EMPLOYMENT
LAW UPDATE

PETTITKOHN
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AGENCY

Federal

EEOC Rescinds 2024 Enforcement Guidance on Workplace Harassment

On April 29, 2024, the Equal Employment Opportunity Commission ("EEOC") issued its *Enforcement Guidance on Harassment in the Workplace*, marking the agency's first comprehensive update on harassment since 1999. The roughly 90-page document broadly addressed harassment across all protected characteristics under federal EEOC law.

Less than a year later, on January 28, 2025, EEOC Acting Chair Andrea Lucas scaled back significant portions of the agency's Biden-era guidance related to gender identity discrimination and harassment, aligning the agency's position with President Trump's Executive Order 14168, signed on Inauguration Day.

In *Texas v. Equal Employment Opportunity Commission*, a federal district court in Texas upheld that shift, striking down portions of the 2024 guidance concerning bathroom access, dress codes, and pronoun usage. The court concluded that the EEOC had exceeded its statutory authority by interpreting "sex" to extend beyond the biological binary.

Continuing this course, on January 22, 2026, the EEOC voted 2–1 along party lines to rescind the 2024 Enforcement Guidance in its entirety. While some expected the Commission to withdraw only the sections addressing sexual orientation and gender identity, it instead eliminated the full guidance, including provisions covering race, color, pregnancy, disability, and other largely uncontroversial protected categories.

Importantly, this rescission does not change the obligations of California employers under Fair Employment and Housing Authority ("FEHA"). In response, federal lawmakers have introduced legislation—such as the BE HEARD Act of 2026—that would amend Title VII to explicitly include sexual orientation and gender identity.

JUDICIAL

Federal

Severability Clause Does Not Negate Clear Delegation Clause

In *Sandler v. Modernizing Medicine, Inc.,* Kara Sandler ("Sandler") worked for Modernizing Medicine, Inc. ("Modernizing"). Sandler signed an arbitration agreement that required any employment-related disputes be resolved through binding arbitration under the Federal Arbitration Act, following the procedures of the California Arbitration Act. Sandler filed suit against Modernizing in the Southern District of California, asserting state and federal claims of age and disability discrimination. Modernizing moved to compel arbitration. The district court denied Modernizing's motion, relying on several California state-court decisions that concluded a severability clause undermined a delegation of validity questions to the arbitrator.

The Ninth Circuit reversed an order denying a motion to compel arbitration and vacated a ruling that an arbitration agreement was unconscionable. The Ninth Circuit held the parties clearly and unmistakably agreed to delegate arbitrability by incorporating arbitral rules that assign validity questions to the arbitrator, and that the presence of a severability clause did not undermine that delegation or create ambiguity. The panel further opined that the district court misapplied federal law and erroneously relied on state-court decisions pointing to the existence of a severability clause to refuse to compel arbitration. The case was remanded to the district court with instructions to grant the motion to compel arbitration and to stay the case pending the completion of arbitration proceedings.

California

California Supreme Court to Review Whether Arbitration Agreement's FAA Provision Preempts State Law

In *Barbosa v. Sierra Pacific Orthopaedic Center Medical Group, Inc.*, the Court of Appeal affirmed the trial court order denying Sierra Pacific Orthopaedic Center's motion to compel arbitration and dismiss class claims, reasoning that even if an arbitration agreement has a provision stating it is governed by the Federal Arbitration Act ("FAA"), because preemption derives from constitutional law, not private agreement, without evidence of interstate commerce, California Labor Code section 229's limitation on arbitrability applies. Specifically, Labor Code section 229 permits wage claims to proceed in court "without regard to the existence of any private agreement to arbitrate" when the FAA does not apply. On March 25, 2026, the California Supreme Court granted a petition for review to determine "If an arbitration agreement provides that disputes will be resolved under the [FAA], do the FAA's substantive provisions apply and preempt inconsistent state laws regardless of whether interstate commerce is involved?"

Employee's Adverse Arbitration Findings on Individual Claims May Defeat Employee's Standing under PAGA

In *Sorokunov v. NetApp, Inc.,* Alexander Sorokunov ("Sorokunov") filed suit against his former employer, NetApp, Inc. ("NetApp"), seeking civil penalties under the Private Attorneys General Act ("PAGA"). Sorokunov alleged that NetApp improperly collected or retained portions of his wages, underpaid him relative to a contractual wage scale, and relied on a discretionary system to calculate commissions.

The trial court compelled arbitration of Sorokunov's individual, non-PAGA Labor Code claims but declined to stay the PAGA claim pending arbitration. As a result, arbitration proceeded first to determine whether Sorokunov himself had suffered any Labor Code violations.

Sorokunov did not prevail in arbitration. The arbitrator ruled in NetApp's favor on all individual Labor Code claims. NetApp then returned to court and moved for judgment on the pleadings as to the PAGA claim, arguing that the adverse arbitration ruling foreclosed the underlying violations. The trial court agreed and dismissed the PAGA claim.

On appeal, Sorokunov argued that the arbitration award should not have preclusive effect because the parties were not the same or in privity—given that a PAGA action is brought on behalf of the State—and therefore the issues decided in arbitration were not the same as those presented in the PAGA action. The Fourth District Court of Appeal rejected both arguments and affirmed the judgment.

The court declined to follow *Gavriiloglou v. Prime Healthcare Management, Inc.*, which had reached the opposite conclusion, and instead applied the doctrine of issue preclusion.[1] The court held that Sorokunov was barred from relitigating issues already decided against him in arbitration and therefore no longer maintained the representative PAGA action. However, the preclusive effect was limited to Sorokunov himself; it did not extend to the Labor and Workforce Development Agency ("LWDA") or other employees.

Application of *Cook* is the Fact-Specific Exception, Not the Rule

In 2024, the Second District Court of Appeal held in *Cook v. University of Southern California* that an arbitration agreement between a former university employee and the University of Southern California ("USC") was substantively unconscionable because it required the employee to arbitrate "all claims, whether or not arising out of Employee's University employment, remuneration or termination."

In *Ayala-Ventura v. Superior Court*, the Fifth District Court of Appeal was asked to review a trial court's decision on a janitorial service's motion to compel arbitration, where the agreement included claims "whether or not arising out of" employment. The trial court granted the employer's motion to compel, finding it was distinguishable from the agreement in *Cook*. The Court of Appeal affirmed the decision holding that *Cook* should be limited to its unique facts, specifically the fact that USC operates hospitals, sports venues, and numerous other facilities that could give rise to claims entirely unrelated to employment. The court reasoned that the concerns in *Cook* are largely atypical in the context of a regular employment relationship where a business provides a relatively narrow set of services. The court found that an arbitration agreement covering "all claims" between the parties may not present the same unconscionability concerns as it did for USC because the reasonable scope of claims that could arise is intrinsically tied to the employment relationship.

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, Kevin Chicas, 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, Lisa Thorsson 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, Jenny Che or Brett Greenberg at our Los Angeles office: 101 Continental Blvd., Suite 820, El Segundo, CA 90245, (310) 649-5772.

[1] A full summary of this case is available in our January 2026 Newsletter available here.*