
LEGAL LANDMINES: WHAT TO KNOW ABOUT BEING SUED BY YOUR EMPLOYEE



ROSASCO
LAW GROUP

Presented by: Erica Rosasco

 MOON & YANG APC
ATTORNEYS AT LAW

STOP GETTING SCREWED

SEXUALLY HARASSED? DISCRIMINATED AT WORK?
NOT PAID OVERTIME? WRONGFULLY TERMINATED?

SE HABLA ESPAÑOL

NO RECOVERY = NO FEE

(844) PAY-WAGE





Unfairly Laid Off? COVID-19 Exposure? Lawyers For Justice Fights To Collect What Belongs To You!



LAWYERS FOR JUSTICE

PC



THE TRUTH ALWAYS WINS

844 - 44FIRED

844-44FIRED.com



Wrongful Termination Law Firm

Free Legal Consultation
888.694.7132

ARE YOU
FACING
UNEQUAL
TREATMENT
AT WORK?



THE LAW OFFICE OF CHRISTOPHER S. DEWITT
WORKING SOLUTIONS NYC

CALL (646) 430-7930 OR
CLICK "LIVE CHAT" TODAY!



- Ensure FLCs handle records requests with counsel
- Work comp cases are often referred to class action attorneys
- Letters are being sent to our workers
- Phone calls & text messages to our workers
- Social media advertising looking for your employees
- Stress open door policy

**IF YOU WERE EMPLOYED
BY [REDACTED] FAMILY WINES
IN THE PAST 3 YEARS,
WE WANT TO TALK TO YOU.**

**IF YOU QUALIFY, YOU COULD
BE OWED COMPENSATION.**

WE'VE WON MILLIONS FOR CA WORKERS. WE'LL FIGHT FOR YOU!

Legal advertisement by Edwin Aiwazian of Lawyers Justice, PC. Any statements in this ad do not: 1) constitute a guarantee, warranty, prediction regarding the outcome of your legal matter, or 2) a promise to represent you. Past results do not guarantee future outcomes. The attorneys at Lawyers For Justice, PC practice law in California only.

Were you employed by [REDACTED]
Family Wines within the past 3 years?



HITTING A
NEW LOW FOR
OUR
PROFESSION

BASIC TYPES OF WAGE AND HOUR LAWSUITS

INDIVIDUAL CLAIMS

- Generally maximum of \$20,000-\$30,000 on wage and hour.
- Not a lot of Plaintiff's attorneys interested.

CLASS ACTION CLAIMS

- All Individual Claims for All "Similarly Situated" Employees Going Back 4 Years
- Damages Cannot Be Reduced

PRIVATE ATTORNEYS GENERAL ACT CLAIMS

- Civil Penalties for All Employees for Any Labor Code Violation
- Penalties Can Be Reduced by the Court

How Does a Class Action differ from PAGA?

Class Action

- Must have an adequate class representative
- Penalties set in stone
- Goes back 3-4 years
- Plaintiff can be picked off in a settlement (Pick Up Stix defense)
- Must get preliminary approval, notice to class must be given, allows for objectors, and final approval by court with opt out availability to employees
- Rigorous test to ensure class action is best method of resolution such that individual cases cannot be maintained

PAGA Case

Court might require manageability plan

Penalties can be reduced by a sympathetic judge in the interest of justice

One year statute of limitations

Court approval needed

No opt out

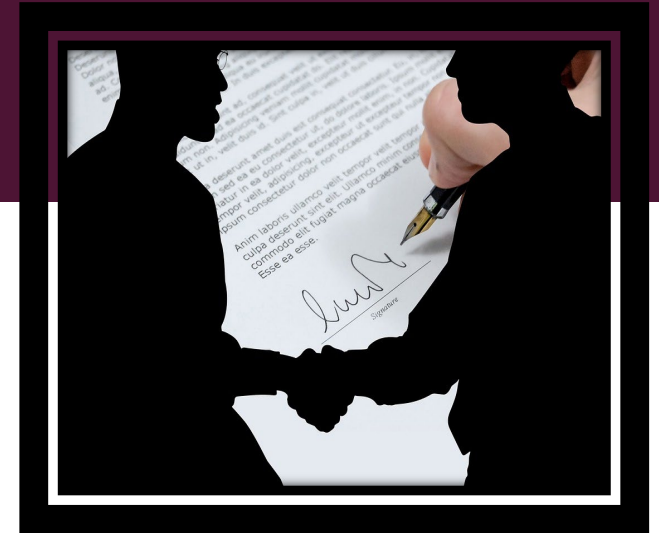
HAVE AN ARBITRATION AGREEMENT

PROS

- Private
- Fast
- Stops Class Actions
- Can make the agreement mandatory

CONS

- \$\$\$\$\$
- Cannot Prevent PAGA
- Cannot use for sexual harassment or discrimination cases

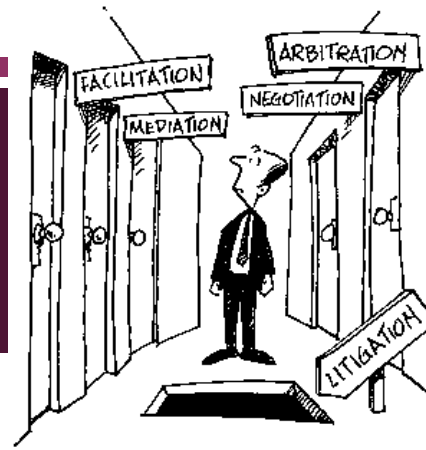


WHAT YOU CAN DO

- Get an Arbitration Agreement from Your Attorney.
- Ask About Updates At Least Annually.
- Expect Changes Frequently.
 - Mandatory Agreements are a Misdemeanor in California, but Law Unenforceable.
- Get New Versions Signed by both employer and employee.
 - Electronic signatures?
- No excuses not to have one!



ARBITRATION VS. TRIAL



Pro 😊

- More employer friendly
- Quicker resolution
- Less expensive for attorney's fees because it is quicker and more limited on discovery/motions
- More confidential than a trial
- Easier access to a judge during discovery disputes
- Class action waiver
- Parties get some choice in the arbitrator

ROSASCO LAW GROUP

Con X

- Very expensive! Deposit request of at least \$60-80k upfront. Around \$5k is nonrefundable.
- Less discovery / motions available
- More informal rules of evidence
- Arbitrator is less likely to drop the hammer; might split the baby
- No jury; putting all your eggs in one basket
- Very limited rights to appeal
- Risk of mass arbitration

FEDERAL COURT VS. STATE COURT



PRESERVING THE EVIDENCE

PUT A
LITIGATION
HOLD ON ALL
RECORDS,
COMPUTERS,
ELECTRONICS,
TEXT MESSAGES,
MESSAGING
APPS AND CELL
PHONES

GATHER UP YOUR RECORDS EARLY

ALL RELEVANT DOCUMENTS MUST
GO TO YOUR ATTORNEY ASAP



DUTY OF COOPERATION

- YOUR ATTORNEY CAN QUIT IF YOU DON'T COOPERATE FULLY
- TIMELY RETURN PHONE CALLS AND E-MAILS AND RESPOND TO REQUESTS FOR INFORMATION PROMPTLY
- IF YOU DON'T CARE; I WON'T STAY



I'M NOT
EVERYONE'S CUP
OF TEA
YOUR ATTORNEY
CAN FIRE YOU

ROSASCO LAW GROUP

THE ATTORNEY
CLIENT
RELATIONSHIP IS
NOT A CONTRACT
OF SLAVERY





IS MEDIATION FOR QUITTERS?

CONSIDER
MEDIATION EARLY
AND OFTEN

**I WANT AN AGGRESSIVE
ATTORNEY!**



ROSASCO LAW GROUP

**ATTORNEYS
HAVE AN
OBLIGATION TO
ACT
PROFESSIONALLY
AND GRANT
PROFESSIONAL
COURTESIES**



DISCOVERY

THE FAILURE TO PRODUCE RESPONSIVE DOCUMENTS AND INFORMATION CAN AND WILL BE USED AGAINST YOU.

NO TRIAL BY AMBUSH.

TAKE REQUESTS FOR DISCOVERY SERIOUSLY

JUDGE CAN STRIKE YOUR ANSWER IF YOU FAIL TO RESPOND TO DISCOVERY OR ISSUE MONETARY SANCTIONS

- TAKE PLAINTIFF'S DEPOSITION EARLY
- OPPORTUNITY TO SERVER DISCOVERY TWO WEEKS AFTER SERVICE OF COMPLAINT BUT NOT WITH ARBITRATION
- PLAINTIFF WILL REACT GENERALLY BY TAKING PMK DEPOSITIONS

TAKING DEPOSITIONS

DEPOSITION CONT.

- Have company attend deposition – person who employee will have hard time lying to
- Be prepared with documents (try for element of surprise)
- Start easy, end hard
- In person only
- Find out if the employee really understand what lawsuit is about and if they've read and understand the complaint
- Have employee confirm signatures and lawful policies
- Try to establish lack of violations and lack of knowledge
- Destroy credibility if possible
- Go in armed with research, evidence, criminal history



SHOULD YOU ASK FOR THE EMPLOYEE'S CELL PHONE?

EXPERTS CAN DOWNLOAD THE PHONE AND RETRIEVE DELETED ITEMS, LOCATIONS, ETC.

WHAT IS THE BELAIRE WEST PROCESS?

- Do you have to turn over your employees' names, phone numbers and addresses?
- Should you?
- Is there a way around it?
- Aren't lawyers using this list to find their next case? (Spoiler – YES)





JUSTICE IS VERY EXPENSIVE

EMPLOYMENT CASES ALL
CARRY THE RISK OF PLAINTIFF
ONLY ATTORNEY FEE AWARDS



THIS CASE
HAS NO
MERIT. WHY
HASN'T THE
COURT
DISMISSED IT
YET?

SOMETIMES OUR MAGIC WAND
IS BROKEN



EARLY OFFERS ARE BEST

SHOULD YOU CONSIDER
A CCP 998 OFFER TO
COMPROMISE?

THE AGENCIES – NOT ALL CREATED EQUALLY

California

- ALRB
- CRD
- Cal/OSHA
- EDD
- Labor Commissioner

Federal

- DOL
- EEOC



POST COVID JURIES – THE LANDSCAPE HAS CHANGED



10% of the population believes the world is flat



Conspiracy theories abound



High verdicts



Mistrust of corporations and employers



Consider waiving a jury

THE ATTORNEY-CLIENT PRIVILEGE



- Must be kept confidential
- Don't share information/documents/emails your attorney sends you
- No partial waivers
- Covered: Attorney's impressions, thoughts or conclusions
- I can't protect you from what I don't know
- Share the good, the bad and the ugly with your attorney
- *****Attorneys cannot let you lie under oath*****
- CC'ing an attorney doesn't protect the e-mail
- CC'ing an attorney with your EE could escalate a dispute
- Sometimes attorneys work best behind the scenes so that the EE doesn't retain counsel
- We're on the same team --- we must trust each other.

CONFLICTS OF INTEREST



ACTUAL
CONFLICTS
CANNOT BE
WAIVED

POTENTIAL
CONFLICTS MUST
BE WAIVED IN
WRITING

MY EMPLOYEE IS SUING ME. CAN I FIRE THEM?



Conduct a wage and hour
audit and fix any
questionable practices

Cut off damages by offering a
job back

CORRECT
MISTAKES
IMMEDIATELY –
SUBSEQUENT
REMEDIAL
MEASURES

More cases filled

Must have arbitration agreement to reap full benefits

Must conduct regular audits

Increases EE share of penalty from 25% to 35%

Standing – EE must personally experience the alleged violation in the last year!

Court can address manageability and scope of the claims and evidence presented at trial

TAKE ADVANTAGE OF PAGA REFORM

PAGA REFORM – AB 2288 CONT.

- Penalty Caps for Proactive Compliance
 - For ER who proactively take steps to comply with Labor Code **before** receiving notice or records request, the maximum penalty that can be awarded is 15% of the applicable penalty
 - Caps Penalties: for ER who takes steps to fix policies and practices after receiving PAGA notice, the maximum penalty that can be awarded is 30% of the applicable penalty amount
 - Reduces maximum penalty where the alleged violation was brief or where it is a wage statement violation that did not cause confusion or economic harm to the EE (i.e., misspelling the company name or leaving off “Inc.”)
 - Levels playing field for ER who pays weekly
 - Addresses derivative claims
 - Creates new penalty (\$200 per pay period) if ER acted maliciously, fraudulently or oppressively

PAGA REFORM CONT.

Reasonable steps for a reduced penalty?

- Periodic payroll audits AND taking action in response to the audit.
- Disseminated lawful written policies
- Trained supervisors on applicable Labor Code and wage order compliance
- Taking appropriate corrective action with supervisors

Totality of the circumstances

WATCH OUT FOR THE SALES PITCH

- Be wary of attorneys who over promise to drive up legal costs and then arrive at the same place....there's liability and now the case must be settled but you've upset plaintiff's counsel, made them work and they're entitled to fees.
 - What did you get for your efforts?
 - What are your chances of prevailing on the entire case?
 - Only one cause of action is needed to get prevailing plaintiff attorney fees
- Save the fight for when you can win or plaintiff's counsel doesn't give you a choice due to overly exaggerated demands (extortion)



CAN YOU TALK
TO YOUR
EMPLOYEE
WHO IS SUING
YOU?

PROS/CONS

DO THE
PARTIES HAVE
THE RIGHT TO
WORK OUT
THEIR
DIFFERENCES?

UNION
EXCEPTION

TIME TO SAY GOODBYE?



Offer a severance

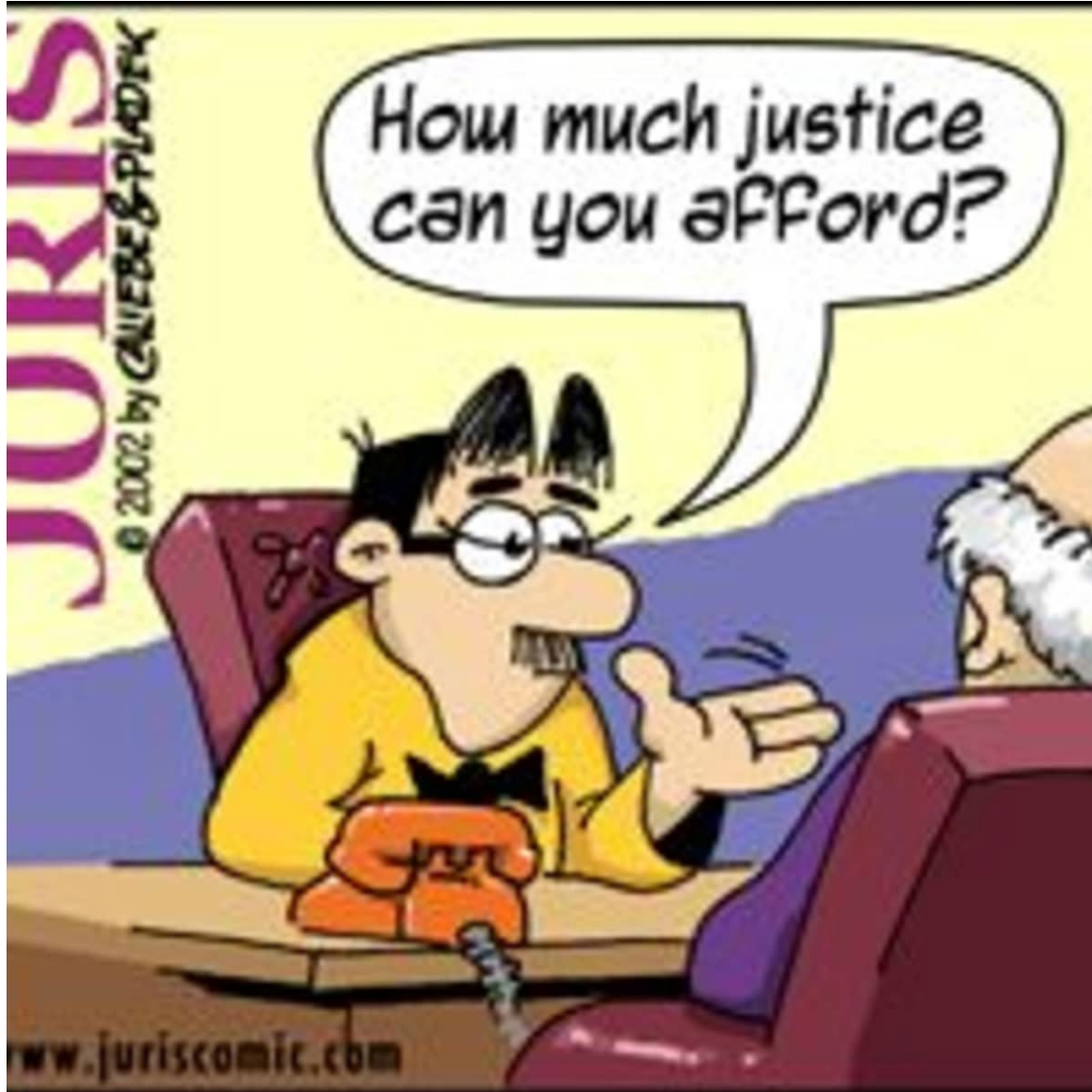


Won't stop PAGA or agency cases but EE thinks the matter is resolved



Cheaper than the smallest claim





YOUR EMPLOYEES ARE A PAWN IN THE LA ATTORNEY'S GAME

DO YOU EMPLOYEES KNOW THEIR RIGHTS, UNDERSTAND HOW THEY CAN RESOLVE ISSUES AND WHAT FORUM IS BEST FOR THEIR CASE?



ASSET PROTECTION STARTS NOW

SHOULD YOU OPERATE
SEPARATE BUSINESSES?

DO YOU OWN ASSETS IN
OTHER COMPANIES?

KEEP ASSETS AWAY FROM
COMPANY THAT HOLD
EMPLOYEES

OPERATE AS A BUSINESS
ENTITY AND MAINTAIN
CORPORATE FORMALITIES

If this happens to me, I'll just file bankruptcy!

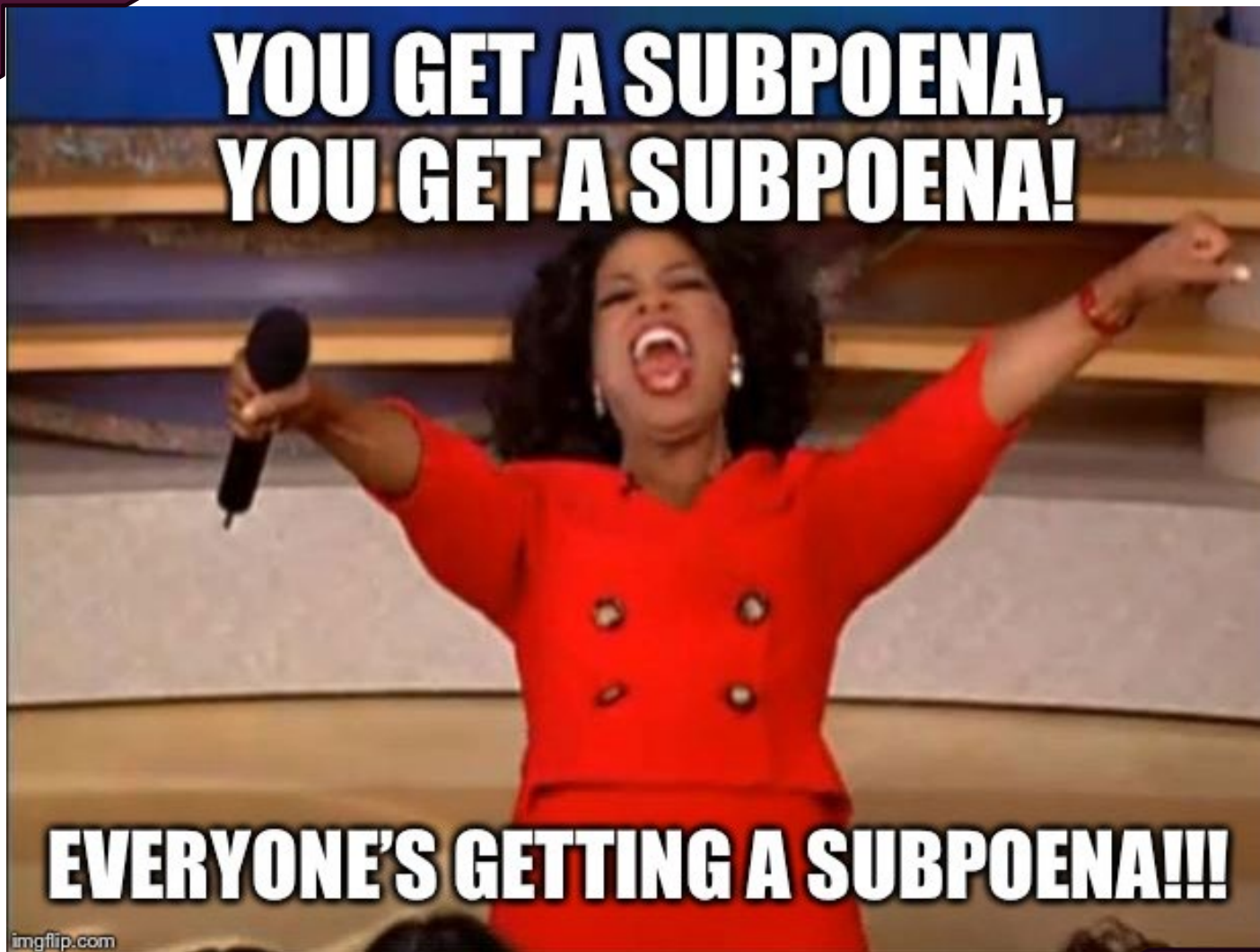


- Is it that easy?
- How might the case continue to follow you?
- What if the state comes after you?





**I GOT A LETTER REQUESTING MY EMPLOYEE'S
PAYROLL AND PERSONNEL RECORDS.**



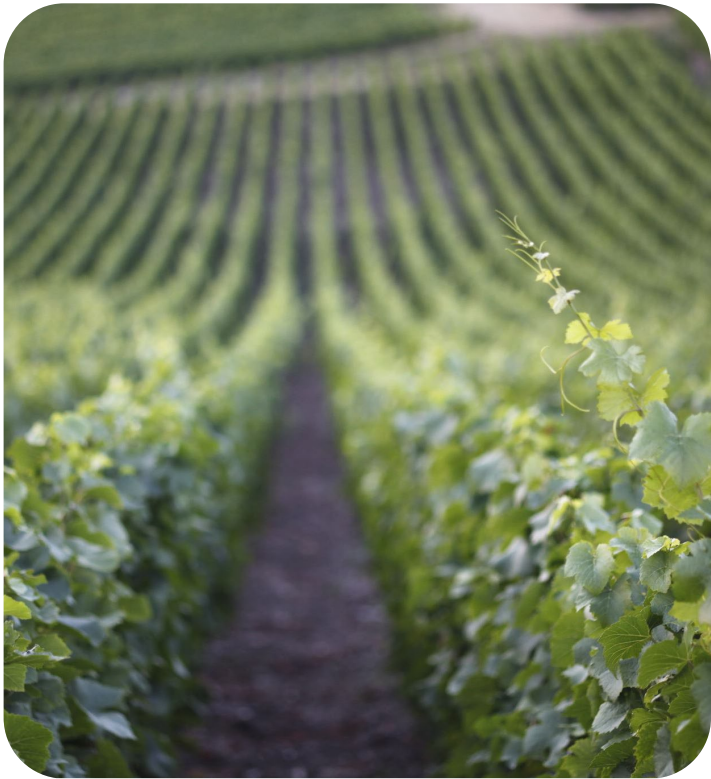
I GOT A
SUBPOENA FROM
MY EMPLOYEE'S
WORKER'S
COMPENSATION
ATTORNEY.

I HAVE TO PRODUCE
THOSE, RIGHT?

WHAT SHOULD YOU ASK YOUR ATTORNEY?

- Amount of deposit and hourly rates
- Who will be assigned to work on your case
- What experience they have with these types of cases
- What experience they have with the opposing counsel
- Case evaluation after time for initial review
- Budget for trial/arbitration
- What other types of law they practice (avoid the jack of all trades)
- Services they offer – advice and counsel, policy updates, arbitration agreements
- Initial plan of action
- Whether motions might be necessary (Motion for Summary Judgement, Demurrer, Motion to Strike, etc.) and what you would gain by doing one
- What have they done in similar cases for a successful resolution or dismissal
- Can you settle out directly with the employee





Joint Employers – Who's Responsible for a Class Action or PAGA Lawsuit?

- Grower?
- Farm labor contractor?
- Vineyard manager?
- Supervisor(s)?
- Individual owners?
- Have a joint defense agreement



Labor Code § 558 – Making Individuals Liable

- Now heavily used to make individuals liable in wage and hour cases.
- Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of the labor code or any provision regulating hours and days of work in any order of the wage orders **shall be subject to civil penalties.**
- Citations from the Labor Commissioner can be to any “**person**” that has paid or caused to be paid a wage for overtime work in violation of the labor code, or any provision regulating hours and days of work in the wage orders or any overtime law.

SOCIAL JUSTICE GROUPS HAVE NO RIGHT TO
GO ON YOUR PROPERTY



Keep
out

Keep out social justice groups

Inform

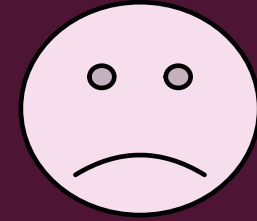
Inform EEs of their rights and common
scams

Watch
out

Watch out for cappers and social media
campaigns designed to trick your EEs

FIELD ACCESS TRAINING

EMPLOYEE UPSET?



01

No EE goes to a lawyer and says they want to file a class action lawsuit or PAGA case

02

Mostly the EE thinks they were mistreated or wrongfully terminated

03

Any hint at upset should be immediately addressed

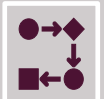
DOCUMENT! DOCUMENT! DOCUMENT!



If you didn't document it, it doesn't exist.



Document disciplinary issues and poor work performance



Try to follow a progressive discipline path (but don't promise it)



Document your slower workers



Can you measure productivity? Give warnings in writing.

Don't Forget to

document, document, document

- Document at or near the time of the events
- Pull objective data when available
- Document consistently
- Avoid lengthy back and forth emails about an employee
 - Discuss face to face
- Watch out for defamatory statements
- Watch out for red flags –
 - disability, protected class, protected activities



TERMINATIONS

you're hired

you're fired

1

Don't bury someone in a layoff and then don't rehire them

2

Terminate someone who you don't want to call back

3

Use a notice of change in relationship form to spell out why they aren't invited back



OPEN DOOR POLICY



HR & Safety people need to be in the fields



EEs need to know who to go to when something is wrong, upsetting



Have names and phone numbers in your sexual harassment policy



Have sensitive situations addressed privately and respectfully

WAGE & HOUR AUDITS



- **Have frequent and regular audits of your W&H policies**
- **At a minimum, a few paychecks and corresponding timecards**
- **Benefit from new PAGA for regular audits**
- **Paperwork needs to look perfect so there's a way out of PAGA**
- **Piece rate? Get it audited often**

KEEP PAY PRACTICES SIMPLE

ROSASCO LAW GROUP



QUESTIONS?

Presented by: Erica L. Rosasco
6540 Lonetree Blvd., Suite 100
Rocklin, CA 95765
916.672.6552
erica@rosascolawgroup.com
www.rosascolawgroup.com



LEGAL disclaimer: Seminar materials and this presentation are not intended as legal advice and are not legal advice. These materials cannot substitute for legal advice. You should consult an experienced employment attorney if you have questions about your business, policies or your circumstances.