKsystems disseminated the arbitration agreement by email, which included the company's own incendiary views about class actions, mocking them as "inefficient" and only to "enrich lawyers." This agreement required class members to either quit their jobs or affirmatively opt out of arbitration to remain in the class - the opposite of the typical opt-out structure of class actions under Federal Rule of Civil Procedure 23.

On June 10, 2024, after two years in litigation and after the class had been certified, TEKsystems filed a motion to compel arbitration and dismiss class. TEKsystems relied on the fine print in the new arbitration agreement to force each employee to try his/her claims individually in private arbitration.

The district court found the communications TEKsystems provided with the new arbitration agreement that disparaged class actions was misleading, potentially coercive, omitted key information, and confused recipients about their rights and deadlines, especially because it was sent right during the holiday season. The district court denied the motion, relying on its authority to ensure the fairness of class proceedings under the Federal Rules of Civil Procedure ("FRCP") rule 23(d).

On appeal, the Ninth Circuit Court of Appeals affirmed the district court's decision. The Ninth Circuit held that district courts have broad authority under FRCP 23(d) to refuse to enforce arbitration agreements when a defendant's conduct undermines the fairness of the class action process.

California

Defendant's Silence is Not Oral Agreement to Extend Legal Deadlines

In *Randolph v. Trustees of the California State University*, Teresa Randolph ("Randolph") originally filed suit against her former employer, California State University Chico State ("Chico State"), alleging employment discrimination and retaliation in 2019. Under the normal statutory rule California Code of Civil Procedure section 583.310 and emergency COVID-19 extensions, Randolph had until October 19, 2024, to get her case in front of a jury.

However, in March 2024 at a status conference, the trial court set the trial for February 3, 2025, roughly four months past the legal deadline. Chico State's counsel did not object to the late date. Seven months later, however, Chico State filed a motion to dismiss the entire case, arguing Randolph had run the statutory time limit.

Randolph's legal team argued that because Chico State's counsel did not object when the judge read the February 2025 date aloud, they had effectively entered into an "oral stipulation," or agreement, to extend the deadline.

The trial court ruled that Randolph had an obligation to object to the court setting the trial date beyond the statutory deadline and that Chico State's failure to object to the trial date was insufficient to establish an "oral stipulation" to commence the trial after the expiration of the statutory period. The case was dismissed without prejudice.

The California Court of Appeal reviewed for abuse of discretion. Randolph's appeal relied heavily on *Nunn v. JPMorgan Chase Bank* where a silence-as-agreement argument was upheld. In *Nunn*, there was a detailed record reflecting discussions among the attorneys on dates and affirmatively accepting a delay to accommodate their own schedules. Here, there was no transcript of the hearing and the court's minute order

listed only the dates and the attorneys' attendance. The minute order contained no record of a discussion, an agreement, or a waiver of the deadline.

The Court of Appeal affirmed. The court emphasized that the burden remains on the plaintiff to ensure his/her case is tracked for trial before the clock runs. A defendant's failure to object to a court error does not relieve the plaintiff of that duty. With the dismissal affirmed, Chico State was awarded its costs for the appeal.

While Employers Can Pursue Individual Settlements During Class Certification Proceedings, Courts Will Scrutinize Efforts and Accuracy of Employer's Communications to Employees

In *The Merchant of Tennis, Inc. v. Superior Court*, Jessica Garcia ("Garcia") filed a third amended consolidated class action complaint against The Merchant of Tennis, Inc., ("Merchant") alleging failure to pay wages and rest break requirements in May 2022. In May 2024, Garcia moved for class certification. Immediately after, Merchant approached current and former employees with individual settlement offers in exchange for releasing their claims. Merchant entered into approximately 954 individual settlement agreements ("ISAs").

Garcia challenged the ISAs, arguing the company had used fraud and coercion to obtain them, such as misrepresenting the scope of litigation and the claims being released. The Superior Court of San Bernardino County held the ISAs were voidable, finding Merchant made several problematic statements to employees. Specifically, these misrepresentations included: (1) baseless assertion that class members typically receive less than 40 percent of a settlement; (2) that the class action plaintiffs had dismissed certain claims; (3) describing the case as being in discovery without explaining that its own summary judgment motion had been denied after four years of litigation; (4) describing the ISAs as being limited when it actually released all claims; and (5) telling employees that arbitration agreements precluded participation without disclosing that only 40 percent of employees had such agreements.

After finding the settlements voidable, the court ordered the parties to develop curative notices for those who had signed ISAs, allowing them to revoke their agreements and join the class action. However, the parties could not agree on the notice's language, specifically on whether to inform class members that they might be required to repay the settlement amount if Merchant prevailed in the action. The trial court sided with Garcia, ruling that the notice should tell employees that settlement payments may be treated as an offset to any other recovery, but not that they would be required to return the payments. The judge reasoned that the employer-employee relationship involves higher risks of coercion and abuse, and that employees would be discouraged from participating in the class action if they thought they could not repay Merchant.

The Fourth District Court of Appeal granted Merchant's petition in a divided decision. It held that under the California Civil Code, class members who rescind their ISAs may be required to repay Merchant the consideration received if Merchant prevails, but such repayment can be delayed until the conclusion of litigation.

Arbitration Agreement is Governed by the Federal Arbitration Act Through Parties' Consent in Arbitration Clause

In *Tuufuli v. West Coast Dental Administrative Services, LLC*, Sinedou S. Tuufuli ("Tuufuli") was a customer service representative for West Coast Dental Administrative Services, LLC ("West Coast"). Upon hire, Tuufuli executed an arbitration agreement requiring that any employment-related disputes be resolved through binding arbitration. The agreement included a provision that stated it "shall be governed by the Federal Arbitration Act ("FAA") and, to the extent permitted by such Act, the laws of the State of California."

In April 2023, Tuufuli filed a complaint asserting individual and class claims for alleged Labor Code and Business and Professions Code violations. West Coast moved to compel arbitration of Tuufuli's individual claims and to dismiss her class claims, arguing that the parties' arbitration agreement was governed by the FAA.

The trial court granted West Coast's motion, finding the arbitration agreement was valid and enforceable under the FAA. The court relied on the agreement's express language stating that the agreement was governed by the FAA and on evidence of West Coast Dental's interstate activities. The court also dismissed Tuufuli's class claims because the agreement contained a class-action waiver.

Tuufuli appealed, challenging only the trial court's finding that the FAA applied to the arbitration agreement. The California Court of Appeal affirmed the trial court's order, holding that the FAA does not apply ***only*** to contracts involving interstate commerce, but also governs when parties expressly agree to its application. The appellate court emphasized that arbitration under the FAA is a matter of consent, not coercion, and parties are generally free to structure their agreements as they see fit. It declined to address whether the agreement independently involved interstate commerce based on West Coast's operations.

This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication intended to be educational regarding recent legislative changes and court decisions affecting California employers. If you would like more information regarding our employment team, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Christine Clark, Kristin Kameen, Nicole Allen, Ethan Anderson, Ruby Carlon, Melina Corona, Alec Dea, Will Dischmann, Kendall Garald, Emma Hill, Gabriella Kelly, Celeste Leung, Haley Murphy, Jessica O'Malley, Nia Perkins, Mariam Saleh, Shayan Shirkhodai, Jenny Sturman, Jackson Sullivan, or Ben Watson at our San Diego office: 11622 El Camino Real, Suite 300, San Diego, CA 92130, (858) 755-8500; or Colette Asel, Steven Dawson, Steven Whang, Jenny Che, Brett Greenberg, or Alysha Zapata at our Los Angeles office: 101 Continental Blvd., Suite 820, El Segundo, CA 90245, (310) 649-5772.