

Management Alert



California Supreme Court Will Hear Three Employment Cases Next Month

Earlier this month, the California Supreme Court heard oral argument in an important employment case involving proof in class actions. Oral arguments have been scheduled for April 2014 in three other important employment cases. The following is an overview of what is ahead for the California Supreme Court.

Salas v. Sierra Chemical

Oral Argument Set For: April 2, 2014

The Issue: Whether defenses of after-acquired evidence and unclean hands based on plaintiff's use of false documentation to obtain employment justify dismissal of plaintiff's Fair Employment and Housing Act ("FEHA") claims.

Appellate Court Decision: The Court of Appeal held that an undocumented worker who, during the hiring process, fraudulently claimed to have the legal right to work could not recover back pay for a wrongful termination or a failure to hire based on the defenses of after-acquired evidence and unclean hands. The Court of Appeal explained that undocumented workers generally are entitled to all the protections available under the FEHA. However, the court held that an individual who used a false social security number to obtain employment could not bring a failure to re-hire claim. Thus, the Court of Appeal affirmed the trial court's decision dismissing the plaintiff's claims based on the after acquired evidence and unclean hands doctrine.

Ayala v. Antelope Valley Newspapers

Oral Argument Set For: April 2, 2014

The Issue: Whether common issues predominate in a proposed class action involving claims that turn on whether members of the putative class are independent contractors or employees.

Appellate Court Decision: This Court of Appeal held that a group of newspaper carriers who claimed to have been misclassified as independent contractors could pursue a class action, even though there were material differences between class members as to several factors relating to whether they were employees or independent contractors. The court held that, even though some factors required an individualized inquiry, common issues predominated because other factors of the independent contractor test could be decided by common, class wide proof.

Iskanian v. CLS Transportation of Los Angeles

Oral Argument Set for: April 3, 2014

The Issue: Whether class action waivers in arbitration agreements are enforceable in the wake of *AT&T Mobility v. Concepcion* as applied to class actions and representative actions under PAGA.

Appellate Court Decision: The Court of Appeal held that a class action waiver in an employment arbitration agreement was enforceable, thereby requiring the plaintiffs to proceed only on their individual claims and not on their class claims. This was the first California decision to hold that the United States Supreme Court's decision in *AT&T Mobility v. Concepcion* invalidated the California Supreme Court's decision in *Gentry v. Superior Court*, which held that class action waivers are unenforceable in certain situations. The Court of Appeal found that, in light of *Concepcion*, the Federal Arbitration Act ("FAA") preempts all state rules that disregard the terms of an arbitration agreement and, thus, the agreement's express waiver of class arbitration must be honored. The Court of Appeal also rejected the employee's argument that his right to pursue a PAGA representative action could proceed in arbitration despite the express terms of the arbitration agreement.

Duran v. U.S Bank

Oral Argument: Recently argued on March 4, 2014 (read more about it [here](#)).

The Issue: Whether statistical sampling evidence is enough to establish class liability in misclassification/overtime cases.

Appellate Court Decision: The Court of Appeal reversed a \$15 million judgment for a class of bank officers who claimed that they had been misclassified as exempt. The trial court permitted them to use statistical sampling to prove both class-wide liability *and* damages. But, the Court of Appeal disagreed and reasoned that this "trial by formula" approach violated due process in numerous ways: "[W]e have never advocated that the expediency afforded by class action litigation should take precedence over a defendant's right to substantive and procedural due process." Although the appellate decision in *Duran* promised to end an era in which California plaintiffs could use junk science and skirt due process, all in the name of class action expediency, the California Supreme Court halted this development in its tracks by granting review of the *Duran* decision. The high court is expected to rule in the case by mid-2014.

We will continue to provide updates on these important employment cases and issues as they develop.

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