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MCLE SELF-STUDY:

THE TOP EMPLOYMENT CASES OF 2025

The year 2025 was a bit unusual as both the United States and California Supreme Courts issued very few employment law decisions. However, California state and federal appellate courts continued their annual tradition of bombarding us with an exhausting number of them.

UNITED STATES SUPREME COURT

This year's highlights include a fascinating concurrence and a dissent in two cases by Justices Clarence Thomas and Neil M. Gorsuch, suggesting that the tripartite burden-shifting test set out more than a half-century ago in *McDonnell Douglas v. Green*[1] is too employer-friendly.

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In ***Ames v. Ohio Department of Youth Services***,[2] Justice Ketanji Brown Jackson, writing for a unanimous Court, held that majority group plaintiffs are not required to meet the heightened evidentiary standard of showing "background circumstances" to establish a *prima facie* case at the first step of the *McDonnell Douglas* burden-shifting framework.[3]

Perhaps even more interesting than the majority opinion in that case is the concurrence of Justices Thomas and Gorsuch suggesting that the Court should abandon the *McDonnell Douglas* framework because it "lacks any basis in the text of Title VII," has proved "difficult for courts to apply," causes "significant confusion," as well as "troubling outcomes on the ground"—and, most intriguing: "fails to capture all the ways in which a plaintiff can prove a Title VII claim."

Similarly, in ***Hittle v. City of Stockton***,[4] Justices Thomas and Gorsuch dissented from the Court's denial of *certiorari* in a discrimination case granting summary judgment to the employer. They would have reversed the grant of summary judgment and done away with the *McDonnell Douglas* burden-shifting framework, noting: "Some courts fail to appreciate that *McDonnell Douglas* is necessarily underinclusive. The framework sets forth criteria that, if satisfied, will allow a plaintiff to prove a Title VII violation. But satisfying *McDonnell Douglas* is not the only way or even the best way to prove a claim." And they concluded: "Analyzing evidence exclusively under *McDonnell Douglas* may lead a court to overlook the other ways that a plaintiff can prove his claim."

CALIFORNIA SUPREME COURT

In ***Hohenshelt v. Superior Court***,[5] the California Supreme Court held that California Code of Civil Procedure section 1281.98—which requires employers to pay arbitration fees within 30 days or waive their right to arbitrate—is not preempted by the Federal Arbitration Act (FAA).[6] However, the court essentially rewrote the statute by holding that a drafting party can avoid forfeiture of the right to arbitration by showing that the delay was excusable under sections 473, 3275, or 1511—the background principles that generally apply to other contractual obligations and that are nowhere to be found in the text of section 1281.98.

And in ***Iloff v. Lapaille***,[7] the California Supreme Court clarified that an employer is only entitled to assert a good faith defense to a liquidated damages claim upon a showing that it made a reasonable attempt to determine the requirements of the minimum wage law.

ARTIFICIAL INTELLIGENCE

Innumerable federal cases and holdings in other states stand for the proposition that attorneys have a personal obligation to ensure that all citations and quotations are accurate, even if generated by artificial intelligence (AI). ***Noland v. Land of the Free, L.P.***[8] is the first such California case, though it won't be the last to take on the topic. Plaintiff's counsel in *Noland* had filed a brief in which nearly all of the quotations had been fabricated and a few of the cited cases did not exist at all.

While noting at the outset that the case is, "in most respects, unremarkable," the Second Appellate District opinion took pains to underscore its import:

> Simply stated, no brief, pleading, motion, or any other paper filed in any court should contain any citations—whether provided by generative AI or any other source—that the attorney responsible for submitting the pleading has not personally read and verified. Because plaintiff's counsel's conduct in this case violated a basic duty counsel owed to his client and the court, we impose a monetary sanction on counsel, direct him to serve a copy of this opinion on his client, and direct the clerk of the court to serve a copy of this opinion on the State Bar.

The court of appeal sanctioned counsel $10,000. It also noted that because the opposing party failed to catch the error—the court's own research attorneys did—the sanctions were to be paid to the court and not to the other party.

DISCRIMINATION & HARASSMENT

In ***Carranza v. City of Los Angeles***,[9] a hostile work environment sexual harassment case in which a jury awarded the plaintiff $4 million in noneconomic damages for having to endure a topless photograph, falsely said to be the plaintiff, circulated throughout her workplace: the Los Angeles Police Department (LAPD). Notably, the plaintiff never saw the photograph. The LAPD failed to honor the plaintiff's request to inform members of the LAPD that the photo was not of her and that circulating the photo was misconduct and could be a criminal offense.

On appeal, the LAPD argued that the plaintiff failed to meet the "severe or pervasive" threshold for hostile work environment claims because that threshold is a "high standard" requiring "extreme" conduct and a "hellish" workplace. The court of appeal rejected this argument, citing a section of the Fair Employment and Housing Act

(FEHA)[10] that states a single incident of harassing conduct may constitute harassment if it unreasonably interferes with the plaintiff's work performance or creates an intimidating, hostile, or offensive work environment.

The court of appeal held that a plaintiff alleging harassment does not have to be harassed to his or her face, citing the long-standing principle that "a person can perceive, and be affected by, harassing conduct in the relevant environment by knowledge of that harassment as well as by personal observation." Notably, the court also underscored that the FEHA "does not reward discretion in harassing behaviors. Rather, it protects victims from workplace environments poisoned by inappropriate conduct—whether sung, shouted, or whispered."

In ***Kruitbosch v. Bakersfield Recovery Services, Inc.,***[11] the court of appeal held that while a coworker's conduct could not be imputed to the employer for purposes of a hostile work environment sexual harassment claim under the FEHA, the plaintiff did state a cognizable sexual harassment claim based on the theory that the employer's response to the complaint altered his working environment. Here, the plaintiff alleged that his coworker subjected him to crude sexual advances at his home and via his personal cellphone away from the work premises.

Specifically, the plaintiff alleged that his coworker sent him multiple unsolicited nude pictures, showed up uninvited to his house, and repeatedly propositioned him for sex. After the plaintiff reported the conduct to the company's human resources department, the employer allegedly refused to take any action—ratifying the conduct through inaction—simultaneously mocking his concerns. The court found this response could indicate to a reasonable person that the employer had no objection to the coworker's inappropriate conduct.

In ***Caldrone v. Circle K Stores Inc.,***[12] the Ninth Circuit reversed summary judgment in favor of the employer, Circle K, in a case in which three plaintiffs had sued for employment discrimination, alleging they were denied promotions because of their ages. Initially, the court rejected the district court's decision to grant summary judgment based on the plaintiffs' failure to apply for the promotion—a position Circle K did not announce was available.

The Ninth Circuit explained: "It makes little sense to require plaintiffs to demonstrate that they submitted an application when an employer declines to solicit applications and does not announce that a position is available."

Next, the court repudiated the district court's decision to grant summary judgment based on the fact that one of the plaintiffs was only 9.3 years older than the person who got the promotion, explaining: "Although 10 years is the presumptive threshold for a substantial age difference, a plaintiff can overcome that presumption by 'producing additional evidence to show that the employer considered his or her age to be significant.'" The Ninth Circuit found that the plaintiffs presented this additional evidence when they showed triable issues of fact regarding whether a vice president who had expressed ageist animus was involved in the decisionmaking process.

In ***Lui v. DeJoy***,[13] the Ninth Circuit reversed summary judgment in favor of the employer in a Title VII race, sex, national origin, and retaliation lawsuit. Initially, the Ninth Circuit found that the district erred when it held that the plaintiff failed to establish a *prima facie* case of discrimination under *McDonnell Douglas Corporation v. Green*, because she did not show that she was treated less favorably than "similarly situated" employees. The district court rejected her argument that she could satisfy that requirement for a prima facie case by showing that her position was filled by another employee outside her protected class. The Ninth Circuit agreed with the plaintiff.

Next, the court held that the district court erred in concluding that the decision to demote the plaintiff was an independent adverse action that could not be attributed to the alleged bias of other employees, because the plaintiff only claimed such bias after an "independent investigation" was conducted. The Ninth Circuit found that the decision was not "actually independent" because the alleged investigation merely consisted of a documentary review of the proposed demotion along with the written complaints of other employees—all of whom the plaintiff had alleged were biased against her on the basis of her race, sex, and national origin.

In ***McMahon v. World Vision, Inc.,***[14] World Vision, Inc.—a church—extended a job offer to Aubry McMahon for a remote position as a customer service representative (CSR). However, after learning that McMahon was in a same-sex marriage, World Vision revoked its job offer. McMahon sued in federal district court, alleging discrimination based on sex, sexual orientation, and marital status under Title VII. The Ninth Circuit upheld summary judgment in favor of World Vision. It held that the ministerial exception bars McMahon's employment discrimination claims, because CSRs perform "key religious functions central to World Vision's mission"—including communicating about its ministries and projects to donors and supporters and engaging with donors in prayer.

In ***Petersen v. Snohomish Regional Fire & Rescue***,[15] ***Sexton v. Apple Studios LLC***,[16] and ***Allos v. Poway Unified School District***,[17] employers succeeded in defeating lawsuits stemming from their refusals to accommodate employees' COVID-19 related requests.

In *Petersen*, the Ninth Circuit held that an employer could not accommodate firefighters' COVID-19 vaccine exemption requests without undue hardship because allowing unvaccinated firefighters to work—even if they were masked, tested regularly, and maintained social distancing—not only increased the risk of having a substantial number of essential workers on sick leave, but also potentially placed severe limits on emergency medical and firefighting responses in the community.

In *Sexton*, Apple conditionally offered Brent Sexton a role in a new television series, "Manhunt." The offer was conditioned on Sexton being fully vaccinated for COVID-19. Sexton refused and sought an exemption on medical grounds. Apple rejected the exemption request, concluding that an unvaccinated actor could not safely be accommodated and withdrew Sexton's offer. Sexton sued for disability discrimination and related claims. In response, Apple filed an anti-SLAPP motion to strike Sexton's complaint. The trial court denied Apple's motion. The court of appeal reversed, however, holding that Apple's decision not to cast Sexton was in fact "protected expressive conduct" under the First Amendment. It also found that Sexton's claims lacked merit because, by remaining unvaccinated, he failed to meet the "safety" qualification required for the job he sought.

In *Allos*, a public school employer defeated an employee's claims that it violated the FEHA and the California Labor Code when it refused to allow her to work exclusively from home following the COVID pandemic. The trial court granted summary judgment to the district based on statutory immunity[18] as well as a determination that the plaintiff was not disabled under the FEHA based upon a "suspected or selfdiagnosed allergy to vaccines." The court of appeal affirmed.

In ***Lister v. City of Las Vegas***,[19] Latonia Lister, a black female firefighter, sued her employer for sex-based and race-based discrimination and retaliation in violation of Title VII. She alleged that when she walked into the firehouse's dining room at dinnertime, her supervisor, who was feeding a dog pieces of steak, said: "Here, girl. Here, Latonia," while smacking his lips to make kissing noises. He then dropped the steak onto the floor in front of her.

At trial, the jury found that the incident was "severe or pervasive and objectively and subjectively offensive to a reasonable person," but that it was not retaliatory and was not motivated by gender-based or race-based discrimination. Nevertheless, the jury awarded Lister $150,000 for pain and suffering damages. Because the jury found no liability on the part of the city for gender or race discrimination or retaliation, the district court set aside the damages award and entered judgment for the city.

The Ninth Circuit affirmed.

In ***Howell v. State Department of State Hospitals***,[20] the court of appeal found that an employee is not entitled to a new trial after the jury awards damages for emotional distress. In that case, after three years of litigation and a trial lasting two weeks, a jury found Ashley Howell's former employer, the Department of State Hospitals, liable for disability discrimination and awarded her $36,751 in lost earnings and health insurance benefits but nothing for her alleged emotional distress or pain and suffering. In addition, the trial court awarded Howell $135,102 in fees and costs. The trial court denied Howell's motion for a new trial on her claim for emotional distress damages.

The court of appeal held that the trial court had not abused its discretion by failing to grant a new trial based on the fact that Howell had previously been diagnosed with a major depressive disorder and posttraumatic stress disorder following a sexual assault she suffered three years before she began employment with the state hospitals. Some of the physicians who testified at trial attributed Howell's mental distress largely to the preemployment sexual assault and one medical evaluator concluded that, less than a month after the termination, Howell "presented essentially the best [he] had ever seen her."

The appellate court also held that the trial court properly struck the jury's award for lost health insurance benefits because Howell failed to prove she suffered a loss such as paid insurance premiums or out-of-pocket costs related to the loss of insurance. Finally, the appellate court affirmed the trial court's award of $135,102 in fees and costs despite Howell's request for $1.8 million, which the trial court called "striking" and "unsupportable" and characterized the time spent on various matters as "shocking" and "beyond all reason." The court of appeal did, however, remand the case to the trial court to consider Howell's unopposed request for prejudgment interest.

RETALIATION & WHISTLEBLOWERS

In ***Lampkin v. County of Los Angeles***,[21] a county employee sued the county, asserting a claim for whistleblower retaliation in violation of California Labor Code section 1102.5. The jury returned a special verdict finding that the

employee established elements of his claim, but that the county established the same decision defense—resulting in no damages being awarded to the employee. The trial court then granted the employee's motion for an order declaring him to be the prevailing party and awarded him $400,000 in attorneys' fees. On appeal, in a case of first impression, the court held that an employee's section 1102.5 action is not successful if the defendant employer has established the same-decision defense and the plaintiff obtains no relief.

ATTORNEYS' FEES

In ***Bronshteyn v. Department of Consumer Affairs***,[22] a disability and failure to accommodate case, counsel for the plaintiff employee was awarded $4.9 million in attorneys' fees—including a 1.75 multiplier for the fees incurred up to the jury verdict and a 1.25 multiplier for hours worked following the verdict. The court of appeal deferred to the trial court's approval of attorneys' fees for the plaintiff's counsel in excess of $1,000 per hour, which the court of appeal characterized as "at the upper end of Los Angeles market rates." The court then warned defendants that, in fee-shifting cases, they may well pay dearly for filing unsuccessful motions throughout the case:

> When the plaintiff files a case with the prospect of recovering attorney fees, the defense is fully entitled to fight hard. But the defense does so knowing it might end up paying for all the work for both sides. Filing a flood of unselective and fruitless motions can be counterproductive if the plaintiff ultimately prevails, for the bill for that flood will wash up on the defense doorstep. Then, the court may look with a wary eye at defense complaints about a whopping plaintiff's bill.

In ***Villalva v. Bombardier Mass Transit Corporation***,[23] two employees sued their employer, Bombardier Mass Transit, claiming unpaid wages. Rather than filing their claims in court, the employees first sought relief from the California labor commissioner, using the "Berman" hearing process.[24] After the commissioner denied their claims, the employees filed a request for a *de novo* hearing in the superior court where they prevailed in a bench trial and received an award of $140,000 in back wages and penalties. The trial court also granted the employees' motion for attorneys' fees and costs in the amount of $200,000.

On appeal, Bombardier asserted that the employees were not entitled to recover their fees and costs because California Labor Code section 98.2(c) only authorizes an award of fees and costs against an unsuccessful appellant in a *de novo* superior court trial. The court of appeal disagreed, and held that "nothing in section 98.2 suggests that the legislature intended to make this remedy unavailable to employees who first attempt to obtain relief from the labor commissioner through the expedited Berman hearing."

WAGE & HOUR

In ***Hirdman v. Charter Communications, LLC***,[25] the court of appeal held that outside sales employees are properly considered "exempt employees" under California's paid sick leave law.[26] The import is that employers may calculate paid sick leave for outside salespeople based on the same method used for other types of paid leave and that there is no legal requirement to include commissions or use the "regular rate of pay" method reserved for nonexempt employees.

ARBITRATION

In ***Velarde v. Monroe Operations, LLC***,[27] the court of appeal affirmed an order denying the defendant employer's motion to compel arbitration, finding extensive evidence of procedural unconscionability. At issue in the case was an adhesive contract buried in a stack of 31 documents to be signed as quickly as possible while a human resources (HR) manager waited and before the plaintiff employee could start work that same day. Most problematically, in response to the plaintiff's statements that she was uncomfortable signing the arbitration agreement as she did not understand it, the HR manager made false representations about the nature and terms of the agreement. Those representations, which specifically and directly contradicted the written terms of the agreement, rendered aspects of the agreement substantively unconscionable. Combined, those procedural and substantively unconscionable aspects rendered the agreement unenforceable.

In ***Casey v. Superior Court***,[28] the court of appeal affirmed the trial court's denial of a motion to compel arbitration based on the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA).[29] The court held that the EFAA preempts attempts under state law to compel arbitration of cases relating to a sexual harassment dispute. It also underscored that parties cannot contract around the law by way of a choice of law provision, and that where a plaintiff's lawsuit contains at least one claim that fits within the scope of the EFAA, the arbitration agreement is unenforceable as to all claims asserted in the lawsuit.

PROCEDURAL MATTERS

Thomas v. Corbyn Restaurant Development Corporation[30] involved an unknown third party purporting to be plaintiff's counsel who sent "spoofed" emails to defendants' counsel providing fraudulent wire instructions for transmitting the settlement proceeds; the proceeds went to the fraudulent account.

The court of appeal held that the risk of loss is shifted to the party who is in the best position to prevent the fraud. In this case, it determined that defense counsel was in the best position because they had failed to notice that the "spoofed" email address differed from plaintiff's counsel's authentic email address in several ways and because the imposter's primary phone number was inoperable at the time of the transfer—all of which should have been warning signs.

In ***Nazaryan v. FemtoMetrix, Inc.***,[31] the plaintiff employee sued his former employer and several of its officers over a settlement agreement resolving a prior action between them. That agreement called for the defendants to classify the settlement proceeds as "Founder's Stock" and not compensation, salary, or income for plaintiff's services. The defendant subsequently issued 1099-MISC forms characterizing the settlement proceeds as "nonemployee compensation." The plaintiff claimed the defendant breached the settlement agreement and violated the Internal Revenue Code[32] by filing fraudulent 1099 forms. The trial court entered judgment for the plaintiff, and the court of appeal affirmed, holding that the trial court did not err by finding the company's president and its CFO liable.

In ***Johnson v. Department of Transportation***,[33] an employee sued Caltrans, asserting claims for discrimination, harassment, and retaliation. The trial court granted Caltrans's motion to disqualify the employee's attorney and three of his retained experts due to the attorney's violation of a protective order pertaining to an email about the case sent from Caltrans's attorney to the employee's supervisor. The supervisor had shared it with the employee and the employee's attorney, and the retained experts had also viewed it. Holding that protection of "the confidentiality of communications between attorney and client is fundamental to our legal system," the court of appeal affirmed.

ENDNOTES

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1. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
2. *Ames v. Ohio Dep't of Youth Serv.*, 605 U.S. 303 (2025).
3. *See also*, Andrew H. Friedman, *McDonnell Douglas: The End Is Near?*, Cal. Lab. & Emp. L. R. Vol. 39, No. 5 (Sept. 2025).
4. *Hittle v. City of Stockton*, 145 S. Ct. 759 (2025).
5. *Hohenshelt v. Superior Court*, 18 Cal. 5th 310 (2025).
6. 9 U.S.C. §§ 1-6.
7. *Iloff v. Lapaille*, 18 Cal. 5th 551 (2025).
8. *Noland v. Land of the Free, L.P.*, 114 Cal. App. 5th 426 (2025).

9. *Carranza v. City of Los Angeles*, 111 Cal. App. 5th 388 (2025).

10. Cal. Gov't Code §§ 12900-12996 at § 12923.

11. *Kruitbosch v. Bakersfield Recovery Serv., Inc.*114 Cal. App. 5th 200 (2025).

12. *Caldrone v. Circle K Stores Inc.*, 2025 WL 2811320 (9th Cir. 2025).

13. *Lui v. DeJoy*, 129 F.4th 770 (9th Cir. 2025).

14. *McMahon v. World Vision, Inc.*, 147 F.4th 959 (9th Cir. 2025).

15. *Petersen v. Snohomish Regional Fire & Rescue*, 150 F.4th 1211 (2025).

16. *Sexton v. Apple Studios LLC*, 110 Cal. App. 5th 183 (2025).

17. *Allos v. Poway Unified Sch. Dist.*, 112 Cal. App. 5th 822 (2025).

18. Cal. Gov't Code § 855.4.

19. *Lister v. City of Las Vegas*, 148 F.4th 690 (9th Cir. 2025).

20. *Howell v. State Dep't of State Hosp.*, 107 Cal. App. 5th 143 (2024).

21. *Lampkin v. County of Los Angeles*, 112 Cal. App. 5th 920 (2025).

22. *Bronshteyn v. Department of Consumer Affairs*, 114 Cal. App. 5th 537 (2025).

23. *Villalva v. Bombardier Mass Transit Corp.*, 108 Cal. App. 5th 211 (2025).

24. Cal. Lab. Code §§ 98.

25. *Hirdman v. Charter Comm., LLC*, 113 Cal. App. 5th 376 (2025).

26. Cal. Lab. Code § 246(l)(3).

27. *Velarde v. Monroe Operations, LLC*, 111 Cal. App. 5th 1009 (2025).

28. *Casey v. Superior Court*,108 Cal. App. 5th 575 (2025).

29. 9 U.S.C. §§ 401–402.

30. *Thomas v. Corbyn Restaurant Dev. Corp.*, 111 Cal. App. 5th 439 (2025).

31. *Nazaryan v. FemtoMetrix, Inc.*, 110 Cal. App. 5th 1023 (2025).

32. 26 U.S.C. § 7434.

33. *Johnson v. Department of Transp.*, 109 Cal. App. 5th 917 (2025).