PERRIN CONFERENCES

EMPLOYMENT LITIGATION CONFERENCE

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Current Issues and Trends in Wage and Hour Practices

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PAGA – Employment Law's Four-Lettered Word

- PAGA in a nutshell:
  - Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et* seq.)
- Empowers "aggrieved employees" to act as the proxy for state administrative agencies and collect penalties from employers for Labor Code violations committed against themselves and/or other "aggrieved employees"

Saying It All Might Not Be Saying Enough

- Prior to initiated a civil suit under PAGA, employees must provide their empower and the California Labor and Workforce Development Agency ("LWDA") with a written description of the PAGA claims they intend to assert at least 65 days before filing (Cal. Lab. Code § 2699.3(a)(2).)

- LWDA crackdown on boilerplate letters

PAGA Arbitration Developments

- Viking River Cruises, Inc. v. Moriana (2022) 142 S. Ct. 1906 – overturned long-standing precedent to declare that an employee's individual PAGA claims can be compelled to binding arbitration

- Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104 – confirmed parts of Viking River and held that an employee's individual PAGA claims are subject to binding arbitration, but the employee does not lose standing to assert representative claims while arbitration is pending

Splitting The Baby – The Headless PAGA Case Is Born

- Faced with the potential to have to arbitrate an individual claim before allowed to pursue representative PAGA claims, plaintiff attorneys have sought to disclaim any individual claims to proceed directly to representative PAGA – Headless PAGA claims

- Leeper v. Shipt (2025) 566 P.3d 234 – Supreme Court set to determine whether every PAGA action necessarily involves an individual component subject to arbitration.

PAGA Arbitration - What Is It Good For?

- Even if part of the claim can be compelled to arbitration, so what? The Supreme Court in Adolph expressed in dicta that when an individual portion of a PAGA claim is compelled to Arbitration, a ruling there should be honored by the Superior Court as it relates to standing… Not so fast my friend!

- Prime Healthcare Management v. Superior Court 2025 WL 3640781 (decided 12/15/25) – Held that the arbitrator's finding in favor of employer on all labor code claims did not deprive the employee of standing to continue to pursue PAGA claim in Superior Court.

That's What You Said – But It's Not What You Meant

- LaCour v. Marshalls of California, LLC – Intentionally sidestepped headless PAGA question and focused on contractual language of agreement and **when** agreement was executed. Found that the parties at that time could not have contemplated splitting a PAGA action since no splitting was allowed at the time. Apparently would have found the agreement enforceable had it been executed today.

The NLRA & California Employers
How does it impact California employers?

- The **National Labor Relations Act** is a federal law that protects employees' rights to organize, speak up about working conditions, and act together to improve their workplace

- California is covered by **three NLRB regions: Regions 20, 31, and 32**, with all cases ultimately reviewed by the **Ninth Circuit Court of Appeals**

    - **Region 20 – San Francisco**
    - **Region 31 – Los Angeles**
    - **Region 32 - Oakland**

- Today we will focus on three NLRA topics impacting California employers:
    - Union Organizing and Employer Restrictions
    - Non-Union Workforces and NLRA Protections

The NLRA & California Employers
#1 - Union Organizing and Employer Restrictions

Employer are prohibited from doing these 4 things during union organizing under the NLRA:

T – Threaten
I – Interrogate
P – Promise
S – Surveil

Foundational Supreme Court - NLRB v. Gissel Packing Co., 365 U.S. 575 (1969)

Employer can:
- Express opinions without threats or promises
- Share factual information and respond to questions honestly

The NLRA & California Employers
#1 - Union Organizing and Employer Restrictions

Major Recent Development affecting California Employers

- *Cemex Construction Materials Pacific, LLC, 372 NLRB No. 130 (2023)*

- **RULE: If a union shows majority support and the employer commits any unfair labor practice, the Board may order bargaining without an election**

Example:

- ***A California healthcare employer holds "listening sessions" after hearing about union interest. Managers tell employees, "We don't need a union here—we're a family, and unions bring conflict."***

Current California Trends

- Union activity expanding beyond traditional sectors into healthcare, hospitality, logistics, retail, and tech-adjacent industries.
- Union activity showing up in places employers didn't expect it, often before they realize they're dealing with protected concerted activity.

The NLRA & California Employers
#2 – Non-Union Workforces and NLRA Protection

The NLRA and the New World of Social Media

Maria is a registered nurse at a **non-union hospital** in California. Over the past several months, the hospital has reduced staffing levels while increasing patient loads. Nurses are being told to "push through" despite burnout concerns.

Maria posts the following on her **private Facebook page**:

"I'm DONE with this hospital. We're drowning every shift, short-staffed, overworked, and management acts like we're being dramatic.
They don't give a damn about patient safety or us — just cutting costs and piling more shit on nurses.
My manager is a straight-up bitch about it.
Anyone else exhausted and fed up with this BS?"

Hospital management becomes aware of the post and terminates Maria for:

- Inappropriate and unprofessional language
- Disparaging management
- Violating social media and professionalism policies

The NLRA & California Employers
#2 – Non-Union Workforces and NLRA Protection

Section 7 of the National Labor Relations Act is the part of the law that protects employees' rights to act together at work.

It guarantees employees the right to:

- **Organize**
- **Form, join, or assist a union**
- **Act together to improve wages, hours, or working conditions**
- **Speak up collectively about workplace issues**
- **Choose not to engage in union activity**

And it applies to **both union and non-union workplaces**.

The NLRA & California Employers
#2 – Non-Union Workforces and NLRA Protection

Employees **have the lawful right to**:

- Discuss wages, hours, and working conditions
- Raise group complaints
- Speak collectively (including on social media)
- Seek mutual aid or protection

Employees **lose protection** if speech crosses into threats or insubordination.
- Richmond District Neighborhood Center (SF), 361 NLRB No. 74 (2014)

Employers **often unlawfully restrict**:

- Wage discussions
- "Negative" social media posts
- Group complaints
- Slack/Teams discussions
- Public criticism tied to working conditions

The NLRA & California Employers
#2 – Non-Union Workforces and NLRA Protection

Common Employer Policy and Procedural Missteps

- Overbroad social media policies
  - Design Technology Group (Bettie Page Clothing), 359 NLRB No. 96 (2013) – CA
- Confidentiality rules that silence wage discussion
- Not recognizing how one employee's expression can equal protected concerted activity
  -NLRB v. City Disposal Systems, 465 U.S. 822 (1984)
- Managers reacting emotionally to public criticism