



LYNCH, GILARDI  
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*A Professional Corporation*

# CALIFORNIA EMPLOYMENT LAW NEWSLETTER

## *What's New for California Employers?*

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The following is a brief summary of the significant employment law developments since our last newsletter.<sup>1</sup>

### LABOR

*Arbitration Waiver:* A Union's Collective Bargaining Agreement did not compel an individual to arbitrate his statutory claims of discrimination against his employer. *Volpei v. County of Ventura*. The court found that the Collective Bargaining Agreement "was unilateral and permissive and did not clearly and unmistakably waive the employee's right to a judicial forum for his statutory discrimination claims." *Comment:* This is an unsettled area of law on which there are conflicting decisions.

### LEGISLATION

*Employer's Right to Attorneys' Fees:* An employer who prevails in a wage and hour suit cannot recover attorneys' fees unless the employer can prove that the action was pursued in "bad faith." *SB 462. Comment:* Generally, fee-shifting rights exist only in a prevailing employee's favor.

*Recovery Periods:* Employers may not require employees to return to work during "recovery periods" (i.e., cool down periods to prevent heat illness) as defined by OSHA. *SB 435. Comment:* Employers whose workers work outside should consult the Cal OSHA regulations.

*Immigration Status Retaliation:* Employers can be subject to penalties for using immigration law to retaliate against employees exercising Labor Code rights. *SB 263*. Further, an attorney can be disbarred for threatening to report a

litigation witness to immigration authorities. *SB 666*.

*Military and Veteran Status:* Military and veteran status is added to the list of classifications protected from employment discrimination under FEHA. *AB 263*.

*Whistleblower Exhaustion:* Whistleblowers must exhaust administrative remedies before suing for retaliatory discharge. *MacDonald v. State of California*. In this case, the employee was terminated shortly after complaining that a co-worker was "illegally and/or inappropriately smoking" at the office. *Comment:* Employees claiming retaliation under Labor Code §§ 1102.5 & 6310 must file a complaint with the Labor Commissioner within six months of the violation or occurrence.

### OTHER DEVELOPMENTS

*Employment Contract:* Former employees could proceed with a claim for breach of contract and misrepresentation by alleging they remained at their jobs in reliance on an employer's false promise. *Moncada v. West Coast Quartz Corp.* The company, wishing to keep key employees, promised on many occasions that they would receive a bonus sufficient to retire if they remained at the company until it was sold. *Comment:* It may be possible to control claims of entitlement to increase pay through written employment agreements requiring that any such promises be in writing and signed by a high-level corporate officer.

*Independent Contractor Status:* District Manager working for an insurance company was found to be an independent contractor. *Beaumont-Jacques v. Farmers Group, Inc.* In this case, the district manager worked for various insurance companies pursuant to a District Manager Appointment Agreement. *Comment:* In this case, the court found that the manager exercised "meaningful discretion" in recruiting agents and then training and motivating them to sell insurance products for the company.

*EDD Hearing Evidence:* Because State law bars the use of Unemployment Insurance Appeals

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<sup>1</sup> This summary is intended to be a brief overview of significant legal developments and is not an in-depth analysis of the cases or statutes discussed. Our clients are advised to contact their employment attorney before making significant decisions related to the legal developments reported herein. *NOTE:* These cases have not been updated/cite-checked since they were first reported.

Board findings in any subsequent litigation, the prevailing party could not rely on those findings as a basis of malicious prosecution for filing the workers' compensation claim. *Kurtz v. Syrus Systems, LLC*. In this case, the employee was also foreclosed from bringing a SLAPP motion based on the EDD finding. *Comment*: The decision seems like the right one as claims in EDD proceedings are generally not subject to the same scrutiny as actions filed in civil court.

*Vicarious Liability*: An employer may be liable for death resulting from a drunken employee's post-holiday party automobile accident. *Purton v. Marriott Int'l, Inc.* To make things worse, in this case, the employee made it safely home before going back out and getting into the accident. *Comment*: This case is somewhat illogical and contrary to other reported decisions.

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If you have questions regarding any of the aforementioned employment law developments, contact your LGG attorney or Ron Souza at [rsouza@lgglaw.com](mailto:rsouza@lgglaw.com).

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