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Labor and Employment Litigation Update

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Legislation – Discrimination

- **SB 1137** – Employees May Bring Intersectional Claims for Relief from Discrimination.
- **SB 1340** – Local Entities Authorized to Enforce CA Civil Rights Law.

Labor Relations – Meet & Confer

- County Must ‘Meet and Confer’ Before Initiating Investigation into Sheriff Gangs Where Deputies Were Ordered to Appear and Answer Questions about Their Knowledge of and Involvement in Law Enforcement Gangs.
 - *A.L.A.D.S. v. County of Los Angeles*, 106 Cal.App.5th 982 (2024).

Employee Discipline – Social Media

- Employee's Critique of Employer on Social Media Constitutes Protected Activity under the MMBA, but it was appropriate for the agency to place the employee on paid administrative leave where the allegations of misconduct were sufficient to warrant an investigation.
 - *Sunline Transit Agency, PERB Decision No 2928-M (2024).*

Disability Discrimination – Recoverable Damages

- Employee Seeking Non-Economic Damages Must Prove Termination Actually Caused Non-Economic Injuries.
 - *Howell v. State Department of State Hospitals*, 107 Cal.App.5th 784 (November 7, 2024).

Disability Discrimination – Interactive Process

- A Reasonable Accommodation Does not Excuse an Employee from Performing the Essential Functions of their Role.
 - *Wentworth v. Regents of University of California*, 105 Cal. App. 5th 580 (2024).

Fair Labor Standards Act – Burden of Proof

- The Preponderance of the Evidence Standard Applies When Alleging that an Employee is FLSA Exempt.
 - *E.M.D. Sales, Inc. v. Carrera*, 604 S. Ct. 45, 46 (2025).

Fair Labor Standards Act – Primary Duty Indicative of Exemption

- An Employee's High Level of Complex Decision-Making can Lead Towards Exemption Under FLSA.
- On-call time is not compensable work when employees are allowed to engage in personal activities during on-call periods.
- Plaintiffs spent their on-call time freely waiting for “pop-up” flights, and a 30-minute notice period before requiring the jet pilots to come to work was not unduly restrictive.
 - *Kennedy v. Las Vegas Sands Corp.*, 110 F.4th 1136 (9th Cir. August 1, 2024).

Fair Labor Standards Act – Salary Considered in Exemption Analysis

- When determining whether to classify an employee as exempt, employers should consider strongly whether the employee is paid on a **salary or hourly basis**.
- In determining whether an employee is salaried, consider whether an employee receives a predetermined amount of compensation on a weekly or less frequent basis irrespective of any promises made in an employment contract.
- An employer likely loses the benefit of classifying an employee as exempt if the facts demonstrate **the employer did not intend to pay employees on a salary basis**.
 - *Silloway v. City & Cnty. of San Francisco*, 117 F.4th 1070 (9th Cir. 2024)

Thank You!

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