

CASES PENDING BEFORE THE CALIFORNIA SUPREME COURT

By Phyllis W. Cheng



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DISCRIMINATION / HARASSMENT / RETALIATION

Bailey v. San Francisco District Attorney's Office, nonpublished opinion, 2020 WL 5542657 (2020), review granted (Dec. 30, 2020); S265223/A153520

Petition for review after affirmance of judgment. Did the Court of Appeal properly affirm summary judgment in favor of defendants on plaintiff's claims of hostile work environment based on race, retaliation, and failure to prevent discrimination, harassment and retaliation? Reply brief due.

Bonni v. St. Joseph Health Sys., 13 Cal. App. 5th 851 (2017), review granted, 224 Cal. Rptr. 3d 684 (November 1, 2017); S244148/G052367

Petition for review after reversal granting anti-SLAPP motion. Further action in this matter deferred pending consideration and disposition of a related issue in *Wilson v. Cable News Network, Inc.* S239686 (decided July 22, 2019; 7 Cal. 5th 871), 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. Submitted/opinion due.

Lawson v. PPG Architectural Finishes, Inc., 982 F.3d 752 (9th Cir. 2020); S266001/9th Cir. No. 19-55802

Request under California Rules of Court rule 8.548 that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. Does the evidentiary standard set forth in Labor Code section 1102.6 replace the rest of the test of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 as the relevant evidentiary standard for retaliation claims brought pursuant to Labor Code section 1102.5? Reply brief due.

Pollock v. Tri-Modal Distrib. Servs., 47 Cal. App. 5th 532 (2020), review granted, 267 Cal. Rptr. 3d 203 (August 12, 2020); S262699/B294872

Petition for review after affirmance of judgment. (1) In a cause of action alleging quid pro quo sexual harassment resulting in a failure to promote in violation of the Fair Employment and Housing Act, did the statute of limitations to file an administrative complaint with the Department of Fair Employment and Housing begin to run when the successful candidate was offered and accepted the position, or when that promotion later took effect, if there is no evidence that the plaintiff was aware of the promotion on the earlier date? (2) Was it proper for the Court of Appeal to award costs on appeal under rule 8.278 of the California Rules of Court against an unsuccessful FEHA claimant in

the absence of a finding that the underlying claims were objectively frivolous? Submitted/opinion 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 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")? Submitted/opinion due.

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 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? Submitted/opinion due.

STAFF PRIVILEGES

Natarajan v. Dignity Health, 42 Cal. App. 5th 383 (2019), *review granted*, 259 Cal. Rptr. 3d 195 (February 26, 2020); S259364/C085906

Petition for review after affirmance of judgment for writ of administrative mandate. Does a physician with privileges at a private hospital have the right to disqualify a hearing officer in a proceeding for revocation of those privileges based on an appearance of bias (see *Haas v. County of San Bernardino*, 27 Cal. 4th 1017 (2002), or must the physician show actual bias? Submitted/opinion due.

TORT LIABILITY

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

(May 16, 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? Oral argument June 1, 2021.

Sandoval v. Qualcomm Inc., 28 Cal. App. 5th 381 (2018); *review granted*, 242 Cal. Rptr. 3d 418 (January 16, 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)? Supplemental briefs due.

UNEMPLOYMENT INSURANCE

Skidgel v. CUIAB, 24 Cal. App. 5th 574 (2018), *review granted*, 238 Cal. Rptr. 3d 118 (Sept. 26, 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? Oral argument June 1, 2021.

WAGE AND HOUR

Ferra v. Loews Hollywood Hotel, LLC, 40 Cal. App. 5th 1239 (2019), *review granted*, 257 Cal. Rptr. 3d 591 (January 22, 2020); S259172/B283218

Petition for review after affirmance of 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" in Labor Code § 510(a), which requires employers to pay a wage premium for each overtime hour? Submitted/opinion due.

Grande v. Eisenhower Med. Ctr., 44 Cal. App. 5th 1147 (2020), *review granted*, 262 Cal. Rptr. 3d 369 (May 13, 2020); S261247/E068730, E068751

Petition for review after affirmance of judgment in a civil action. May a class of workers bring a wage and hour class action against a staffing agency, settle that lawsuit with a stipulated judgment that releases all of the staffing agency's agents, and then bring a second class action premised on the same alleged wage and hour violations against the staffing agency's client? Fully briefed.

Naranjo v. Spectrum Security Servs., Inc., 40 Cal. App. 5th 444 (2019), *review granted*, 257 Cal. Rptr. 3d 188 (January 2, 2020); S258966/B256232

Petition for review after 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? Fully briefed. ⁴¹