

Taking the Road Less Traveled: Recent Court Decisions, Wage and Hour and Arbitration

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Presenters



- Bruno W. Katz-Partner
- Member of California Restaurant Association and California Hotel & Lodging Association and Global Alliance of Hospitality Attorneys
- Frequent Lecturer on employment practices, liability issues and other risk management matters
- 2010 recipient of the Outstanding Career Armed Services Attorney Award from Judge Advocates Association

The Realities of Litigation

- **What is a Lawsuit About?**
- **Minimizing exposure**
- **Costs of Litigation**
- **Claim Avoidance Measures**

Lawsuit Perceptions

- Not about the search for “the truth”
- Jurors decide what they think is “the truth”

Perception Outcomes

- **Bad:**
 - **Poor Communication**
 - **Internal**
 - **External**
 - **Greedy**
 - **Poor Service**

Perception Outcomes

- **Good:**
 - **Knowledge**
 - **Good Communication**
 - **Follow-on**
 - **Documentation**
 - **Thorough**

Effect of Creating Good Perception

- Establish trust with the client
- Less likely to sue
- Good position to defend a lawsuit
- Agent/Broker can practice with confidence

Costs

- **Hard Costs**
- **Soft Costs**

Hard Costs

- **Insurance Deductible**
- **Personal Attorney**
- **Costs Total Min \$100,000**

Soft Costs

- **Distraction Factor**
- **Lost Opportunity**
- **Potential for Internal Discord**
- **Administering the Lawsuit**
- **Status Meetings**
- **Lost Production**
- **Damage to Reputation**



Leadership



“If we do not lay out ourselves in the service of mankind whom should we serve?”

-John Adams-

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Why Arbitration?

- Cost-Effective
- Fact-Finder Knowledge
- Limitations on Discovery
- Lower Monetary Awards
- Limited Right to Appeal

The Authority

- **The Federal Arbitration Act (found at 9 U.S.C. Section 1 et seq.), enacted in 1925.**
- **Requires that where the parties have agreed to arbitrate, they must do so in lieu of going to court, provided that the proceeding is fundamentally fair.**

Applicable to States

[Southland Corp. v. Keating](#), 465 U.S. 1
(1984)

- Established the applicability of the FAA to contracts under state law of California.

2010 Supreme Court Cases

[Rent-A-Center West v. Jackson,](#)

560 U. S._____, 130 S. Ct. 2847 (2010)

- Arbitrator, not court, decided whether arbitration agreement is unconscionable.

2010 Supreme Court Cases

Granite Rock vs. International Brotherhood of Teamsters,

560 U.S. _____, 130 S. Ct. 2847 (2010)

- Established that it is the court and not an arbitrator who decides a collective bargaining ratification date.

2010 Supreme Court Cases

Stolt-Nielsen vs. AnimalFeeds

International Corp. , 561 U.S. _____,
130 S. Ct. 1758 (2010)

- Held that imposing arbitration on parties who have not agreed to arbitration violates the FAA.

2011 Case To Watch

[AT &T Mobility v. Concepcion](#), (Argued November 30, 2010)

- ISSUE: Does the Federal Arbitration Act preempt state unconscionability law?

2011 Case To Watch

[Wal-Mart Stores v. Dukes](#), (Argument
March 29, 2011)

- ISSUE: Does the Federal Arbitration Act preempt state unconscionability law?

2011 Case To Watch

Brinker Restaurant Corp. v. Superior Court; *Brinkley v. Public Storage, Inc.*
(California Supreme Court)

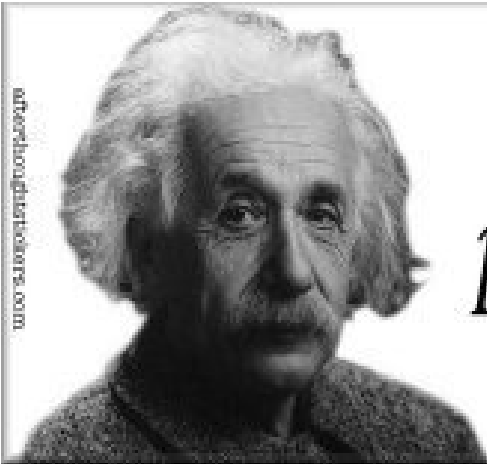
-ISSUE: Does Requirement For Employers To Provide Meal and Rest breaks mean must ensure breaks actually taken?

2011 Case To Watch

[Sullivan v. Oracle](#) (California Supreme Court)

-ISSUE: Does the California Labor Code apply to overtime work performed in California for a California-based employer by out-of-state employees such that overtime pay is required for work in excess of eight hours per day or in excess of forty hours per week?

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*You cannot simultaneously
prevent and prepare for war.*

-- Albert Einstein

EINSTEIN WAS WRONG!!

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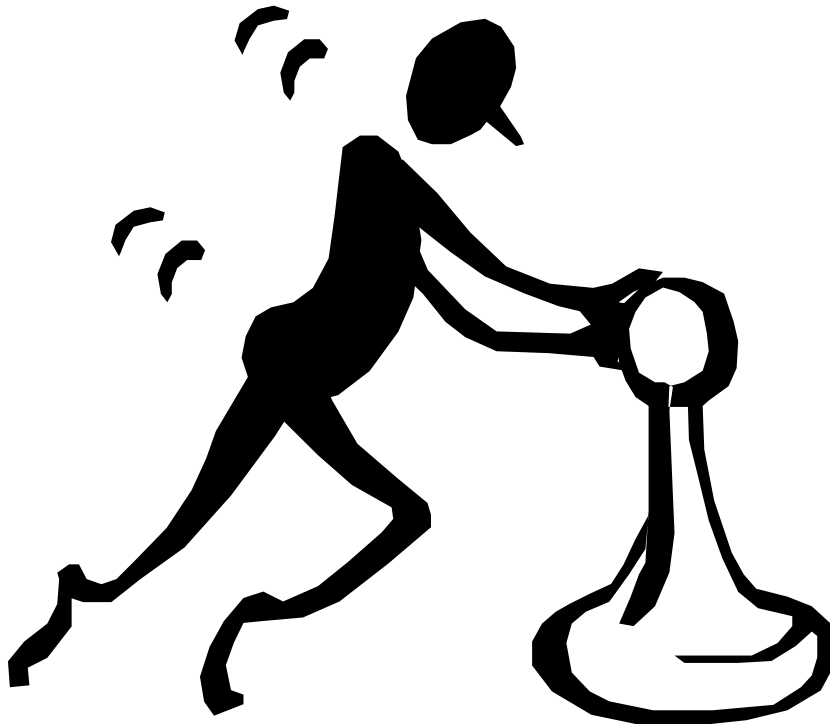
PREVENTION

equals

AUDIT

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Prevention Strategies



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Prevention Strategies

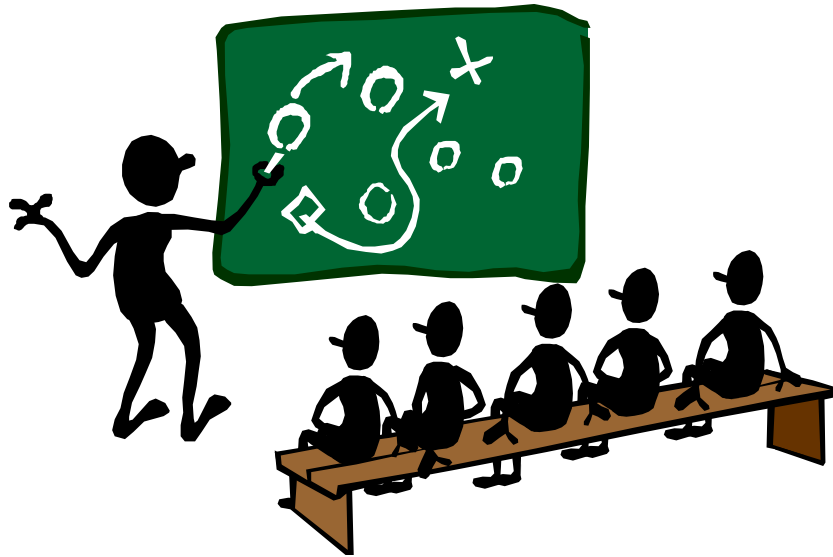
- **Assess exposure and turn off the spigot of potential damages**
 - Isolate and eliminate practices considered to be suspect



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Prevention Strategies

Determine strategy and tactics early and then implement



Prevention Strategies

Routine Internal & External Audits

Audit not just to legal requirements

Require employee sign-off and certification

Prevention Strategies

Employee training & interviews as part of audits

Don't keep employees in the dark

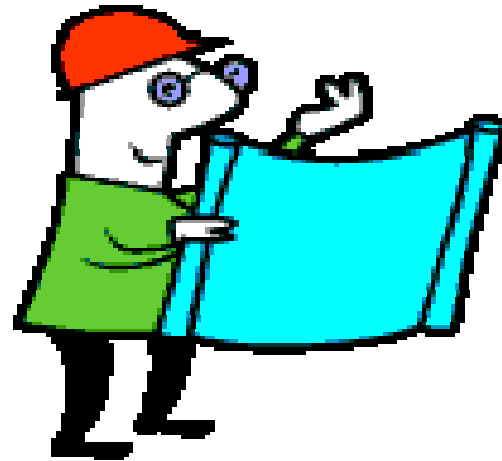
Enforce employment practices with disciplinary action if necessary

Continuous Prevention

- **Develop a clear policy**
- **Communicate the policy to all employees**
- **Train managers on the policy**
- **Create an effective complaint procedure**
- **Investigate complaints thoroughly**
- **Take appropriate corrective action**

Prevention Strategies

Compliance plan, including audits, should be synergized with your other practices, procedures & policies



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Investigate Complaints

- **Trained Company officials should conduct all investigations**
- **Investigations must be thorough, unbiased and conducted by disinterested persons**
- **Peer Review**
- **DISCIPLINE ON FACTS!**

What Are Your Values?

- **Instill Them From the Beginning**
- **Operating Values-clear and concise**
- **Treat People Well**
- **Triple Bottom Line**

Treat Your People Well

- Pick "Spirit" over "Flesh"
- Allow Employees to Think
- Write Them "Up"
- Able to Respond

Benefits of Prevention

- **Productivity is Higher**
- **Morale is Higher**
- **Business Success is Higher**



Leadership Is the Key

Perfect Employee Communications

Become Essential



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**THANK YOU FOR
YOUR ATTENTION!**

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