Every year in California, new laws, judicial interpretations, and administrative decisions create and expand upon the myriad legal obligations already faced by employers. The year 2014 was no exception. Among numerous other new bills, the California Legislature enacted mandatory paid sick leave, created new training obligations regarding the prevention of “abusive conduct,” and expanded potential liability for employers who use staffing agencies.

California appellate courts also issued a variety of decisions in 2014, which may impact the practices of California employers, especially in the area of wage and hour law. For example, one California court ruled that employers must reimburse employees for work-related calls on their personal cellphones, even when the employee has “unlimited minutes”. This case may affect statewide efforts of employers to implement “bring-your-own-device” (“BYOD”) programs.

Federal developments may also affect the operations of California employers in 2015. For example, the National Labor Relations Board recently held that employees have a presumptive right to use their employers’ e-mail systems to communicate about workplace issues, including union organizing.

These are just a few of the substantial developments affecting California employers in 2015. This newsletter briefly summarizes these developments. Many of these cases and laws – and several others – will be analyzed in greater detail during the firm’s 2015 Labor & Employment Seminar.

I. Mandatory Paid Sick Leave

AB 1522 amends Labor Code section 2810.5 and adds Labor Code section 245 – 249, known as the “Healthy Workplaces, Healthy Families Act of 2014.” This law requires almost all public and private-sector employers in California to give employees at least three paid sick days per year. This law becomes effective July 1, 2015, except for certain poster and notice requirements effective January 1, 2015.

II. California Introduces Greater Wage And Hour Obligations For Employers
These laws became effective January 1, 2015, unless otherwise noted.

**SB 1360** amends Labor Code section 226.7 by requiring “heat-illness prevention recovery periods” to be paid breaks, and counted as working time for overtime purposes. Employers with outdoor work areas should: (1) reassess their written heat illness risks and prevention programs (including any high-heat procedures, if necessary); (2) provide instruction and/or refresher training to employees and supervisors as part of those programs; (3) make available the appropriate shade (or, if permitted, alternative procedures or measures) at or near outdoor work areas; (4) provide sufficient quantities of portable drinking water to outdoor workers; (5) ensure that recovery periods are counted as time worked; and (6) document when employees request and/or take a recovery period pursuant to the heat illness prevention regulations.

**AB 1723** amends Labor Code section 203 to allow the Labor Commissioner to impose waiting time penalties as part of its citation process. Prior to AB 1723, waiting time penalties were authorized only through a civil action or through a hearing before the Labor Commissioner, but not as a Labor Commissioner citation.

**AB 2074** amends Labor Code section 1194.2 to confirm that a claim for liquidated damages may be filed at any time prior to the expiration of the statute of limitations that applies to the underlying unpaid wage action. The new measure provides for employees to recover liquidated damages for the entire three year statute of limitations period for bringing an action alleging payment of less than the state minimum wage.

**AB 2288** adds Labor Code section 1311.5, creating the Child Labor Protection Act, which expands remedies for child labor law violations. This measure authorizes treble damages to an individual who was discriminated against on the job because he or she filed a claim or civil action alleging a violation of employment laws that arose while the individual was a minor. This measure requires tolling the statute of limitations for claims arising from violations of employment laws until the person allegedly aggrieved attains the age of majority.

**Significant Wage and Hour Cases**

California courts issued a variety of decisions in 2014 which may impact the duties and obligations of California employers.


Labor Code section 2802 requires an employer to reimburse an employee who uses a personal cell phone for work-related calls, despite “unlimited minutes” plans. This case involved a customer service manager for Schwan’s Home Service, Inc., a food delivery provider. As part of his job, he used his personal cell phone to make business calls. The company did not reimburse him for the use of his phone. In a sweeping decision, the Court of Appeal stated: "We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."

*Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662 (2014)

In this case, the California Supreme Court clarified the requirements of the commissioned salesperson exemption, which exempts an employee from California’s overtime laws. The exemption requires that the employee’s earnings “exceed one and one-half (1½) times the minimum wage.” The *Peabody* Court held
that an employer may not attribute commissions paid in one pay period to prior pay periods for purposes of establishing compliance with the minimum earnings requirement. Instead, an employer must pay the required minimum earnings each and every pay period.


In this case, a salaried exempt employee brought a putative class action challenging her employer’s policy of requiring exempt employees to use vacation time for partial day absences of any length. She claimed that requiring exempt employees to use vacation for partial day absences violated the salary basis test under California law.

The Court of Appeal confirmed that employers may require salaried exempt employees to use accrued vacation/PTO time for partial day absences in any increment, including increments of less than four hours, without violating wage and hour law. California’s white collar exemptions (executive, administrative, and professional) all require employees to be paid on a salary basis. Generally this means, subject to certain exceptions, if a salaried exempt employee performs any work during a workweek, the employee must be paid his/her entire salary for that week. One exception allows deductions from the weekly salary for certain full day absences occasioned by the employee, but no deductions may be made to the salary for a partial day absence.

This decision provides California employers with certainty regarding the legality of deducting vacation/PTO time for exempt employees’ partial-day absences.

*Integrity Staffing Solutions, Inc. v. Busk, 574 U.S. (2015)*

Former employees of Integrity Staffing Solutions, Inc., a company that provides warehouse space and staffing to clients such as Amazon.com, sued their former employer alleging that time spent undergoing security clearances was compensable time. At the end of each workday, employees were required to pass through a security clearance checkpoint where they had to remove their keys, wallets, and belts, pass through a metal detector, and submit to being searched. The whole process could take up to 25 minutes. The former employees argued that these practices violated the Fair Labor Standards Act (FLSA) as well as Nevada state labor laws.

The United States Supreme Court held that time spent undergoing security clearances is not compensable under the FLSA because the Portal-to-Portal Act exempted employers from liability for claims dealing with activities that are preliminary or postliminary to the principle activities that an employee is employed to perform. Here, the screenings were found not to be integral to the employees’ duties; therefore the time spent undergoing screenings was not compensable.

*Ayala v. Antelope Valley Newspapers, Inc. 59 Cal. 4th 522 (2014)*

Employees brought a putative class action against their employer claiming they were misclassified as independent contractors. The California Supreme Court reaffirmed that the principal test of an employment relationship (versus an independent contractor relationship) is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. The Supreme Court also discussed other factors relevant to determining existence of an employment relationship, and clarified how the manageability of class claims can impact class certification. The court did not agree that showing some employees in the overall putative class were controlled more than others automatically warranted denial of class certification. This case turned on the question of the employer’s right to exert
control over the employee and not the extent of control rendered upon the employee. Here, the California Supreme Court held that the denial of class certification is improper if a trial court focuses its attention exclusively on evidence that a defendant actually imposed more detailed supervisory control over some employees than others.

III. California Expands Discrimination, Harassment, and Retaliation Protection

These laws became effective January 1, 2015, unless otherwise noted.

**AB 2053** amends Government Code section 12950.1 to include training regarding the prevention of “abusive conduct” as part of the bi-annual manager sexual harassment training, required by the Fair Employment and Housing Act (i.e., AB 1825 training).

**AB 1443** amends Government Code section 12940 to expand anti-discrimination and anti-harassment prohibitions under the FEHA. Specifically, unlawful discrimination protection extends to interns and those in training programs with respect to the “selection, termination, training or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of the person”. In addition, anti-harassment protections are extended to unpaid interns and volunteers in the workplace.

Finally, employers are prohibited from refusing to select a person for a training program, or to discharge a person from a training program, because of a conflict between the person’s religious belief and any employment requirement, unless the employer is unable to reasonably accommodate the religious belief or observance without undue hardship.

**AB 1660** amends Government Code section 12926 to expand prohibitions against national origin discrimination under the FEHA. First, an employer violates the FEHA if it discriminates against an individual for holding or presenting a driver’s license issued to undocumented persons (i.e., AB 60 drivers’ licenses) who can submit satisfactory proof of identity and California residency. It makes conforming changes under the FEHA to specify that discrimination on the basis of national origin includes discrimination on the basis of possessing an AB 60 driver’s license. However, any actions taken by an employer to comply with any requirement or prohibition under the federal Immigration and Nationality Act do not violate this provision.

**AB 1792** creates Government Code section 13084, which prohibits discrimination against employees receiving public assistance. It also prohibits an employer from disclosing to any person or entity that an employee is receiving public benefits, unless the disclosure is authorized by law. It also requires EDD, in collaboration with other state agencies, to publish a list of California’s top 500 employers with the largest number of employees enrolled in public assistance programs.

**AB 1650** adds Public Contract Code section 10186 to prohibit requests for criminal conviction information for certain jobs. It is also known as the “Fair Chance Employment Act,” another “ban-the-box” initiative that prohibits contractors who submit a bid to the state for a job involving on-site construction-related services from asking applicants to disclose information about criminal conviction history.

**AB 2751** amends Labor Code sections 98.6, 1019, and 1024.6, expanding remedies for retaliation against suspected undocumented workers. The measure prohibits threatening to file or the filing of a false
immigration-related report or complaint with any state or federal agency. The law also authorizes a civil action for equitable relief and damages or penalties by an employee or other person who is the subject of an unfair immigration-related practice. It also authorizes a court to order, upon application by a party or on its own motion, the suspension of certain business licenses held by the violating party for prescribed periods based on the number of violations.

Additionally, this measure prohibits an employer from discharging or in any manner discriminating, retaliating, or taking any adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security number, or federal employment authorization document. It also prohibits an employer’s compliance with these provisions from serving as the basis for a claim of discrimination, including any disparate treatment claim.

Finally, this law provides for the $10,000 civil penalty, per violation, to be paid directly to the employee.

**Significant Discrimination/Retaliation Cases**

*Salas v. Sierra Chemical, 59 Cal.4th 407 (2014)*

In this case, the California Supreme Court affirmed that the protections of California employment law are available to undocumented immigrants. The plaintiff, Mr. Salas, sued his former employer for failing to recall him to work after he injured himself and claimed workers’ compensation benefits. The plaintiff alleged the company retaliated against him for filing his workers’ compensation claim, and discriminated against him because of his injury. The company argued that because the plaintiff was not authorized to work in the U.S. in the first place it shouldn’t be liable for failing to hire him back. A lower court agreed and dismissed the case.

*The California Supreme Court reversed.* The Court held that Mr. Salas should be allowed to take his case to a jury, finding that all workers, even undocumented workers, should be protected from discrimination and retaliation. At the same time, the court held that undocumented employees cannot seek reinstatement or front pay for any time after the employer became aware of their undocumented status.

*State of Arizona v. Asarco, 9th Cir. Case No. 11-17484 (December 10, 2014)*

In a Title VII sexual harassment case, a $300,000 punitive damages verdict comported with due process despite award of nominal damages ($1).

Here, the State of Arizona won a sexual harassment trial against a mining company in federal court on behalf of Angela Aguilar. The jury awarded no compensatory damages, but awarded $1 in nominal and $868,750 in punitive damages. The district court denied a motion for judgment as a matter of law, though it did cap the punitive award at $300,000 in accordance with 42 U.S.C. § 1981a.

The defendant contended that the punitive damage award must be reduced under the standards articulated in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996). In *Gore*, the U.S. Supreme Court held that the appropriate level of punitive damages could be determined by analyzing the (1) degree of reprehensibility, (2) disparity between the harm suffered and the punitive award, and (3) comparison to civil penalties authorized or imposed in comparable cases. In *Asarco*, the Ninth Circuit, *en banc*, rejected the defendant’s argument that the punitive damage award must be evaluated under the three guideposts set by *Gore* to measure excessiveness. The Supreme Court developed those standards to measure common-law damages. By comparison, when Congress actually sets the award range, the *Gore* guideposts are less
relevant.

IV. Omnibus Workplace Developments

**AB 1634** amends Labor Code sections 6319, 6320, and 6625 to prohibit the Division of Occupational Safety and Health from modifying civil penalties unless the employer has abated an employment safety violation.

**AB 326** amends Labor Code section 6409.1, which requires an employer to immediately report a work-related serious injury, illness, or death to the DOSH by telephone or telegraph. The amendment removes the reference to telegraph, and allows reports to be made by email.

**AB 2536** amends Labor Code section 230.3, and expands leave for emergency rescue personnel to include in the definition of emergency personnel an "officer, employee, or member of a disaster medical response entity sponsored or requested by the state." It requires an employee of a healthcare provider to affirmatively and immediately notify the healthcare-provider-employer of deployment. Existing law provides employees designated as safety or rescue personnel who are activated in response to an emergency situation cannot be adversely acted upon by their employer for this reason.

*Lane v. Franks, 134 S.Ct. 2369 (2014)*

This case involves subpoenaed testimony from a public employee that reflected negatively against the employee's public employer. Current law provides that when a public employee speaks pursuant to his ordinary job duties, he is not speaking as a private citizen, and therefore such speech has no First Amendment protection. However, when the employee speaks as a private citizen on a matter of public concern, such speech may be protected by the First Amendment, and public employers may not take adverse employment actions against their employees for engaging in such speech. Here, the Supreme Court held that sworn testimony by a public employee on a matter of public concern, which is compelled by subpoena outside the course of the employee's ordinary job responsibilities, is considered citizen speech protected by the First Amendment.


AMN Healthcare, Inc., dba Nursefinders, is a staffing company that provides medical personnel to hospitals and other medical facilities. Two medical assistants, Drummond and Montague, had a disagreement at work, and Drummond allegedly poured carbolic acid into Montague's water bottle, leading to Montague's injuries.

Montague sued Nursefinders for negligence, arguing the company should be held vicariously liable for Drummond's actions, as well as for negligent training. The Court of Appeal held the staffing company was not liable for the employee’s poisoning of her co-worker because the act was "highly unusual and startling" and thus, clearly outside the course and scope of employment. That the employment relationship brought tortfeasor and victim together in time and place is not enough to establish employer’s vicarious liability.

V. Privacy Law Updates

**AB 1710** amends Civil Code sections 1798.81.5, 1798.82, and 1798.85, to require a person or business that is the source of a breach of Social Security numbers or driver's license numbers to offer an identity theft protection or mediation service to affected individuals at no cost, for no less than 12 months. It also
prohibits the sale or marketing of Social Security numbers, with certain exceptions.

SB 828, stylized as the “4th Amendment Protection Act,” adds Government Code section 7599 and limits the state from assisting the federal government in the collection of electronic data except pursuant to a warrant.

AB 928 amends Government Code section 11019.9 to require state agencies to conspicuously post privacy policies on their websites.

AB 1755 amends Health & Safety Code section 1280.15 so that a clinic, health facility, home health agency, or hospice licensed by the State Department of Public Health now has 15 business days, instead of five, to report to the Department, to notify the affected patient or patient’s representative of unauthorized access to, or disclosure of, a patient’s medical information.

SB 1255 amends Penal Code section 647 to further define as disorderly conduct the intentional distribution of an image of another person’s intimate body parts, or depicting engagement in specified sexual acts under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should have known that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress. See also Civ. Code § 1708.85, which creates a private right of action for such a violation.

AB 1442 adds Education Code section 49073.6, which requires schools and school districts, if they consider gathering or maintaining information about their pupils from social media, to notify pupils and their parents or guardians about the program and provide an opportunity for public comment. The law requires that any such information collected relate to school or pupil safety and that pupils have access to, and an opportunity to correct or delete their own information. It imposes certain other limits on the use and disclosure of such information, including that such information be destroyed within one year after the pupil turns 18 or is no longer enrolled.

VI. To Arbitrate Or Not To Arbitrate; Arbitration Developments In 2014

AB 2617 amends Civil Code sections 51.7, 52, and 52.1 to prohibit Pre-Dispute Arbitration Agreements with respect to certain California civil rights claims. Specifically, this measure prohibits a person from requiring a waiver of the protections afforded under civil rights law as a condition of entering into a contract for the provision of goods or services, including the right to file and pursue a civil action or complaint with, or otherwise notify, a supervising governmental entity. Any waiver of the protections afforded must be knowing and voluntary, and in writing, and expressly not made as a condition of entering into the contract or as a condition of providing or receiving goods or services. Any person seeking the enforcement of a waiver of civil rights protections shall have the burden of proving that the waiver was knowing and voluntary and not made as a condition of the contract or of providing or receiving the goods or services. All contracts entered into, altered, modified, renewed, or extended on and after January 1, 2015 are affected.

AB 802 amends Code of Civil Procedure section 1281.96 to require private arbitration providers (JAMS, AAA) to collect additional information concerning arbitrations they have handled and make it available on their websites. This information includes: (1) the name of the employer, (2) the nature of the dispute, (3) whether the employer was the initiating or responding party, (4) the wage range earned by the employee, (5) the amount of the claim and the prevailing party/amount of award including attorney’s fees, (6) whether the employee had an attorney and the name of the law firm, (7) the name of the arbitrator, and (8) the total number of times the employer has been a party to arbitration. Most of this information is already required by
California Code of Civil Procedure section 1281.96; the amendment requires more information and requires that the information be provided in a single, searchable database.

Iskanian v. CLS Transportation, 59 Cal.4th 348 (2014)

In this case, the California Supreme Court upheld class action waivers in arbitration agreements, holding that the Federal Arbitration Act governs and therefore preempts state law. This means class action waivers can be enforced in employment arbitration agreements. Notably, the California Supreme Court also held that an arbitration agreement precluding representative PAGA claims is invalid as a matter of California public policy. Numerous federal courts have rejected Iskanian with respect to PAGA exclusions; however, on January 20, the United States Supreme Court decided not to review Iskanian, leaving the decision intact.


An arbitration clause in an employment application is itself sufficient to establish that an employee and employer agree to arbitrate their employment-related disputes, even if the mediation and arbitration policy is not attached. In this case, the plaintiff signed an employment application which incorporated by reference, but did not attach, the employer’s mediation and binding arbitration policy. The Court of Appeal reasoned that the application established that the parties agreed to arbitrate, because (1) the plaintiff had acknowledged in writing that she understood the mediation and binding arbitration policy applied to all employees; (2) the arbitration clause further provided the arbitration policy was incorporated into her employment application; and (3) the arbitration clause also provided that the arbitration policy applied to any employment-related disputes between employees.

Davis v. Nordstrom, Inc., 755 F.3d 1089 (9th Cir. 2014)

In this case the Ninth Circuit held that an employee can legally be bound by a new arbitration agreement, and that sufficient notice of the change is achieved by mailing the revised handbook to employees with thirty days’ notice to decide whether to remain employed.

The employer, Nordstrom, had revised its arbitration policy after the Concepcion decision. After the arbitration agreement went into effect, an employee filed a putative class action in California federal court, alleging that the retailer had violated federal and state employment laws. At the district court level, Nordstrom sought to compel arbitration and was denied.

The Ninth Circuit reversed on appeal, finding that Nordstrom had met the minimum requirements under California state law to notify its employees 30 days before changing the arbitration provision. The appeals court also overturned a lower court ruling that Nordstrom was required to specifically inform its employees that continuing their employment would, by default, result in their acceptance of the new arbitration policy. “We hold that Nordstrom complied with the notice requirement, and that California law imposes no duty upon Nordstrom specifically to inform employees that their continued employment constituted acceptance of new terms of employment.”

VII. Developments In Public/Private Sector Labor Law

Indio Police Command Unit Association v. City of Indio, 2014 Cal. App. LEXIS 906 (September 15, 2014)

The City of Indio’s (the “City”) police chief notified the Indio Police Command Unit Association (“PCU”), the
designated bargaining unit for the department’s commanding officers, that he intended to implement a “strategic reorganization” of the department’s command structure that would eliminate the captain and the four lieutenant positions (bargaining unit), and create three new non-bargaining unit positions.

The City contended that the reorganization was not subject to collective bargaining under the Meyers-Milias-Brown Act (MMBA), because reorganization of the department’s command structure was a management right. Ultimately the Court of Appeal found that the MMBA did require the City to meet and confer in good faith, because the implementation of the reorganization plan transferred work from the bargaining unit to non-bargaining unit positions.

Purple Communications, Inc. and Communications Workers of America, AFL–CIO, 361 NLRB No. 126 (December 11, 2014).

In this case, the National Labor Relations Board (“NLRB”) held that Section 7 of the National Labor Relations Act (“NLRA”) requires employers, except in very limited circumstances, to allow employees to use work email for non work-related purposes – including for union organizing – during non-work-time. Consistent with the purposes and policies of the Act and the NLRB’s obligation to accommodate the competing rights of employers and employees, it decided that “employee use of email for statutorily protected communications on nonworking time must presumptively be permitted by employers who have chosen to give employees access to their email systems.”

In rendering this decision, the NLRB overruled its divided 2007 decision in Register Guard to the extent it held that employees can have no statutory right to use their employer’s email systems for Section 7 purposes.


The United States Supreme Court invalidated President Obama’s January 2012 invocation of his “recess appointments” power to name three members to the National Labor Relations Board (“NLRB”). The Recess Appointments Clause authorizes the President to fill any existing vacancy during any recess of sufficient length, whether occurring during or between sessions of Congress. However, for purposes of the clause, the Senate is in session whenever it indicates that it is, so long as it retains the capacity to transact Senate business.

The Supreme Court’s Noel Canning decision effectively invalidated every contested NLRB decision between January 3, 2012, and August 4, 2013, as the Board had two or fewer properly appointed members during that time; however, the new Board has been “rubber-stamping” past decisions and most legal observers anticipate that this trend will continue.

New Union Election rules effective April 14, 2015

New union election rules allow for online filing of petitions, and quicker and streamlined election processes. Going forward, personal telephone and email addresses will need to be provided to the union as part of the voter list. The NLRB has reasoned that any employee privacy concerns are outweighed by a union’s interest in having access to modern methods of communication. Further, the rule will give the NLRB discretion to postpone most employer appeals about voter eligibility until after the date of the election. It will also eliminate the mandatory 25-day period between the time an election is ordered and the date of the election itself.
VIII. When Is An Entity Without Employees Still An Employer? And Other Joint Employer Developments

_Castaneda v. The Ensign Group, Inc. 229 Cal. App. 4th 1015 (2014)._ 

In this case, a putative class of certified nursing assistants filed suit against The Ensign Group, a parent company that owned rehabilitation and nursing care facilities, including one facility called the Cabrillo Rehabilitation and Care Center (“Cabrillo”). The parent contended that because Cabrillo was an independent entity (albeit 100% owned by the parent) that hired and paid the plaintiff and set his daily work schedule, Ensign could not be considered the plaintiff’s employer, as a matter of law.

The Court of Appeal disagreed, explaining that an entity that controls the business enterprise may be an employer even if it did not directly hire, fire or supervise any employees. The Court of Appeal noted evidence which included: (1) the fact that Ensign was involved in the recruitment and interviewing of Cabrillo employees; (2) Ensign offered and performed essential, centralized services to its affiliates; (3) there was a seamless flow of corporate officers between Ensign and its subsidiaries; (4) Cabrillo employees were required to use Ensign forms and templates; and (5) Ensign controlled the manner in which employees clocked in and out for shifts. The court also considered the facts that (6) Ensign’s logo and signs were posted at the Cabrillo facility, (7) employees at the facility believed they were Ensign employees, (8) employees were assigned “@ensigngroup.net” email addresses, and (9) Ensign controlled their employee benefits. Finally, (10) the plaintiff had also presented facts that the parent company had the ability to correct the allegedly unlawful policy in effect at Cabrillo.

Although a written agreement stated that “the members of the facility staff are Cabrillo’s own employees,” the court chose to ignore such labels when evidence of the entities’ actual conduct established a different relationship.

In sum, the Court of Appeal held that a parent corporation may be an employer of a subsidiary’s employees for purposes of liability for wage and hour violations, even if the parent has no employees.

AB 1897 creates Labor Code section 2810.3, which requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers’ compensation coverage. It also prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions.

Under AB 1897, a “client employer” is defined as a business entity that obtains or is providing workers to perform labor within the usual course of business from a labor contractor. A “labor contractor” is defined as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer’s usual course of business. Specified nonprofit, labor, and motion picture payroll services organizations, and third-parties engaged in an employee leasing arrangement are excluded from this definition.

The National Labor Relations Board Office of the General Counsel has widely publicized its efforts to pursue “joint employer” theories of liability against companies, especially franchisor corporations. On July 29, 2014, the General Counsel vowed to name franchisor McDonald’s, USA, LLC as a joint employer respondent in complaints alleging unfair labor practices against their franchised restaurants. The General Counsel’s decision could potentially hold the franchisor corporation responsible for employment actions taken at thousands of McDonald’s franchises throughout the United States, and may have far-reaching effects that could be litigated up to the United States Supreme Court.
CONCLUSION

Any questions about the developments covered herein and/or during Hanson Bridgett’s 2015 Labor & Employment Seminar should be directed to your Hanson Bridgett Labor & Employment attorney. Thank you and have an excellent 2015!

For more information, please contact:

Gilbert J. Tsai, Partner
415-995-5874
gtsai@hansonbridgett.com