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LABOR & EMPLOYMENT

CALIFORNIA'S TOP LABOR AND EMPLOYMENT LAWYERS

EDITORS' NOTE

As the U.S. Supreme Court continued to favor businesses by raising the bar for class actions, California lawyers looked to our state Supreme Court for cues on how it would follow the high court's lead.

2014 gave us some answers.

Three long-awaited rulings in Iskanian, Duran and Ayala are set to illuminate the playing field for employment class action and the enforceability of employment contracts requiring workers to arbitrate their grievances.

In Iskanian, the court ruled that an arbitration clause can prohibit a class action, handing defense lawyers a win they desperately wanted. But the decision also gave a significant victory to workers — it said they could sue on behalf of themselves and other workers as representatives of the state.

In Duran, the court said statistical sampling could be used in class actions – which many employers sought to avoid – but it set a high bar for the use of such sampling.

Finally, the court held in Ayala that in an employee misclassification action, a class should be certified if the employer has the right to exercise control over its independent contractors, regardless of variations in how the employer exercises that right.

Together the rulings create a challenging body of law for our state's labor and employment lawyers, whose accomplishments continue to boost the California Supreme Court as the most influential in the nation.

In reviewing hundreds of nominations from law firms, alternative dispute resolution providers and others, we sought to recognize work that is having a broad impact on the legal community, the nation and society. We honor the best of them.

Emilio G. Gonzalez

DAVIS WRIGHT TREMAINE LLP
LOS ANGELES

SPECIALTY: employment defense litigation

As first-chair trial counsel, Gonzalez last year prevailed in a wrongful termination and religious discrimination case brought against Bank of America Merrill Lynch in Riverside County.

The plaintiff, a high-level director, claimed that comments about his perceived religious favoritism — made by his subordinates in an anonymous survey — constituted religious harassment. *Arave v. Merrill Lynch, et al.*, RIC 1108279 (Riverside Super. Ct., filed May 11, 2011).

"The employer did not believe he was a bigot," Gonzalez said. "They were concerned with the perception that some employees had and wanted the plaintiff to get out in front of it to dispel any perception that he was engaging in religious favoritism."

Instead, Gonzalez added, "He decided to be offended by this suggestion and quit."

Trying the case had its challenges, he said.

"When you're representing the Bank of America in Riverside, automatically you are viewed with suspicion," Gonzalez said. "People think that there is evil intent in employment decisions and they jump to that conclusion."

He added, "If the jury is inclined to see the company as Darth Vader, my job is to have them see Luke Skywalker's father — to see behind the mask."

During the six-week trial, "We were able to establish a narrative and get our story across in a compelling way."

Among other things, Gonzalez stressed that the company actually had tried to help the executive.

"The jury responded very well to that," he added. "They didn't think that he was forced to quit."

In the end, the jury unanimously rejected the plaintiff's claim and returned a verdict for the defense.

Over all, "It was very contentious and very high stakes," Gonzalez said. "There was significant exposure for our client."

And, he added, a lot of risk, given the sentiment about big business.

"But when you have a plaintiff that says, 'Give me $10 million,'" you really don't have a choice but to take the case to trial."

— PAT BRODERICK