

Recent California Court Cases That May Impact You

A lot of ground was covered at a recent “2022 Legislative and Legal Update” webinar presented to PIASC members by Kristine E. Kwong, Esq., of Musick Peeler! While we provided a recap of many of the new labor laws that Kristine discussed in a prior article (see “California 2022 Labor Law Update,” bit.ly/NN-03-14-22), in this article we’ll look at some of the many court cases that were also presented. A recording of the full webinar is available at <https://bit.ly/CALAW22>.

Court bars enforcement of arbitration bill

On October 10, 2019, Governor Newsom signed AB 51, which prohibited mandatory arbitration provisions related to claims under the California Fair Employment Housing Act (FEHA) and the state’s Labor Code. This bill contained both criminal and civil penalties for employers.

The US and California Chambers of Commerce sued to stop the law from going into effect. The Ninth Circuit agreed that the law is unconstitutional

and cannot be enforced as written.

Where things stand now: You cannot require applicants or employees to enter into Arbitration Agreements as a condition of employment, although consensual Arbitration Agreements are allowed. However, if you want to play it safe, Kristine recommends that you do not ask an employee to sign an Arbitration Agreement at all.

FEHA takes a broader view of disability than the ADA

In *Brown v LAUSD*, an employee started to experience chronic pain and nausea after their employer installed new Wi-Fi at the work site. The employee was diagnosed with “electromagnetic hypersensitivity,” which is not currently recognized as an illness by the medical field.

The employer made an accommodation that did not alleviate the problem, then promised to conduct a neutral Wi-Fi analysis. After the employer reneged on this offer, the employee sued for non-accommodation of the disability.



The employer held that there was no grounds for suing, as the federal courts do not recognize this condition as a disability. While this fact would disallow

the suit under the Americans with Disabilities Act (ADA), the California Fair Employment Housing Act (FEHA) doesn’t care if the problem is due to a recognized medical condition. FEHA just asks, “Is this person unable to work because of some medical reason?” Because the answer was yes, the court ruled that when the employer reneged on the offer to do a Wi-Fi analysis, this in itself was proof of failure to accommodate.

The bottom line is that when a problem of this nature arises, the courts will look at whether the employer is acting in good faith to make a reasonable accommodation. The employer cannot just unilaterally stop the interactive accommodation process.

Statute of limitations clock starts when employee learns of issue

In *Pollock v Tri-model Distribution Services* an employee filed a discrimination claim based on a failure to promote, alleging she was not promoted

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NATIONAL NEWS

Americas Print Show Speakers & More

Centrally located in America’s heartland, Americas Print Show 2022 (APS22) is a three-day industry event with impact from coast to coast and beyond! APS22’s goal is to elevate the collective energy of the U.S. and North America print and graphics community under one roof, offering exhibitors and attendees a place to network and grow their businesses.

Preeminent industry speakers

The roster of highly regarded speakers at this August 17 to 19 event includes:

- Steve Bonoff
Founding Partner, Print Industries
- Deborah Corn
Founder & CEO, Print Media Center
- Bill Farquarson,
Coach and Print Expert
- Greg Lovensheimer,
Executive Vice President, Millcraft
- David Mauro,
Chief Information Officer
- Travis Mlakar,
President / CEO, Millcraft
- Mark Potter,
CEO, Conduit Inc.
- Richard Romano,
Managing Editor, What They Think
- Kathi Rowzie,
President, Two Sides North America



- James A. Russell
Partner, New Direction Partners
- Peter J. Schaefer
Partner, New Direction Partners
- Warren Werbit,
The Print Whisperer

Print association partners

Print industry associations play a crucial role in our industry, from significant employee support and recognition to standardized technology and product quality.

At APS22, the goal is to connect 5,000 businesses with 10,000 A-list customers seeking your services, products, equipment and technology. Together with an extensive and growing collection of media partners and industry associations, the organizers plan to help you far exceed your sales projections over the three APS22 days. Most of the 17 industry-focused organizations participating plan to hold meetings for their regional attendees while connecting member companies all across geographies

and graphics industry verticals. The event’s print association partners are:

- Graphic Arts Association
- Graphic Communications Workforce Coalition
- Graphic Media Alliance
- Great Lakes Graphics Association
- NPSOA
- PIA MidAmerica
- PIASC
- Print Industry Midwest
- Print and Graphics Scholarship Foundation
- Print Media Association
- Printing Industries of the South
- Printing and Imaging Association of Georgia
- Print Industries Alliance
- Printing Industries of New England
- PIA San Diego
- The Printing Industry of the Carolinas
- Visual Media Alliance

Want to exhibit at APS22?

To join the quickly growing, power-packed lineup, exhibitors can reserve a premier booth location today at a substantially reduced rate compared to other industry shows.

An interactive map makes it easy to review current availability and book your space online in real-time. Visit <https://www.AmericasPrintShow22.com/exhibit> for details.

Want to attend APS22?

With advance registration, admission is completely FREE to the show, to participate in the educational sessions and more throughout the three-day event. Register now at <https://www.AmericasPrintShow22.com/attend>.

APS22’s goal is to elevate the collective energy of the U.S. and North America print and graphics community under one roof to network and grow their businesses.

GOVERNMENT & LEGISLATIVE

DOL Civil Penalties Have Increased

The Department of Labor has made its annual adjustments to the civil monetary penalties that apply for a wide range of potential violations. The fol-

lowing amounts apply to penalties assessed after January 15, 2022, for violations that occurred after November 2, 2015:

Item	Description	New Penalty
Fair Labor Standards Act	Repeated or willful violations of the FLSA’s minimum wage or overtime requirements	\$2,203 maximum
OSHA	Willful or repeated violations	\$10,360 minimum \$145,027 maximum
OSHA	Serious, other-than-serious and posting-requirement violations	\$14,502 maximum
OSHA	Failure-to-correct violations	\$14,502 maximum <i>per day</i>
Family and Medical Leave Act	Failure to comply with the posting requirement	\$189

On Our Radar

Updates to proposed legislation, regulations and other issues we’ve been following:

Expansion of FEHA anti-discrimination laws has been killed – AB 1119, which would have expanded the list of protected characteristics listed in the employment discrimination provisions of the Fair Employment and Housing Act to include “family responsibility,” and require employers to accommodate

employees who have family obligations arising from a school or care facility closing, is now dead.

New bereavement leave bill has been killed – AB 95, which would have created a significant bereavement leave requirement, will not be moving forward.



HUMAN RESOURCES

Should You Have a COVID Section in Your Employee Handbook?

While COVID will continue to affect our workplaces for some time, we generally recommend not adding COVID policies directly to your handbook. Guidance from the Centers for Disease Control and Prevention (CDC) continues to evolve, and federal and state laws related to the pandemic will continue to change as well. And as we’ve seen with OSHA’s Emergency Temporary Standard, courts can put employer obligations on hold (or resume their effective date) unexpectedly.

Instead of making changes directly to your employee handbook, we recommend incorporating COVID-related policy updates into a separate handbook addendum, or just a packet of policies and documents that each employee will receive. This is likely to be administratively easier to maintain and should also cut down on how much time employees spend looking for COVID-related policies when they need them. Keeping these policies separate also underscores that they are temporary and will be removed at the appropriate time.

Policies in a COVID addendum or policy kit may include a work-from-

home policy, face-covering policy, workplace safety rules, vaccination policy, workplace sanitation procedures and internal policy changes related to the pandemic (e.g., travel, paid time off, call-in procedure).

If you want to have a general policy related to illness that details when to stay home, whom to notify of an illness, etc., you could include that directly in the employee handbook. Just make sure that the policies there align with whatever you have included in your COVID addendum, if you have one.



Source: HR|BIZZ

FEATURE ARTICLE

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because she refused to have sex with the company vice president. Another woman was promoted instead.

The offer of promotion to the other employee was made in March 2017, and the promotion took place in May 2017. The plaintiff filed charges in April 2018, at a time when the statute of limitations was one year (the time in which a FEHA charge can be filed has since been expanded to three years).

The employer claimed that the employee had no right to sue because the statute of limitations period began in March 2017 when the offer was made. The employee claimed that the statute

of limitations did not begin until May 2017, when she learned that someone else had received the promotion. The California Supreme Court sided with the employee, ruling that the statute did not begin to run until the employee had actual or constructive knowledge of the employer's decision to not promote her.

Loose lips sink ships

In *Jorgenson v Loyola Marymount* an employee sued for age and gender discrimination. After another, younger employee was promoted to Assistant Dean, the employee, who had trained the person who got the promotion, was sidelined.

What was the plaintiff's evidence of age and gender discrimination? In reference to another employment matter, a third party had overheard the new Assistant Dean (not the Dean, who was the decision maker) say that she "wanted someone younger."

Not surprisingly, the Trial Court excluded this third party hearsay statement as an irrelevant "stray comment." But the Court of Appeals reversed that decision because there was evidence that the Assistant Dean had the ability to influence the Dean. In the end, a stray remark about an unrelated position that was made by a

non-decision maker and overheard by a third party was used as evidence to help prove a discrimination case!

The moral of this story is that you must create a culture in which such comments are not acceptable at work and are therefore never made. As they said in World War II, loose lips sink ships!

Need help with any HR issues?

Remember, assistance from the HR experts at HR|BIZZ is included with your PIASC membership. Contact Rodney Bolton at 323-728-9500 ext. 218 or piasc@hrbizz.com.

NATIONAL NEWS

10 New Features of KODAK PRINERGY Workflow 9.0

- 1. **Microsoft Windows Server operating systems:** Runs on Windows 2019 or Windows 2016 server OS running in 64-bit technologies.
- 2. **Mac OS X 10.15 and 11 Client Support:** Prinergy 9.0 Workshop client fully supports Mac OS 10.15 (Catalina) and 11 (Big Sur) and is 64-bit native. Apple's latest Mac operating system will run Prinergy 9.0 at speeds never seen before.
- 3. **Latest APPE technology:** Prinergy 9 uses the Adobe APPE rendering technology, which is 64 bit native. This

- will allow Prinergy to process jobs faster than it ever could before.
- 4. **CTP JDF connectivity using Track from Workshop:** Prinergy 9.0 now offers complete JDF/JMF connections to the Kodak CTP Print Console 5 devices via Prinergy Track. This allows users to monitor and manage their CTP device from their workstation.
- 5. **Preps 9.0:** Preps is now 64-bit native on the Mac and supports Mac OS 10.15 (Catalina) and 11 (Big Sur) to produce impositions faster.

- 6. **ColorFlow 9.0:** ColorFlow is adding features which help packaging printers reliably produce brand color work for high-value-brand customers, including extended gamut with full 7-color support.
- 7. **Prinergy Jobs Dashboard:** Our new Prinergy Cloud Analytics Dashboard gives Prinergy users a new view into what is happening in their Prinergy world.
- 8. **Preflight+** Callas updates: Prinergy preflight+ has been updated to support the latest preflight technology offered in the industry.

- 9. **VPS+:** We made Virtual Proofing Software (VPS) better by merging Tiff Assembler Plus (TAP) and VPS together to create a single raster viewer. This offers unlimited licensing for Prinergy users.
 - 10. **Customer SE fixes:** Prinergy 9.0 addresses previous customer-reported issues.
- PIASC members can save on KODAK PRINERGY Workflow 9.0. For more information, contact Kristy at 323-728-9500 ext. 215 or kristy@piasc.org.

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CLASSIFIEDS

Available items for sale, all located in Oregon: US Paper Counters Bantam-1 with tabber, 2004 model in good condition - \$5,000. Generic Brand L shaped shrink wrapper in very good condition - \$1,500. Rollem scorer, perforator 22" wide with air feed in fair condition - \$1,500. Mini max Oval Strapping machine in good condition - \$500. For more info contact Lane Weatherly at lane@wilcoxfoil.com.

Want to place a classified ad? Contact Wendy Ferruz, 323.728.9500, Ext. 262, wendy@piasc.org



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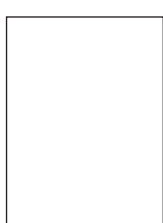
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Portland - Grand Central Bowl & Arcade
808 SE Morrison Street Portland, OR 97214
6:00 pm - 9:00 pm
Register today at piasc.org/events

APR 14

WEBINAR: The Top 10 Sales Apps
Thursday, April 14
Online
www.piasc.org/events

APR 2

International Printing Museum: Crazy Krafts Day for Kids
Saturday, April 2
International Printing Museum
www.printmuseum.org/

AUG 17-19

America's Print Show 2022
Wednesday-Friday, August 17-19
Columbus, OH
www.americaaaprintshow22.com

APR 27

Print is On A Roll 2022
Seattle - Bowlero South
100 Andover Park West, Tukwila, WA 98188
6:00 pm - 9:00 pm
Register today at piasc.org/events

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