

Cases Pending Before the California Supreme Court

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Discrimination / Harassment / Retaliation

Bonni v. St. Joseph Health Sys., 13 Cal. App. 5th 851 (2017), *review granted*, 224 Cal. Rptr. 3d 684 (2017); S244148/G052367

Petition for review after the court of appeal reversed an order granting a special motion to strike in a civil action. The court ordered briefing deferred pending decision in *Wilson v. Cable News Network, Inc.*, S239686 (decided July 22, 2019; 7 Cal. 5th 871), which presents the following issue: In deciding whether an employee’s claims for discrimination, retaliation, wrongful termination, and defamation arise from protected activity for purposes of a special motion to strike (Code of Civil Procedure § 425.16), what is the relevance of an allegation that the employer acted with a discriminatory or retaliatory motive? Answer brief due.

Intentional Interference with Contract

Ixchel Pharma v. Biogen, 930 F.3d 1031 (9th Cir. 2019); S256927/9th Cir. No. 18-15258

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide questions of California law presented in a matter pending in the Ninth Circuit. Does § 16600 of the Business and Professions Code void a contract by which a business is restrained from engaging in a lawful trade or business with another business? Is a plaintiff

required to plead an independently wrongful act in order to state a claim for intentional interference with a contract that can be terminated by a party at any time, or does that requirement apply only to at-will employment contracts? Reply brief due.

Public Works

Busker v. Wabtec Corp., 903 F.3d 881 (9th Cir. 2018); S251135/9th Cir. No. 17-55165

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. Does work installing electrical equipment on locomotives and rail cars (i.e., the “on-board work” for Metrolink’s [Positive Train Control (PTC)] project) fall within the definition of “public works” under Labor Code § 1720(a)(1), either (1) as constituting “construction” or “installation” under the statute, or (2) as being integral to other work performed for the PTC project on the wayside (i.e., the “field installation work”)? Fully briefed.

Mendoza v. Fonseca McElroy Grinding Co., 913 F.3d 911 (9th Cir. 2019); S253574/9th Cir. No. 17-15221

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit.

Is operating engineers’ offsite “mobilization work”—including the transportation to and from a public works site of roadwork grinding equipment—performed “in the execution of [a] contract for public work,” (Labor Code § 1772), such that it entitles workers to “not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed” pursuant to Labor Code § 1771? Fully briefed.

Retirement / Pensions

Alameda Cnty. Deputy Sheriff’s Ass’n v. Alameda Cnty. Employees’ Retirement Ass’n, 19 Cal. App. 5th 61 (2018), *review granted*, 230 Cal. Rptr. 3d 681 (2018); S247095/A141913

Petition for review after affirmance in part and reversal in part of judgment. Did statutory amendments to the County Employees’ Retirement Law (Government Code § 31450 *et seq.*) made by the Public Employees’ Pension Reform Act of 2013 (Government Code § 7522 *et seq.*) reduce the scope of the pre-existing definition of pensionable compensation and thereby impair employees’ vested rights protected by the contracts clauses of the state and federal Constitutions? Fully briefed.

Hipsher v. Los Angeles Cnty. Employees, 24 Cal. App. 5th 740 (2018), *review granted*, 237 Cal. Rptr. 3d 791 (2018); S250244/B276486 & B276486M

Petition for review after affirmance and modification of grant of peremptory writ of mandate. Further action deferred pending consideration and disposition of a related issue in *Alameda Cnty. Deputy Sheriffs' Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, S247095 (see Cal. Rules of Court, rule 8.512(d) (2)), or pending further order of the court. Holding for lead case.

Marin Ass'n of Public Employees v. Marin Cnty. Employees' Retirement Ass'n, 2 Cal. App. 5th 674 (2016), review granted, 210 Cal. Rptr. 3d 15 (2016); S237460/A139610

Petition for review after affirmance sustaining demurrer without leave to amend. Further action deferred pending the decision of the Court of Appeal, First Appellate District, Division Four, in *Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, A141913 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to Cal. Rules of Court, rule 8.520, is deferred pending further order of the court. Holding for lead case.

McGlynn v. State of Calif., 21 Cal. App. 5th 548 (2018), review granted, 234 Cal. Rptr. 3d 710 (2018); S248513/A146855

Petition for review after affirmance sustaining demurrer. Further action deferred pending consideration and disposition of a related issue in *Alameda Cnty. Deputy Sheriffs' Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, S247095. Holding for lead case.

Tort Liability

Gonzalez v. Mathis, 20 Cal. App. 5th 257 (2018), review granted, 232 Cal. Rptr. 3d 731 (2018); S247677/B272344

Petition for review after reversal of judgment. Can a homeowner who hires an independent contractor be

held liable in tort for injury sustained by the contractor's employee when the homeowner does not retain control over the worksite and the hazard causing the injury was known to the contractor? Further action in this matter is deferred pending consideration and disposition of a related issue in *Vazquez v. Jan-Pro Franchising Int'l, Inc.*, S258191 (see Cal. Rules of Court, rule 8.512(d) (2)), or pending further order of the court. Submission of additional briefing, pursuant to Cal. Rules of Court, rule 8.520, is deferred pending further order of the court. Holding for lead case.

Sandoval v. Qualcomm Inc., 28 Cal. App. 5th 381 (2018), review granted, 242 Cal. Rptr. 3d 418 (2019); S252796/D070431

Petition for review after affirmance of judgment. Can a company that hires an independent contractor be liable in tort for injuries sustained by the contractor's employee based solely on the company's negligent failure to undertake safety measures, or is more affirmative action required to implicate *Hooker v. Department of Transportation*, 27 Cal. 4th 198 (2002)? Fully briefed.

Unemployment Insurance

Skidgel v. CUIAB, 24 Cal. App. 5th 574 (2018), review granted, 238 Cal. Rptr. 3d 118 (2018); S250149/A151224.

Petition for review after affirmance of judgment. Are In Home Supportive Services workers (Welfare & Institutions Code § 12300 *et seq.*) who are providers for a spouse or a child eligible for unemployment insurance benefits? Fully briefed.

Wage and Hour

Cole v. CRST Van Expedited, Inc., 932 F3d 871 (9th Cir. 2019); S257220/9th Cir. No. 17-55606

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide a question of

California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. (1) Does the absence of a formal policy on meal and rest breaks violate California law? (2) Does an employer's failure to keep records of meal and rest breaks taken by employees create a rebuttable presumption that the breaks were not provided? Review denied/case closed.

Donohue v. AMN Services, LLC, 29 Cal. App. 5th 1068 (2018), review granted, 245 Cal. Rptr. 3d 1 (2019); S253677/D071865

Petition for review after affirmance of judgment. Can employers utilize practices upheld in the overtime pay context to round employees' time to shorten or delay meal periods? Fully briefed.

Ferra v. Loews Hollywood Hotel, 40 Cal. App. 5th 1239 (2019), review granted, 2020 Cal. LEXIS 516, 2020 WL 373049; S259172/B283218

Petition for review after affirmance of summary judgment. Did the Legislature intend the term "regular rate of compensation" in Labor Code § 226.7, which requires employers to pay a wage premium if they fail to provide a legally compliant meal period or rest break, to have the same meaning and require the same calculations as the term "regular rate of pay" under Labor Code § 510(a), which requires employers to pay a wage premium for each overtime hour? Opening brief due.

In re Certified Tire and Service Centers Wage and Hour Cases, 28 Cal. App. 5th 1 (2018), review granted, 242 Cal. Rptr. 3d 417 (2019); S252517/D072265

Petition for review granted after affirmance of judgment. Further action deferred pending consideration and disposition of a related issue in *Oman v. Delta Air Lines, Inc.*, S248726 (see Cal. Rules of Court, rule 8.524 (c)), or pending further order of the court. Submission of

additional briefing deferred pending further order of the court. Holding for lead case.

Kaanaana v. Barrett Business Services, Inc., 29 Cal. App. 5th 778 (2018), review granted, 243 Cal. Rptr. 3d 827 (2019); S253458/B276420, B279838

Petition for review after reversal of judgment. Should the phrase “work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type” in Labor Code § 1720(a) (2) of California’s Prevailing Wage Law (Labor Code §§ 1720–1861) be interpreted to cover any type of work regardless of its nature, funding, purpose, or function, including belt sorting at recycling facilities? Fully briefed.

Kim v. Reins Int’l. California, Inc., 18 Cal. App. 5th 1052 (2017), review granted, 230 Cal. Rptr. 3d 681 (2018); S246911/B278642

Petition for review after affirmance of judgment. Does an employee bringing an action under the Private Attorneys General Act of 2004 (PAGA) (Labor Code §§ 2698–2699.6) lose standing to pursue representative claims as an “aggrieved employee” by dismissing his or her individual claims against the employer? Submitted/opinion due.

Naranjo v. Spectrum Security Servs., Inc., 40 Cal. App. 5th 444 (2019), review granted, 257 Cal. Rptr. 3d 188 (2020); S258966/B256232

Petition for review after court of appeal’s part affirmance and part reversal of judgment. (1) Does a violation of Labor Code § 226.7, which requires payment of premium wages

for meal and rest period violations, give rise to claims under Labor Code §§ 203 and 226 when the employer does not include the premium wages in the employee’s wage statements, but does include the wages earned for meal breaks? (2) What is the applicable prejudgment interest rate for unpaid premium wages owed under Labor Code § 226.7? Opening brief due.

Oman v. Delta Air Lines, Inc., 889 F.3d 1075 (9th Cir. 2018); S248726/9th Cir. No. 17-15124

Request under Cal. Rules of Court, rule 8.548, that the supreme court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. (1) Do Labor Code §§ 204 and 226 apply to wage payments and wage statements provided by an out-of-state employer to an employee who, in the relevant pay period, works in California only episodically and for less than a day at a time? (2) Does California minimum wage law apply to all work performed in California for an out-of-state employer by an employee who works in California only episodically and for less than a day at a time? See Labor Code §§ 1182.12, 1194; Cal. Code Regs. tit. 8, § 11090(4). (3) Does the *Armenta/Gonzalez* bar on averaging wages apply to a pay formula that generally awards credit for all hours on duty, but which, in certain situations resulting in higher pay, does not award credit for all hours on duty? See *Gonzales v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013); *Armenta v. Osmose, Inc.* 135 Cal. App. 4th 314 (2005). Fully briefed.

Vazquez v. Jan-Pro Franchising Int’l, Inc., 939 F.3d 1045 (9th Cir. 2019); S258191/9th Cir. No. 17-16096

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. The question presented is: Does the decision in *Dynamex Operations West Inc. v. Superior Court* (2018) 4 Cal.5th 903, apply retroactively? Review granted/brief due.

Ward v. United Airlines, Inc., 889 F.3d 1068 (9th Cir. 2018); S248702/9th Cir. No. 16-16415; *Vidrio v. United Airlines, Inc.*, 889 F.3d 1068 (9th Cir. 2018); S248702/9th Cir. No. 17-55471

Request under Cal. Rules of Court, rule 8.548, that the California Supreme Court decide questions of California law presented in consolidated matters pending in the United States Court of Appeals for the Ninth Circuit. (1) Does Labor Code § 226 apply to wage statements provided by an out-of-state employer to an employee who resides in California, receives pay in California, and pays California income tax on her wages, but who does not work principally in California or any other state? (2) The Industrial Wage Commission Wage Order No. 9 exempts from its wage statement requirements an employee who has entered into a collective bargaining agreement (CBA) in accordance with the Railway Labor Act (RLA). (See Cal. Code Regs., tit. 8, § 11090(1)(E).) Does the RLA exemption in Wage Order No. 9 bar a wage statement claim brought under Labor Code § 226 by an employee who is covered by a CBA? Fully briefed. ⁴⁷