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Inside This Issue

IRS Annual Limits for Benefit Plans: 2026 Cost of Living Adjustments

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The Internal Revenue Service (IRS) has issued the cost-of-living adjustments (COLAs) applicable to employee benefit plans for 2026 plan year.[1] As in prior years, the IRS has adjusted numerous benefit plan limits to account for inflation and increased certain limits based on a cost-of-living index. Most notably, the Internal Revenue Code (IRC) § 415(c) annual contribution limitation for defined contribution plans–including 401(k) plans–has increased from $70,000 to $72,000 for 2026.[2] This limit caps the total annual additions to a participant's account, including employee contributions, employer matching contributions, and employer nonelective contributions.

In addition, the annual compensation limit for each employee under a qualified plan under IRC § 401(a)(17) has increased from $350,000 to $360,000 for 2026.[3] For certain governmental plans, the corresponding compensation limit has increased from $520,000 to $535,000.[4] Additionally, the IRS has increased the

[1] IRS Rev. Proc. 2025-40 (or applicable successor revenue procedure for 2026), setting forth cost-of-living adjustments applicable to retirement plans and other employee benefit arrangements for 2026.

[2] IRC § 415(c)(1)(A); IRS Rev. Proc. 2025-40 (increasing the defined contribution plan annual addition limit from $70,000 to $72,000 for 2026).

[3] IRC § 401(a)(17); IRS Rev. Proc. 2025-40 (increasing the compensation limit from $350,000 to $360,000).

[4] IRC § 401(a)(17); IRS Rev. Proc. 2025-40 (increasing the compensation limit from $520,000 to $535,000 for certain governmental plans).

(Continued on page 3)

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(Continued from page 1)

elective deferral limit—the maximum amount an employee may defer from salary into a 401(k), 403(b), or similar plan—from $23,500 to $24,500.[5]

Notably, the IRS increased the wage threshold for the requirement that catch-up contributions be designated as Roth contributions, which comes into effect January 1, 2026. The SECURE 2.0 Act of 2022[6] provided that an individual whose Federal Insurance Contributions Act (FICA) wages exceed a specified statutory threshold in the prior year may no longer make traditional (pre-tax) catch-up contributions and instead must designate any catch-up contributions as Roth contributions.[7] While the statute originally set this threshold at $145,000 in prior-year wages, it also directed that the amount be indexed for inflation.[8] Consistent with that mandate, the IRS has increased the applicable wage threshold to $150,000 based on cost-of-living adjustments applicable for 2026.[9]

In addition, the overall catch-up contribution limits have increased. For individuals age 50 and older, the standard catch-up contribution limit has increased, rising to $8,000 after remaining unchanged at $7,500 since 2023.[10] However, for individuals who attain ages 60-63 during the taxable year and are thus eligible to make the enhanced "super catch-up" contribution under SECURE 2.0, the limit remains unchanged at $11,250.[11]

The IRS also issued its annual cost-of-living adjustments increasing several limits applicable to health and welfare benefit plans for 2026. With respect to health savings accounts (HSA), the maximum annual contribution has increased from $4,300 to $4,400 for individuals with self-only coverage, and from $8,550 to $8,750 for individuals with family coverage.[12] In addition, the maximum permitted reimbursements under Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs) increased from $6,350 to $6,450 for self-only coverage, and from $12,800 to $13,100 for family coverage.[13] These adjustments reflect statutory inflation indexing and apply automatically for most arrangements beginning in the 2026 calendar year.

Separately, and unlike the inflation-based adjustments described above, recent legislation significantly increased the statutory cap on dependent care flexible spending account (Dependent Care FSA) contributions. After remaining unchanged for several years, the maximum annual contribution to a Dependent Care FSA has increased from $5,000 to $7,500 per household, or from $2,500 to $3,750 if married filing separately.[14] This increase was enacted pursuant to the One Big Beautiful Bill Act, signed into law on July 4, 2025, and represents a material departure from the long-standing limit set forth in the Internal Revenue Code.

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[5] IRC §§ 402(g)(1), 403(b); IRS Rev. Proc. 2025-40 (increasing the elective deferral limit from $23,500 to $24,500 for 2026).

[6] SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, § 603, 136 Stat. 4459, 6018–19 (2022) (amending Internal Revenue Code § 414(v) to require Roth treatment of catch-up contributions for employees whose prior-year FICA wages exceed the indexed threshold).

[7] IRC § 414(v).

[8] IRC § 414(v)(7)(B) (providing for inflation adjustment of the $145,000 wage threshold for mandatory Roth catch-up contributions)

[9] IRS Rev. Proc. 2025-40 (or successor cost-of-living adjustment revenue procedure for 2026) (adjusting the prior-year wage threshold for Roth catch-up contributions to $150,000).

[10] IRC § 414(v)(2)(B)(i); IRS Rev. Proc. 2025-40 (setting the standard age-50-and-over catch-up contribution limit at $8,000 for 2026).

[11] IRC § 414(v)(2)(B)(ii) (establishing enhanced catch-up contributions for individuals ages 60–63, equal to the greater of $10,000 (indexed) or 150 percent of the regular catch-up amount).

[12] IRC § 223(b)(2); IRS Rev. Proc. 2025-40 (adjusting HSA contribution limits for 2026).

[13] IRC § 9831(d)(2)(D); IRS Rev. Proc. 2025-40 (increasing permitted QSEHRA reimbursement limits for 2026).

[14] IRC § 129(a)(2), as amended by One Big Beautiful Bill Act (July 4, 2025) (increasing the annual exclusion for dependent care assistance programs to $7,500 per household).

Finally, the Social Security Administration has announced an increase in the Social Security wage base for 2026, raising the maximum amount of wages subject to the Social Security portion of FICA taxes from $176,100 to $184,500.[15] As in prior years, this adjustment reflects changes in national wage indexing and has direct payroll and withholding implications for employers.

A year-to-year comparison of these adjustments is available below.

Compliance Takeaway for Employers

Considering the 2026 IRS cost-of-living adjustments and recent statutory changes, employers should take the following general compliance steps:

- Review payroll and benefit systems to ensure all 2026 contribution limits, compensation caps, and wage bases are applied correctly.
- Confirm operational readiness for SECURE 2.0 changes taking effect in 2026, including required Roth treatment of certain catch-up contributions.
- Coordinate with vendors (payroll providers, recordkeepers, and third-party administrators) to verify consistent implementation across systems.
- Assess whether plan amendments or updated employee communications are required, particularly where statutory changes—not automatic indexing—apply.
- Conduct pre-year testing and validation to reduce the risk of excess contributions, payroll errors, and corrective action after the fact.

As with prior years, most compliance risk arises from operational failures rather than plan design, making advance coordination and system testing critical for 2026 readiness.

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[15] 42 U.S.C. § 430; Social Security Administration, *Contribution and Benefit Base for 2026*, $184,500 (announced pursuant to national average wage indexing).

ANNUAL LIMITATIONS

Effective as of January 1, 2026

LIMIT	2026		2025		2024	
Elective Deferrals						
IRC Section: 402(g)(1), 457(e)(15), 408(p)(2)(E)						
401(k), 403(b), 457(b), and SEPs	$24,500		$23,500		$23,000	
SIMPLE Plans	$17,000		$16,500		$16,000	
Catch-up Contributions (age 50 and older)*						
IRC Section: 414(v)(2)(B)(i) & (ii), 414(v)(7)(A)						
401(k), 403(b), Governmental 457(b), and SEPs	$8,000		$7,500		$7,500	
SIMPLE Plans	$4,000		$3,500		$3,500	
Roth catch-up threshold (prior year FICA wages)**	$150,000		$145,000		N/A	
Annual Compensation Limit						
IRC Section: 401(a)(17), 404(l)						
General Limit	$360,000		$350,000		$345,000	
Certain Governmental Plans	$535,000		$520,000		$505,000	
Limitations on Benefits and Contributions						
IRC Section: 415(b)(1)(A), 415(c)(1)(A)						
Defined Contribution Plans	$72,000		$70,000		$69,000	
Defined Benefit Plans	$290,000		$280,000		$275,000	
"Highly Compensated Employee" Definition						
IRC Section: 414(q)(1)(B)	$160,000		$160,000		$155,000	
"Key Employee" / "Officer," Top-Heavy Plans						
IRC Section: 416(i)(1)(A)(i)	$235,000		$230,000		$220,000	
Pension-Linked Emergency Savings Accounts						
IRC 402A(e)(3)(A)(i)	$2,600		$2,500		$2,500	
PBGC Guaranteed Annual Benefit						
(single life annuity payable at age 65; rounded)	$93,477		$89,182		$85,295	
SEP Coverage						
IRC Section: 408(k)(2)(C), 408(k)(3)(C)						
Minimum/Maximum Compensation	$800/$360,000		$750/$350,000		$750/$345,000	
Health Savings Accounts (HSAs)	Single	Family	Single	Family	Single	Family
Maximum Annual Contributions	$4,400	$8,750	$4,300	$8,550	$4,150	$8,300
Minimum Deductible	$1,700	$3,400	$1,650	$3,300	$1,600	$3,200
Maximum Out-of-Pocket	$8,500	$17,000	$8,300	$16,600	$8,050	$16,100
Catch-up Contribution (age 55 and older)	$1,000	$1,000	$1,000	$1,000	$1,000	$1,00
Qualified Small Employer Health Reimbursement Arrangements (QSEHRAs)	Single	Family	Single	Family	Single	Family
Maximum Annual Reimbursements	$6,450	$13,100	$6,350	$12,800	$6,150	$12,450
Excepted Benefit Health Reimbursement Arrangements***						
Maximum Annual Reimbursements	$2,200		$2,150		$2,100	

LIMIT	2026	2025	2024
Health Care Flexible Spending Account Maximum (per employee per unrelated employer)			
Salary Reduction Contributions	$3,400	$3,300	$3,200
Carry-over to Next Plan Year	$680	$660	$640
Dependent Care Assistance Maximum			
Per Household	$7,500	$5,000	$5,000
Married Filing Separately	$3,750	$2,500	$2,500
Qualified Transportation Fringe (Monthly)			
Parking and Mass Transit Pass/Vanpool	$340	$325	$315
Adoption Assistance Programs			
Maximum Exclusion per Child	$17,670	$17,280	$16,810
Phase-Out Floor	$265,080	$259,190	$252,150
Phase-Out Ceiling	$305,080	$299,190	$292,150
Long-Term Care Deductible Premiums			
Age 40 and younger	$500	$480	$470
Age 41 to 50	$930	$900	$880
Age 51 to 60	$1,860	$1,800	$1,760
Age 61 to 70	$4,960	$4,810	$4,710
Over age 70	$6,200	$6,020	$5,880
Total FICA Tax (Combined OASDI and HI Portions)			
Employees and Employers, each	7.65%****	7.65%****	7.65%****
FICA Taxes (HI Portion)			
Employees and Employers, each (all wages)	1.45%****	1.45%****	1.45%****
Social Security Tax (OASDI Portion)			
Employees and Employers, each	6.2%	6.2%	6.2%
Wage Base	$184,500	$176,100	$168,600

* For individuals who attain 60-63 in 2026, the catch-up contribution limit remains $11,250 for most 401(k), 403(b), governmental 457(b) plans, and SEPs, and $5,250 for SIMPLE plans.

** Effective January 1, 2026, individuals who earned in excess of the wage threshold in the prior year from an employer must make catch-up contributions to an applicable employer plan (other than a plan described in Section 408(k) or (p)) as designated Roth contributions. Applicable wages are an individual's prior year wages as defined under IRC 3121(a). See IRC 414(v)(7), 90 Fed. Reg. 44527.

*** Effective January 1, 2020, an Excepted Benefit HRA can be used to reimburse the costs of certain §213(d) medical expenses for eligible employees.

**** Higher-income employees will be subject to an additional 0.9% Medicare tax on wages in excess of threshold amounts based on filing status as listed in the table below. Employers are required to withhold the 0.9% Medicare tax on wages paid to an employee in excess of $200,000 without regard to filing status.

FILING STATUS	THRESHOLD AMOUNT
Married filing jointly	$250,000
Married filing separately	$125,000
Single; Head of Household (with qualifying person); or Qualifying widow(er) with dependent child	$200,000

Wage & Hour Advisor: Court of Appeal Affirms Dismissal of PAGA Case Based on Claim Preclusion Arising from Settlement of Overlapping PAGA Case

Aaron Buckley

Introduction

On November 19, 2025, the California Court of Appeal, Second District, affirmed a trial court's order dismissing a Private Attorneys General Act (PAGA) action with prejudice based on the doctrine of claim preclusion (also known as "res judicata"), holding the settlement of a prior PAGA action alleging substantially identical claims barred re-litigation of those same claims in a subsequent action.

Brown v. Dave & Buster's of California, Inc.[1]

Lauren Brown worked at a Dave & Buster's restaurant in Westchester, California from November 2016 to April of 2018.[2] In June 2019, Brown filed a representative PAGA action against the company seeking civil penalties based on allegations that the company violated the Labor Code by requiring its employees to work off the clock and failed to provide compliant meal and rest periods, vacation pay, and compliant wage statements.[3]

The trial court sustained Dave & Buster's demurrer and stayed the case based on the pendency of at least two previously-filed PAGA actions involving "substantially identical" claims.[4] In February of 2020, Dave & Buster's filed a status conference statement describing two additional earlier-filed PAGA actions, noting that Brown's PAGA action was the fifth-filed PAGA action pending against it.[5] In June of 2021, Dave & Buster's reported to the trial court that it had reached an agreement to settle one of the earlier-filed PAGA actions.[6]

In June of 2023, Dave & Buster's moved for judgment on the pleadings, arguing the settlement of an earlier-filed PAGA action, *Andrade v. Dave & Buster's Management Corporation, Inc.*, San Diego County Superior Court Case No. 37-2019-00019561-CU-OE-CTL, had released all of Brown's claims against it and that claim preclusion barred Brown's lawsuit in its entirety.[7] Dave & Buster's also argued that Brown lacked standing to bring representative claims for any PAGA violations occurring on or after the date of the *Andrade* settlement approval.[8]

Dave & Buster's included with its motion a request for judicial notice of various documents from the *Andrade* action, including a pre-filing PAGA notice to the Labor and Workforce Development Agency (LWDA) dated May 13, 2019, an initial complaint filed November 14, 2019, and an amended notice to the LWDA dated February 3, 2022, in which Andrade added a vacation pay claim and added as defendants the named defendants in Brown's action.[9] Andrade filed an amended complaint 35 days after filing her amended notice, adding the vacation pay claim and the additional defendants.[10] Shortly thereafter Andrade moved for approval of her settlement, which the San Diego Superior Court granted on November 4, 2022.[11]

The trial court granted Dave & Buster's motion, dismissed Brown's complaint with prejudice, and entered judgment in favor of Dave & Buster's.[12] Brown appealed.[13]

The California Court of Appeal summarized the doctrine of claim preclusion, explaining that claim preclusion bars a new lawsuit if the first case had the same cause of action, between the same parties, and a final judgment on the merits.[14] The purpose of claim preclusion, the court explained, is to "promote[]

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[1] No. B339729, 2025 Cal. App. LEXIS 750 (Nov. 29, 2025).

[2] 2025 Cal. App. LEXIS 750, at *2.

[3] 2025 Cal. App. LEXIS 750, at *2.

[4] 2025 Cal. App. LEXIS 750, at *2.

[5] 2025 Cal. App. LEXIS 750, at *2-3.

[6] 2025 Cal. App. LEXIS 750, at *3.

[7] 2025 Cal. App. LEXIS 750, at *3-4.

[8] 2025 Cal. App. LEXIS 750, at *4.

[9] 2025 Cal. App. LEXIS 750, at *4.

[10] 2025 Cal. App. LEXIS 750, at *4.

[11] 2025 Cal. App. LEXIS 750, at *5.

[12] 2025 Cal. App. LEXIS 750, at *5-6.

[13] 2025 Cal. App. LEXIS 750, at *6.

[14] 2025 Cal. App. LEXIS 750, at *7 (citing *DKN Holdings LLC v. Faerber,* 61 Cal. 4th 813, 824-25 (2015)).

judicial economy by requiring all claims based on the same cause of action that were or could have been raised to be decided in a single suit."[15]

The court of appeal rejected Brown's argument that she had standing to pursue civil penalties for Labor Code violations that occurred after November 4, 2022—the date the *Andrade* settlement was approved—noting Brown's employment with Dave & Buster's ended in 2018.[16]

Brown also argued that Andrade's failure to strictly adhere to the statutory 65-day waiting period between the filing of her amended PAGA notice and the filing of her amended PAGA complaint (she waited only 35 days) defeated claim preclusion.[17] The court of appeal rejected this argument as well, noting that the 65-day waiting period was an "administrative exhaustion" requirement designed to give the LWDA "the opportunity to decide whether to allocate scarce resources to an investigation–a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations."[18] However, "[n]othing in the statute's language or any published case law suggests the 65-day waiting period also applies to amended notice of complaints."[19] The court of appeal noted its decision on this issue was "consistent with the longstanding doctrine of substantial compliance" and concluded that "Andrade's failure to wait 65 days was a harmless defect," noting the LWDA had not opposed approval of the *Andrade* settlement.[20]

As further support for its decision, the court of appeal noted that a failure to give preclusive effect to the Andrade settlement would be inconsistent with the California Supreme Court's rejection of PAGA plaintiffs' efforts "to file objections to the settlement reached by another aggrieved employee representing the same state interest and also acting on the state's behalf," and that "opening the door to these objections was contrary to PAGA's text, statutory scheme, and legislative history."[21]

[15] 2025 Cal. App. LEXIS 750, at *7 (citing *5th & LA v. Western Waterproofing Co., Inc.,* 87 Cal. App. 5th 781, 788 (2023)).

[16] 2025 Cal. App. LEXIS 750, at *6-7.

[17] 2025 Cal. App. LEXIS 750, at *7-8.

[18] 2025 Cal. App. LEXIS 750, at *8-11 (citing *Williams v. Superior Court,* 3 Cal. 5th 531, 545-46 (2017)).

[19] 2025 Cal. App. LEXIS 750, at *11.

[20] 2025 Cal. App. LEXIS 750, at *11-12.

[21] 2025 Cal. App. LEXIS 750, at *12-13 (citing *Turrieta v. Lyft, Inc.,* 16 Cal. 5th 664, 715)).

Conclusion

This decision is welcome news for California employers that face multiple, overlapping PAGA actions. Employers that find themselves in this situation should ensure that if an earlier-filed PAGA case is settled, the settlement includes all the claims and parties in subsequent, overlapping PAGA actions. This may require the settling plaintiff(s) in the earlier-filed action to amend their PAGA notices and PAGA complaints. If that is done properly, court approval of the settlement should preclude continued litigation of subsequent actions that cover the same parties, claims, and time periods.

Aaron Buckley is a partner at Quarles & Brady LLP in San Diego. He represents employers in cases involving wage and hour, discrimination, wrongful termination, and other issues. Mr. Buckley is a member of the Wage & Hour Defense Institute, a defense-side wage and hour litigation group consisting of wage and hour litigators throughout the United States.

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CASE NOTES

ADA

***Buchanan v. Watkins*, No. 24-6236, 2025 U.S. App. LEXIS 30364 (9th Cir. Nov. 20, 2025)**

The Ninth Circuit Court of Appeals held that a district court's decision to admit evidence under Federal Rule of Civil Procedure 26(a) or (e) was reviewed for abuse of discretion.

Amy Buchanan appealed the district court's grant of summary judgment to Watkins & Letofsky, LLP on her discrimination and retaliation claims under the Americans with Disabilities Act. The district court determined that Watkins & Letofsky was not a covered employer under the ADA because it did not employ 15 or more employees for 20 or more calendar weeks in 2016 or 2017.

The Ninth Circuit held that the district court erred in granting summary judgment in favor of Watkins & Letofsky on Buchanan's ADA claims. Viewing the evidence in the light most favorable to Buchanan and drawing all reasonable inferences in her favor, there was a genuine dispute of material fact as to whether Watkins & Letofsky was a covered employer under the ADA. As an initial matter, the district court did not err by counting Susan Watkins and Nancy Letofsky as employees. Using the common law factors of control and viewing the facts in the light most favorable to Buchanan, Watkins & Letofsky exhibited sufficient control over Susan and Nancy to create a triable issue of fact as to whether they should be classified as employees rather than independent contractors. The district court relied on Exhibit M to determine that Watkins & Letofsky did not employ 15 or more employees for 20 weeks in 2017 even when including Buchanan, Susan, and Nancy in the total employee count. It appeared that the district court relied on the column titled "# of E/E at Week Start" of Exhibit M to arrive at its determination. But relying upon the column entitled "# of E/E at Pay Date" of that same exhibit indicated that there were 20 or more weeks when Watkins & Letofsky employed 15 or more employees. The "# of E/E at Pay Date" column seemed to incorporate data from Exhibit J, which listed the number of employees at each pay date in 2017, although Exhibit M organized that payroll data in a different fashion.

Accordingly, the Ninth Circuit Court of Appeals reversed the judgment of the district court.

Reference. See, e.g., Wilcox, *California Employment Law,* §40.22A *Americans With Disabilities Act of 1990* (Matthew Bender).

ARBITRATION

***Larios v. Township Building Services*, No. 25-1936, 2025 U.S. App. LEXIS 29689 (9th Cir. Nov. 13, 2025)**

The Ninth Circuit Court of Appeals held that to establish that the FAA did not apply, the parties must have "clear and unmistakable evidence that they agreed to apply nonfederal arbitrability law."

Township Building Services provided commercial janitorial services in multiple states. Township hired janitors from multiple states, including Salvador Flores Larios and Borys Arroliga ("plaintiffs"). The employment contracts contained an arbitration agreement with a choice of law provision stating California law would govern. The arbitration agreement included a class action waiver. The agreement was expressly limited to claims related to employment with Township. Plaintiffs brought wage and hour class and collective action and contended that Township failed to present competent evidence that the contract involved commerce and therefore fell within the coverage of the FAA. The district court properly determined that the FAA applied to the arbitration agreement at issue. Township appealed the district court's order denying its motion to compel arbitration.

The Ninth Circuit held that the district court erred in concluding that the arbitration agreement was substantively unconscionable because it contained a class action waiver. The FAA preempted state court decisions prohibiting class action waivers as unconscionable. The district court also erred in concluding that the arbitration agreement was substantively unconscionable because it was overbroad. On the contrary, the arbitration agreement was expressly limited to claims arising out of the employment relationship. The evidence before the district court nonetheless adequately established the arbitration agreement's involvement with interstate commerce. The FAA applied to any "contract

evidencing a transaction involving commerce" that contained an arbitration provision. Township presented uncontroverted evidence that it provided commercial janitorial services to "commercial, industrial and retail businesses" in multiple states. Township regularly hired janitors from multiple states, including the named plaintiffs, who were from different states and provided services in different states. This was sufficient to establish that the plaintiffs' employment at Township "affected commerce." As a result, their arbitration agreements "involve commerce" and were covered by the FAA. The agreement did not, by its plain language, waive the plaintiffs' right to seek administrative relief. Rather, it provided that "the employee, in consideration of employment with Township Building Services, waives all other rights or remedies which may be available to said employee had the employee not agreed to Binding Arbitration except for those rights afforded either party by State or Federal rulings, processes or laws, which allow and/or require governmental administrative hearings." The arbitration agreement also provided that "Township and its employees hereby agree that they do not waive all other rights, remedies, and advantages that may be available to them had they not agreed to binding arbitration." Because the arbitration agreement did not in fact waive administrative relief, this argument failed.

Accordingly, the Ninth Circuit Court of Appeals reversed and remanded the judgment of the district court.

Reference. See, e.g., Wilcox, *California Employment Law,* §90.20 *Individual Arbitration Agreements* (Matthew Bender).

DISABILITY

***Mendoza v. Board of Retirement Employees Retirement Association,* No. B327347, 2025 Cal. App. Unpub. LEXIS 7700 (Dec. 3, 2025)**

The California Court of Appeals held that in order to qualify for a service-connected disability retirement, the applicant's permanent incapacity must be "a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity.

Alberto Mendoza began employment as a Ventura County Deputy Sheriff and was assigned to the Todd Road Jail Facility. Appellant was working at the facility when he slipped while going up stairs, "which caused discomfort in his lower back." He suffered another injury to his back when an inmate he was attempting to subdue, kicked him in the right waist area. appellant underwent a magnetic resonance imaging (MRI) of his lumbar spine. The MRI film showed degenerative disc disease at the L5-S1 level and a disc herniation abutting the right S1 nerve root. Appellant's treating physician issued an evaluation report with a request for authorization of treatment. The requested surgery was authorized by the County of Ventura, but appellant declined to undergo the procedure. On May 25, 2016, appellant filed an application with the Ventura County Employees' Retirement Association ("VCERA") for a service-connected disability retirement. The hearing officer issued his proposed findings of fact and recommended decision denying appellant's application for service-connected disability retirement benefits. Appellant petitioned for a writ of administrative mandate. Trial court denied the same. Mendoza appealed.

The California Court of Appeals concluded that the doctrine of avoidable consequences/mitigation of damages logically applied not only when it was likely that the employee could still return to work by undergoing recommended medical treatment, but also when it was likely the employee could have returned to work but for their unreasonable refusal to timely submit to treatment that may no longer be effective due to the passage of time. Under the latter law rule requiring mitigation of damages, which was properly applied in determining eligibility for disability retirement. A retirement board can reasonably find that the employee's inability to return to work was not a result of their work-related injury, but rather a result of their unreasonable refusal to submit to medical treatment for that injury. Moreover, appellant could not be heard to complain the evidence did not support the court's findings that he unreasonably refused to undergo the hemilaminectomy microdiscectomy that was approved in November 2015, and that he probably would have been able to return to work had he undergone that surgery. His opening brief did not set forth any of the evidence favourable to those findings. Although the court focused on appellant's refusal to undergo the approved surgery, the Board of Retirement of the Ventura County Employees Association also found appellant (1) had unreasonably refused to participate in the work hardening program; (2) had unreasonably stopped performing the home exercise program recommended by physician; and (3) "requires further medical care and treatment." Because substantial evidence supported these findings, appellant failed to establish that his writ petition was erroneously denied.

Accordingly, the appellate court affirmed the judgment of the trial court.

Reference. See, e.g., Wilcox, *California Employment Law,* §80.67 *Arbitration* (Matthew Bender).

RETALIATION

***Hollis v. R&R Restaurants, Inc.,* No. 24-2464, 2025 U.S. App. LEXIS 30112 (9th Cir. Nov. 18, 2025)**

The Ninth Circuit Court of Appeals held that a defendant in an FLSA retaliation action needed not be the actual employer and the plaintiff needed not have been employed by the actual employer when the retaliation occurred. Rather, the defendant needed only have acted. indirectly in the interest of an employer in relation to an employee in committing the alleged retaliation.

Zoe Hollis, a dancer at a Portland strip club called Sassy's, sued the club's owners and managers under the Fair Labor Standards Act for misclassifying its dancers as independent contractors and violating corresponding wage and hour provisions. After Hollis filed the complaint, Frank Faillace a partner and manager of both Sassy's and another club called Dante's canceled an agreement for Hollis to perform at a weekly variety show at Dante's. In emailing Hollis to cancel her performance, Faillace cited the suit against Sassy's, explaining his intent to protect Dante's from legal liability. After receiving Faillace's email, Hollis amended the complaint to allege that Faillace's decision to bar Hollis from performing at Dante's constituted retaliation in violation of the FLSA. The district court granted summary judgment to the defendants, reasoning that the FLSA only provided a private right of action for retaliation committed by current employers. Hollis appealed.

The Ninth Circuit held that Faillace was an owner and manager of Sassy's and that Hollis could not prevail on the retaliation claim unless they were employed by Sassy's. Assuming that Hollis established an employer-employee relationship with Sassy's on remand, Faillace was Hollis's employer under the relevant legal standard. R&R Restaurants, Inc, Stacy Mayhood; Ian Hannigan; Frank Faillace ("defendants") nonetheless argued that Faillace was not acting as Sassy's agent when he emailed Hollis to cancel the performance agreement at Dante's. Rather, they asserted that "Faillace acted solely in his capacity as the proprietor of Dante's" in barring Hollis from performing there. But this argument misunderstood the statute, which did not require that the retaliator directly benefit the actual employer nor act under that employer's instructions to be considered an "employer". Rather, the FLSA only required that the retaliator act "indirectly in the interest of an employer in relation to an employee." Canceling a scheduled work agreement and barring a worker from future contract opportunities cut the worker off from an income source. It deprived the worker of funds they would otherwise have been able to earn. Refusing to contract with a worker was not categorically less likely to dissuade that worker from making a complaint than termination or demotion. On this record, a trier of fact could reasonably find that Faillace's actions were sufficiently harmful to constitute retaliation. The defendants cited no case establishing that an adverse action could be taken against a former employee because of that employee's protected complaint as long as the action was motivated by the desire to avoid future litigation or increased liability from the same employee. FLSA-covered employers could not take adverse actions against FLSA plaintiffs and then avoid retaliation liability by explaining those actions as attempts to limit legal exposure created by their alleged violations of the Act. In other words, a financial interest in minimizing liability did not justify bald retaliation.

Accordingly, the Ninth Circuit Court of Appeals reversed the judgment of the district court.

Reference. See, e.g., Wilcox, *California Employment Law,* §21.49 *Retaliation Against Employees* (Matthew Bender).

TERMINATION

***Guytan v. Swift Transportation Co.,* Nos. B332490, B336036, 2025 Cal. App. Unpub. LEXIS 7441 (Nov. 21, 2025)**

A California appellate court held that a defendant met its burden of demonstrating that a cause of action had no merit by showing that one or more elements of the cause of action could not be established, or by demonstrating a complete defense to the cause of action.

Anthony Guytanwas employed by Swift as a driver for approximately 12 months, until his termination in March 2016. In compliance with relevant laws, Guytan was required to submit to drug testing. Guytan was selected for testing. Swift contended that the selection was random and that it complied with applicable regulations in attempting to administer the test. Guytan disputed this characterization, asserting that the test was sprung on him after he had already clocked out of work as part of a pattern of ongoing retaliation. Guytan filed his first action against Swift, alleging eight causes of action, including FEHA and Labor Code violations. The complaint detailed numerous instances of alleged improper conduct by Swift against Guytan. The

disputed drug test and any reporting of the test were not specifically referenced in the complaint. The first action settled in October 2017, with the parties entering into a settlement agreement. As part of the settlement agreement, Guytan executed a general release of claims in favor of Swift on October 9, 2017. In November 2018, Guytan was hired by a new employer, U.S. 1 Logistics (US 1), as a truck driver. Swift caused DriverFacts to release records to US 1, which included the report that Guytan refused to test on March 11, 2016. Swift never did so, however, and Guytan's employment with U.S. 1 was terminated. The court granted summary adjudication in favor of Swift on three of Guytan's causes of action but denied summary adjudication of the FEHA claim and accordingly denied summary judgment. Swift appealed from the judgment. In postjudgment proceedings, the trial court awarded Guytan attorney fees and denied a motion by Swift to tax costs.

The California appellate court concluded that the problem with Swift's argument was that it miscomprehended the context of the claim at issue on summary judgment, as well as directly relevant findings later made by the jury. To obtain summary judgment, Swift needed to demonstrate that there were no triable issues of material fact. Guytan did raise triable issues of material fact. Critically, these issues centered around conduct that postdated the settlement agreement. Furthermore, although the direct issue of whether Guytan released the subject FEHA claim by entering into the general release of claims was not decided by the jury, facts directly impacting that inquiry were resolved by the jury adversely to Swift. Swift cited to no authority prohibiting a FEHA claim by a former employee; relevant authority runs to the contrary. Under the FEHA antiretaliation provision, an employer "may not discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." Guytan a former employee found by the jury to have been retaliated against for engaging in FEHA-protected activity could properly maintain a FEHA claim against the former employer, Swift, that engaged in the retaliatory conduct. Despite the broad language of the release, there was no indication in the settlement agreement that Guytan intended to release Swift from liability for the future transmission of false information to a new employer. The agreement did not contain terms covering such matters, and even a broad release did not extend to issues beyond the terms of the agreement. Furthermore, had the agreement purported to absolve Swift of responsibility for the future transmittal of false, harmful information, such a provision presumably would run afoul of Civil Code Section 1668.

Accordingly, the appellate court affirmed the judgment of the trial court.

Reference. See, e.g., Wilcox, *California Employment Law,* §62.05 *Termination of the Employment Relationship* (Matthew Bender).

WAGE AND HOUR VIOLATIONS

***Camberos v. JJ Nguyen*, No. H052524, 2025 Cal. App. Unpub. LEXIS 7734 (Dec. 3, 2025)**

A California appellate court held that Code of Civil Procedure Section 1281.2 required a trial court to compel arbitration "on petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, . . . if the court determines that an agreement to arbitrate the controversy exists."

Juan Manuel Camberos, a union member, worked for defendant JJ Nguyen, Inc., a landscape contractor. After the end of his employment, Camberos sued JJ Nguyen alleging wage and hour violations under the Labor Code and the applicable Industrial Welfare Commission wage order. JJ Nguyen moved under Code of Civil Procedure Section 1281.2 for an order (1) compelling Camberos to arbitrate his individual claims and (2) staying the trial court proceedings on class and representative claims until the conclusion of that arbitration. Opposing the motion, Camberos objected that counsel's declaration failed to establish foundational facts necessary to admission of the attached CBA. Camberos also disputed whether the proffered CBA required him to arbitrate his claims, including whether it was in effect during July 2022. The trial court denied JJ Nguyen's motion, concluding that the operative CBA's grievance procedure was not mandatory because it used the phrase "'may file a grievance'" instead of 'mandatory language such as "shall"" or "must." JJ Nguyen appealed.

The California appellate court concluded that JJ Nguyen demanded arbitration under a contract that did not require Camberos to accept but now seeks to enforce a different arbitration agreement. JJ Nguyen did not establish a prior demand and refusal of arbitration under the CBA it only later asked the court to enforce. Nor had it shown that the court should excuse this failure because Camberos filed suit. JJ Nguyen did not establish how Camberos would have responded to a demand under the operative CBA, because JJ Nguyen relied on one it implicitly conceded

was inoperative. Beyond the absence of demand and refusal, JJ Nguyen did not satisfy its obligation to include with its petition a copy of the arbitration agreement or the verbatim terms of the arbitration agreement. Rather, it relied on an outdated CBA, which JJ Nguyen admitted in its reply brief to the trial court did not control the arbitrability issue for any claim, that lacked the term that was the centerpiece of its appellate brief. Invocation of alternate grounds for affirmance demonstrate that he would have refused arbitration on the strength of those arguments alone. Although Camberos as a member of the bargaining unit was generally bound by the terms of a CBA there was no evidence that Camberos was aware of the CBA JJ Nguyen asked the court to enforce until after he filed suit and then opposed JJ Nguyen's motion to compel arbitration. JJ Nguyen did not establish its entitlement to an order compelling arbitration under Code of Civil Procedure Section 1281.2.

Accordingly, the appellate court affirmed the judgment of the trial court.

Reference. See, e.g., Wilcox, *California Employment Law,* §9.05 *Arbitration* (Matthew Bender).

***Lorenzo v. San Francisco Zen Centre*, No. A171659, 2025 Cal. App. LEXIS 756 (Nov. 21, 2025)**

A California appellate court held that on de novo appeals under Labor Code Section 98.2, by a religious organization and two individuals found liable as employers under Labor Code Section 558.1, the First Amendment's ministerial exception did not apply because the employers did not show the wage-and-hour claims raised an ecclesiastical concern.

After participating in the San Francisco Zen Center's guest student program, Annette Lorenzo became a WPA at the City Center location. During her time there, she "was responsible for cleaning guest rooms, doing laundry, giving tours of the facility, and checking guests into their rooms." In January 2016, Lorenzo continued as a WPA at Tassajara where she worked in both the kitchen and bathhouse. Lorenzo became a staff member at Tassajara. During the first part of 2017, she served as the assistant to the executive chef. Her responsibilities included taking inventory as well as ordering and organizing supplies. She also prepared and bagged lunches for guests during the summer guest season. In January 2018, Lorenzo was a staff member at City Center and worked as a librarian. In March 2019, Lorenzo was asked to leave and ended her affiliation with the Center. Her final monthly stipend was $198.33. Lorenzo filed a claim with the Labor Commissioner for wage-and-hour violations. The Labor Commissioner issued an order, decision, or award (Order or Labor Commissioner Order) in Lorenzo's favor against Centre, Linda Galijan, and Mike Smith. The total amount awarded against defendants was $149,177.15, which consisted of unpaid minimum wages, unpaid overtime wages, liquidated damages, interest, and waiting time penalties. Defendants appealed. The court denied the motion, finding that Lorenzo's "putative employer has posted an undertaking" in the full amount. Defendants moved for summary judgment. The trial court granted defendants' motion.

The California appellate court concluded that the ministerial exception did not bar every employment claim for lost or unpaid wages. Instead, it only barred those claims that necessarily require an inquiry into matters of a religious entity's "internal government" that were "closely linked" to the entity's "faith and doctrine." The Center did not argue that, much less explain how, Lorenzo's wage-and-hour claims which only sought lost or unpaid wages for her work in the Church's commercial activities require such an inquiry. Instead, the Center conceded in its opening brief that Lorenzo "is correct that 'adjudication of this case does not require the Court to resolve any ecclesiastical questions.'" Lorenzo's wage-and-hour claims were not tied to the Center's decision to terminate her employment and did not invade the Center's autonomy in the selection of its ministers. If the ministerial exception did not apply, the Center bore the burden of showing that based on the affirmative defense of the church autonomy doctrine, Lorenzo's wage-and-hour claims raised an ecclesiastical concern such that they were barred under the Religious Clauses. The purpose of the undertaking requirement "'is to discourage employers from filing frivolous appeals and from hiding assets in order to avoid enforcement of the judgment.'" More so, "recognizing the underlying requirements to be jurisdictional furthers the broader purposes of the statutory scheme." By precluding an employer from even filing a notice of appeal without an undertaking, the employee did not have to expend time and money in procuring a dismissal or enduring trial de novo proceedings pending the ruling, thus furthering the purpose of 'reducing the costs and risks of pursuing a wage claim,' 'deterring employers from unjustifiably prolonging a wage dispute by filing an unmeritorious appeal,' and ultimately 'ensuring that workers are paid wages owed.'" The undertaking posted by the Center, by its express terms, did not include Galijan or Smith. Defendants offered no explanation for this omission. Nor did they explain how their posted undertaking would cover Galijan or

Smith, if they, but not the Center, were somehow found liable.

Accordingly, the appellate court reversed the judgment of the trial court.

Reference. See, e.g., Wilcox, *California Employment Law,* §41.106 *Religious Exemptions and Exceptions* (Matthew Bender).

WRONGFUL TERMINATION

***Thomas v. Southern California Permanente Medical Group*, No. B331251, 2025 Cal. App. Unpub. LEXIS 7532 (Nov. 24, 2025)**

A California appellate court held that the trial court's ruling on a motion to amend a pleading was reviewed under an abuse of discretion standard and the appellant had the burden of establishing its discretion was abused.

James Thomas was employed by Southern California Permanente Medical Group as a licensed vocational nurse from 2012 until his termination in January 2017. Thomas sprained his ankle after he slipped in a stairwell at work. The injury limited his walking and movement, and he suffered pain for several weeks. He immediately reported the injury to Jamila Dainty. Dainty asked Thomas to meet with her, Ariel Rankin, and his union representative. Dainty accused him of taking breaks without being clocked out, and she told him he had been seen heating and eating his food while on the clock. Thomas denied the allegations. As a result, she consulted with a human resources consultant and decided to terminate Thomas's employment. Thomas filed his complaint against SCPMG, Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and Dainty. SCPMG moved for summary judgment on all of Thomas's causes of action and his prayer for punitive damages. The trial court determined Thomas had not shown his ankle sprain was a cognizable disability within the meaning of FEHA, and it refused to consider his purported vertigo disability because it had not been alleged in the operative second amended complaint. That was fatal to several of Thomas's FEHA causes of action, specifically: discrimination; failure to reasonably accommodate; and failure to engage in the interactive process. The trial court granted the motion as to those causes of action. After the trial court granted in part SCPMG's motion for summary judgment and denied Thomas's motion for leave to file a third amended complaint, a jury returned verdicts in favor of SCPMG.

The California appellate court concluded that Labor Code Section 6310 (a) prohibited employees being discharged or discriminated against because they have "made any oral or written complaint to . . . their employer." The type of complaint covered was "a bona fide oral or written complaint to . . . their employer . . . of unsafe working conditions . . . in their employment or place of employment." The trial court erred in granting summary adjudication in favor of SCPMG on the ground Labor Code Section 6310 (a) did not apply to "informal complaints directly to the employer." SCPMG mischaracterized the inconsistencies between Garcia's and Dainty's testimony as immaterial. Garcia's denial she complained to Dainty about any employee, let alone Thomas, was evidence creating a triable issue of material fact as to why or when Dainty actually began to investigate Thomas, because she claimed she did so as a result of Garcia's complaint. The jury's conclusion Thomas's report of a sprained ankle was not a substantial reason for his termination did not bear upon whether he was fired for complaining the staircase was unsafe. Thus, Thomas was prejudiced by the erroneous summary adjudication of his Labor Code Section 6310 cause of action. Thomas offered no similar evidence here to contradict the evidence presented by SCPMG that Dainty was not a managing agent. Dainty administered one department within one of SCPMG's medical centres. Her role was simply to "supervise the day to day operations in her department," but she "did not create SCPMG corporate policies," and instead "helped to enforce policies created by others." Thomas had failed to identify any evidence suggesting Dainty managed a significant part of SCPMG's business or had discretion to make, interpret, or apply SCPMG's corporate policies "on a corporationwide basis."

Accordingly, the appellate court partly affirmed and partly reversed the judgment of the trial court.

Reference. See, e.g., Wilcox, *California Employment Law,* §8.33 *Prohibition Against Discrimination or Retaliation* (Matthew Bender).

CALENDAR OF EVENTS

2026

January 7	California Lawyers' Association (CLA) Free Webinar: Comp Meets Cannabis – Current Trends and Developments Arising at the Intersection of Cannabis and Worker's Compensation	12:00 PM – 1:00 PM
January 12	CLA Webinar: Ghost in the Machine: The Ethics of Using AI in Legal Practice	11:00 – 12:00 PM
January 13	CLA Webinar: Webinar: Going Beyond Fear – Strategies to Overcome Mental Blocks and Performance Setbacks	12:00 PM – 1:00 PM
January 15	CLA Webinar: How to Maximize Settlements in Mediation: Mistakes to Avoid and Strategies That Work	12:00 PM – 1:00 PM
January 20	CLA Webinar: Best Practices for Preserving Privilege in Internal Investigations	12:00 PM – 1:00 PM
January 23	CLA Free Webinar: The Confident Attorney, Communication Secrets That Reduce Stress & Boost Success	12:15 PM – 1:15 PM
February 4	CLA Webinar: ADR Legislative and Case-Law Update	12:00 PM – 1:15 PM
February 5	CLA In-House Counsel Summit	Computer History Museum 1401 N. Shoreline Blvd Mountain View, CA 94043 2:00 PM – 5 PM
February 5-6	CLA 2026 New Employment Law Practitioner Virtual Conference	8:50 AM – 1:00 PM
February 19-20	CLA 2026 Annual Privacy Summit	UCLA Luskin Conference Ctr 425 Westwood Plaza Los Angeles, CA 90095
March 6	CLA Webinar: A Peek Behind the AAA Curtain: What Arbitrators and Parties Should Know	12:00 PM – 1:00 PM
March 9	CLA 5th Annual California International Arbitration Week	Omni Hotel – San Francisco 500 California St. San Francisco, CA 94104
March 10-12	NELI: Employment Law Briefing Webinar	TBA
March 19-21	CLA Inaugural Public Law Conference	Mission Bay Resort 1775 E Mission Bay Dr. San Diego, CA 92109
March 20-21	CLA 49th IP Institute	The Clift Royal Sonesta SF 495 Geary Street San Francisco, CA 94102
April 14-16	NELI: ADA and FMLA Compliance Update Webinar	8:30 AM – 12:15 PM
April 21-23	NELI: ADA and FMLA Compliance Update Webinar	8:30 AM – 12:15 PM
May 1	CLA 2026 Public Sector Conference	Sheraton Grand Sacramento Hotel 1230 J St. Sacramento, CA 95814
June 4	NELI: Ethics in Labor and Employment Law Webinar	10:00 AM – 12:00 PM
June 9-11	NELI: Mid-Year Employment Law Conference Webinar	TBA
September 9-10	NELI: ADA Workshop Webinar	8:30 AM – 12:45 PM
September 16-17	NELI: ADA Workshop Webinar	8:30 AM – 12:45 PM

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