



# Compliance is Key:

## Be Aware of Recent California Case Law Affecting Employers

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# *Huff v. Securitas*

(California Court of Appeal)

**Facts:** Huff brought suit alleging Labor Code violations against employees at Securitas, which did not apply to him because he was not a temporary employee

**Holding:** Employees may bring suits under PAGA for Labor Code violations not personally affecting the employees bringing suit, as long as other employees experienced the violations.

**Significance:** Employers may see larger award amounts in PAGA suits because they will potentially be addressing even more alleged Labor Code violations.



# *Epic Systems Corp. v. Lewis*

(U.S. Supreme Court)

**Facts:** Court considered whether arbitration agreements that require individualized proceedings violate the National Labor Relations Act (NLRA).

**Holding:** Class action waivers in arbitration agreements are enforceable under the Federal Arbitration Act and do not violate the NLRA.

**Significance:** Employers can now require that employees waive their rights to class or collective class actions and require that they arbitrate their claims on an individual basis.

**NOTE:** *This case did not address Representative actions under PAGA.*

# *Maldonado v. Epsilon Plastics Inc.*

(California Court of Appeal)



**Facts:** Epsilon instituted an alternative workweek schedule (AWS), where employees worked up to four 12 hour shifts in a workweek. In January of 2008 Employees voted by secret ballot on the new AWS, but there were no meetings on the AWS before the vote. After that Epsilon continued to vote on AWS's and in each new election failed to follow proper procedures when adopting them.

**Holding:** The employer has the burden of proving that an AWS was properly adopted.

**Significance:** Employers must ensure that proper procedures are followed when an AWS is adopted, and must document that process.

**NOTE:** *The requirements for adopting an AWS depend on the applicable wage order.*

# *Dynamex Operations West v. Superior Court*

(California Supreme Court)

**Facts:** Delivery drivers claimed that they were misclassified by Dynamex as independent contractors and were actually employees

**Holding:** Established the “ABC” test, that presumes all workers are employees. Independent contractor status requires that the worker:

- A. Is free from the control and direction of the hirer in connection with the performance of the work, both under contract and in fact;
- B. Performs work outside the usual course of entity’s business; and
- C. Is engaged in an independently established trade, occupation, or business of the same nature as the work performed for the employer. (i.e. has incorporated, gotten licenses, or purchased advertisements)



**Significance:** It is now more difficult to classify workers as independent contractors.

# *Encino Motorcars, LLC v. Navarro*

(U.S. Supreme Court)

**Facts:** “Service advisors” at a car dealership alleged that they were non-exempt and were therefore entitled to overtime.

**Holding:** “Service advisors” at car dealerships are exempt. The Court rejected the narrow interpretation principle for FLSA exemptions.

**Significance:** Modified how overtime exemptions are generally interpreted. Because the Court rejected the narrow interpretation rule for FLSA exemptions, it could be more difficult for employees to argue that they are non-exempt.



# *Alvarado v. Dart Container Corp. of CA*

(California Supreme Court)



**Facts:** Class action suit alleging that Dart used an incorrect formula for calculating overtime wages.

**Holding:** Determined how an employee's overtime pay rate should be calculated when the employee has earned a flat sum bonus during a single pay period. Employers are required to calculate the regular rate using only non-overtime, regular hours worked.

**Significance:** Applies retroactively; therefore, employers may now be liable for past practices. However, this does not address other types of bonuses such as production or piece rate bonuses.



# NLRB Handbook Guidance

- On June 6, 2018, the NLRB General Counsel provided a memo for guidance on handbook rules in light of the NLRB's decision in *The Boeing Co.* 365 NLRB No. 154 (Dec. 14, 2017).
- The *Boeing* decision:
  - Set forth a new standard for evaluating workplace rules and handbook policies.
    - The NLRB will balance the rule's burden on employees' NLRA rights with the employer's right to maintain discipline and productivity when dealing with facially neutral rules.
  - Under *Boeing*, the NLRB will no longer find rules unlawful because they *could*, rather than *would*, cover protected activities.
  - Ambiguities in rules are no longer construed against the drafter.
- The memo then addresses three categories of rules: Category 1 rules are generally lawful to maintain; Category 2 rules warrant individualized scrutiny; and Category 3 rules are unlawful to maintain.



# Category 1 Rules – Generally Lawful

- Rules that:
  - Do not prohibit or interfere with employees' NLRA rights, or;
  - Any burden on NLRA rights is outweighed by business justifications.
- The memo notes that charges involving these types of rules should be dismissed.
- Category 1 rules include:
  - A. Civility rules, such as rules prohibiting rude or inappropriate behavior;
  - B. No photography or no recording rules;
  - C. Rules against insubordination, non-cooperation, or on-the-job conduct that adversely affects operations;
  - D. Disruptive behavior rules, such as rules prohibiting creating discord with coworkers;
  - E. Rules protecting confidential, proprietary, and customer information or documents;
  - F. Rules against defamation or misrepresentation;
  - G. Rules against using employer logos or intellectual property;
  - H. Rules requiring authorization to speak for the company; and
  - I. Rules banning disloyalty, nepotism, or self-enrichment.

# Category 2 Rules – Not Obviously Lawful or Unlawful

- Require case-by-case determinations.
  - Any determination requires analysis of whether the rule would interfere with NLRA rights.
  - If so - is that interference outweighed by legitimate justifications?
  - Often requires context.
  - Should be submitted to the NLRB's Advice Division.
- Examples of Category 2 rules include:
  - A. Rules regulating use of the employer's name.
  - B. Rules generally restricting speaking to the media.
  - C. Rules against making false or inaccurate statements.

# Category 3 Rules – Generally Unlawful

- Prohibit or limit NLRA rights and the adverse impact outweighs any justifications.
- Charges involving Category 3 rules should have complaints issued for them.
- Category 3 rules include:
  - A. Confidentiality rules specifically regarding wages, benefits, or working conditions; and
  - B. Rules against joining outside organizations or voting on matters concerning the employer.

# Q & A

