

THE ZAPPIA LAW FIRM

A Professional Corporation

— Labor & Employment —

Defending Management's Rights

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September 21, 2025

RE: ZLF - Six SHORT Summaries of Recent CA Employment Cases (Employers Win a Few!)

Happy first day of Autumn everyone. In celebration, a riveting update which includes some cases where employers did OK:

1. **Employer Prevails Against First Amendment Retaliation Claim:** Plaintiff DeFrancesco and his husband Goldman were both employed by University of Arizona Health Sciences. Goldman complained that University President Robbins hired favored applicant Dake even though he applied late and had not performed well in the interview process. DeFrancesco alleged he was later harassed, refused promotion, and terminated by Dake because his husband had complained about Dake's hiring over a year earlier. The Ninth Circuit dismissed Plaintiff's claims finding President Robbins was entitled to qualified immunity from suit because it was not "clearly established" or "settled law" that it was a violation of the First Amendment to retaliate against someone for the speech of another. ([*DeFrancesco v. Robbins*](#) 136 F.4th 933 (9th Cir., 2025) Appeal No. 23-16147) (**Note:** This seems like a pretty good stretch for the Ninth Circuit in the employer's favor – but we'll take it.)
2. **Employer Prevails Against Retaliatory Termination Claim:** A jury initially found in favor of Plaintiff Rookaird on his allegation that he was wrongfully terminated as a BNSF railroad inspector in retaliation for reporting safety violations and continuing to perform air brake tests after twice being directed not to. But the

Court first vacated Rookaird's verdict on the grounds there were issues as to whether he was legitimately terminated for inefficiency and falsifying time records. The Court then determined that BNSF met its high burden of proving by clear and convincing evidence that it would have terminated Rookaird for inefficiency and dishonesty on time sheets, even if he had not engaged in his protected activity of continuing to perform air brake testing. ([Parker v. BNSF Railway Co.](#), ___ F.3d ___ (9th Cir., 5/15/25) Appeal No. 22-35695).

3. **Prevailing Employer Almost Recovered (Some) Attorney's Fees In A Failure to Accommodate Case, But Then Didn't:** Hobby Lobby prevailed against cashier Kelly Rose's allegations under the Private Attorney General Act (PAGA) that it violated the "suitable seating" provisions of the applicable CA Wage Order, requiring employers to provide a chair or stool that does not cause strain or discomfort when readily available, depending on the job and tasks required. When Hobby Lobby prevailed after trial, it sought \$475,000 in fees and costs from both Plaintiff Rose and the CA Labor Workforce Development Agency (CALWDA), which receives 25% of penalties when a Plaintiff prevails on a PAGA claim, even though it had not actively participated in the litigation. The Court awarded Hobby Lobby \$125,000 against both Rose and the CALWDA. However, the Court of Appeal reversed, holding that the CALWDA would not be liable for costs and fees when it was not an active party. The Court then did not answer the question as to whether a prevailing employer was entitled to fees and costs at all after prevailing against a PAGA. ([Rose v. Hobby Lobby Stores](#) (2025) 72 Cal.App.5th 56)
4. **Bad News and Good News: Plaintiff's Attorney's Fees Award Substantially Reduced After Prevailing in an Employment Retaliation Case:** Plaintiff and LAFD Fire Captain Michael Cash prevailed at trial on claims he was retaliated against by the LAFD for complaining that a female probationer should have been terminated for failing a test that would automatically result in a probationer's termination. He was subsequently removed from his training assignment. The jury awarded Cash \$450,000 for retaliation and failure to take steps to prevent retaliation. Cash's counsel then filed a motion for \$705,000 in attorney's fees as the prevailing party. However, it was substantially reduced to \$455,000 for what the Court found unreasonable padding, duplicative work, and unnecessary questioning of witnesses during trial. ([Cash v County of Los Angeles](#) (2025) 111 Cal.App.5th 741)

5. **\$8.5 Million Wage/Hour San Francisco Jury Verdict:** A San Francisco jury awarded \$8.5 million to Delta Dental employees finding they had been misclassified as non-exempt, denied overtime pay, denied meal & rest periods, and denied incentive pay. (*Marianne Ramirez and Wendy Campbell v Delta Dental*, SFCSC Case No. CGC-21-589648, 9/5/25)
6. **Policer Officers' Personnel Records Ordered Fully Disclosed:** Murder suspect Schneider brought a motion for disclosure of the personnel records of six LA Sheriff deputies involved in investigating the allegations against him for purposes of uncovering information that might undermine their credibility at trial. The court found Schnieder showed good cause to seek the records, but granted disclosure of only the names, addresses, and telephone numbers of individuals who had witnessed or complained of misconduct against the deputies. The Court of Appeal reversed, holding the trial court should have ordered LA Sheriff's Department to disclose all *Brady* material in the deputies' personnel files, including documents and any audio-video materials. The key basis of the ruling was that there was credible evidence presented that the officers' files including information that may impact their credibility. Thus, the relevance of the information to the murder defense outweighed the officers' right to privacy. (*Schneider v. Superior Court* (CA Court of Appeal, 2nd Dist., 7th Div, Appeal No B341712, Los Angeles County Superior Court Case No. YA098537))

THE ZAPPIA LAW FIRM APC has defended employers and management's rights in employment and labor law and litigation since 2008. Ed Zappia has represented public and private employers and management for over 30 years in a wide array of employment and labor law matters including: litigation and trial of harassment, discrimination, retaliation, wrongful termination & wage/hour cases; appeals; workplace/personnel investigations; administrative hearings and arbitrations; professional trainings; police and fire law & discipline; labor negotiations and disputes; and union and employee grievances and arbitrations.

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Sincerely,

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