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New Laws Range From Fast Trials to Food-Handler Cards

Among the 725 new laws that took effect in California at the first of the year are several that change the rules for civil litigation, business and insurance.

One of the most significant is intended allow some small civil cases to get through trial quickly and simply. Another new law makes adults liable for serving alcohol to minors, and a third requires judges to disclose in court their election contributors.

LITIGATION AND PROCEDURE

Expedited Jury Trials — Under AB 284, the two sides to an existing lawsuit can agree to have the case tried in one day by an eight-person jury, whatever the amount involved. This new Expedited Jury Trial procedure promises to save countless hours and tens of thousands of dollars per case, as the procedure has in South Carolina and New York.

According to the statute, and new rules issued by the California Judicial Council, parties must agree to present their sides of the trial in just three hours each and to give up the right to most post-trial motions and appeals. They also are required to exchange information about their cases before trial and are limited to only 15 minutes each to question potential jurors.

They must abide by the jury's verdict. However, they can agree before the trial on a minimum and maximum amount of damages the defendant will pay.

Social Host Liability — Generally in California, a "social host" who gives alcoholic drinks to a guest cannot be held liable when the guest then causes or suffers injuries or property damage from drinking. AB 2486 turns that rule around for an adult host who gives alcohol at his residence to an underage drinker.

Electronic Service — A California litigant can serve a document on another party by sending an electronic copy of the document, such as by e-mail. Thanks to SB 1274, now the litigant alternatively can

send the other party a simple electronic notice containing a hyperlink to the document, rather than a copy of the document itself.

Pleading and Motion Deadlines — When a pleading must be filed or an action taken a specified number of days before a court hearing, new AB 2119 declares the deadline date should be calculated by counting backward from the hearing date but excluding that hearing date.

JUDGES AND THE JUDICIARY

Judicial Election Contributions — A judge must disqualify himself from hearing a matter in which a party or attorney has contributed more than $1,500 to the judge's election campaign in the previous six years, according to AB 2487, unless the other side consents. For smaller contributions, beginning at $100, the judge simply must disclose them on the record in open court.

Motion to Disqualify — AB 1894 extends from 10 days to 15 days the time a party or attorney has to move to disqualify a judicial officer for prejudice. It requires someone doing so to notify other parties within five days of making the motion. The law discards a distinction in motion timing regarding judges in master calendar and direct calendar courts.

LIABILITY

Internet Impersonation — Pretending to be someone else on a social-networking site or in e-mail for the purpose of harming that person is now a misdemeanor and, according to SB 1411, also subjects the impersonator to civil liability.

Hazardous Activities — Public entities and employees are not liable to someone injured while engaging in a hazardous recreational activity, such as shooting, hang gliding or auto racing. AB 634 adds scuba diving to the list of recognized dangerous sports.

Paparazzi Liability — Paparazzi who trap celebrities will be liable for a new form of the tort of invasion of privacy under AB 2479. The law applies when someone commits false imprisonment to photograph, film or record someone else.

EMPLOYMENT

Meal Breaks — California's very strict laws on meal and rest breaks no longer covers unionized construction workers, commercial drivers, utility workers and security personnel. AB 569 says the collective bargaining agreement's rules on breaks apply instead, giving employers needed flexibility.

Organ Donation — Employers with more than 15 employees must allow a worker to take a paid leave of absence to donate an organ or bone marrow under SB 1304.

Unemployment Insurance — AB 2364 declares that someone who quits a job to protect herself or her family members from domestic violence has done so for a "good cause" and is still eligible for unemployment insurance.

OTHER BUSINESS

Food Handlers — Employees who handle food in a restaurant or other food facility must have a "food handler card" beginning June 1, according to SB 602. The certification exams must be available on line and at a cost of $15.

Mechanics Liens — AB 457 requires that a mechanics lien must be recorded within 20 days of an action to foreclose on the lien and that the property owner be served with notice of a lien when it is recorded. Another law, SB 189, also revises the California Mechanics Lien Law.

Affordable Housing — Entities that supply affordable housing can join "multi-state joint self-insurance risk pools" to self-insure against tort liability, under AB 2327.

Abuse Evictions — Landlords cannot evict tenants over incidents of domestic violence, abuse or stalking if the abuser is not also a resident of the dwelling. SB 782 also allows tenants with court protective orders to change their locks.

Attorney Malpractice During Mediation Stays in Mediation

Mediation of a legal dispute is a sensitive process. If it is going to work well, everything said and everything done in mediation must stay secret, so California statutes and California courts demand complete confidentiality for mediation.

That statutory demand is so powerful that courts have held a party who won't mediate in good faith can't be sanctioned and a settlement achieved in mediation can't be enforced without a very specific confidentiality waiver.

In fact, the California Supreme Court ruled this month, an attorney who commits malpractice during mediation can't be sued based on anything that happened connected to the mediation. That is true even though the attorney can reveal client secrets to defend against the malpractice suit.

"[T]he mediation confidentiality statutes include no exception for legal malpractice actions by mediation disputants against their own counsel," the court held in a largely unanimous decision in *Cassel v. Superior Court (Wasserman, Comden, Casselman & Pearson)*.

The unhappy client in the case had formed a company to sell clothing incorporating themes from a famous custom painter of cars and motorcycles called "Von Dutch." But the client fell out with his partner in the Von Dutch Originals company and lost the right to the company name.

His attorneys at Wasserman, Comden, Casselman & Person told him he could still use the name overseas and on the Internet, but when he did, the company sued. In mediation, the sides worked toward a settlement that would give Cassel a few million dollars and give the company any rights he might have.

But Cassel claimed that during a very long day of mediation, his attorneys pressured him to accept a very bad deal, including threatening to abandon him two weeks before a scheduled trial and haranguing him during a bathroom break.

The Supreme Court ruled that the trial judge had been correct to prohibit Cassel from suing over the law firm's conduct during the mediation. According to the Evidence Code, nothing from mediation can be used in a later court action at all, the court said.

"As the statutes make clear, confidentiality … extends beyond utterances or writings 'in the course of' a mediation, and thus is not confined to communications that occur between mediation disputants during the mediation proceeding itself."

The confidentiality extends to any "participant," including a neutral observer or one of the attorneys. "Such mediation-related communications plainly encompass those between a mediation disputant and the disputant's counsel, even though these occur away from other mediation participants and reveal nothing about the mediation proceedings themselves," the court said.

After all, as one Supreme Court justice noted in a short concurring opinion, what the attorney said to his client away from the others still might reveal what those others had said during the mediation.

But that concurring justice urged caution and suggested the Legislature should take a look at the situation. He pointed out that under the court's decision, "[a]ttorneys participating in mediation will not be held accountable for any incompetent or fraudulent actions during that mediation unless the actions are so extreme as to engender a criminal prosecution against the attorney.

"This is a high price to pay to preserve total confidentiality in the mediation process."

Parking Big Rig Legally Still Can Be Negligence, Court Says

Whether they act like it or not, most people on the road recognize that driving a big-rig truck is more difficult and more dangerous than driving an ordinary passenger car. Accelerating and braking take longer, blind spots abound, tunnels can be impassible and backing up impossible.

Parking often also presents extra challenges, including, according to a recent California appellate decision, legal challenges. In a first-of-its-kind ruling in California, the court held that a trucker and truck operator may be liable if their tractor-trailer caused an accident by blocking other drivers' lines of sight — even though the truck was legally parked.

"As we look generally at the category of conduct involved, it is readily foreseeable that parking a large, commercial truck near an intersection may obstruct the views of passing motorists and cause them to collide," the court said in *Lawson v. Safeway Inc.*

A slightly different issue, about a big-rig illegally parked in an emergency-parking-only zone, will be argued before the California Supreme Court on Feb. 8. *Cabral v. Ralphs Grocery Co.*, S178799

The big rig had parked on southbound U.S. Highway 101 in front of a motel outside Crescent City, just back from a small cross street that runs toward the coast alongside the motel. The driver had parked there many times before, and it was legal for him to do so.

The afternoon was clear, but the truck was big: 13½ feet tall by 8½ feet wide by 65 feet long. A driver trying to make a left turn from the side street onto Highway 101 crept past the stop sign and the truck to look north, but he didn't see the couple heading south on a three-wheeled motorcycle until it was too late.

The passenger was thrown from the motorcycle and seriously injured. She and her husband sued the drivers, CalTrans and Safeway, and a jury awarded them more than $500,000.

On appeal, Safeway argued that no one should ever be liable for parking legally and that it is up to traffic officials to determine where parking is and isn't safe.

Further, it said, this accident wasn't foreseeable because no similar accidents had happened at the intersection.

The appellate court agreed that "[o]bscured sight lines caused by parked vehicles are an unavoidable risk with which drivers must generally be expected to cope."

But it rejected blanket immunity for legal parking, noting that every case must be decided on its own facts.

And this case, it said, "involves a situation where the risk of foreseeable harm was, in our view, unreasonable."

Among the particular facts that the court cited, the truck in this case was huge. The driver was a professional, whose training should have included sensitivity to other drivers' sight lines. He parked on a major highway with a high speed limit. And he had other places to park.

"In this case, it could hardly be argued that the risk of the harm that befell plaintiffs was as a matter of law unforeseeable," the court held.

Though the ruling does demand new caution by truckers parking big rigs, the court said most drivers needn't worry.

"[O]ur decision is of no concern to the driver of the Expedition who parks next to the Mini Cooper at the shopping center, however difficult it might be for the smaller vehicle to back out of its space," the court said.

Barry L. Rodolff

The founder and president of The Rodolff Law Firm, APC, Barry L. Rodolff, is a highly experienced lawyer who has been assisting clients faced with civil litigation for more than two decades. Mr. Rodolff developed his skills with two well-respected defense firms, Schell & Delamer, and Haight, Brown & Bonesteel. He also worked in-house at Travelers Insurance Company, representing a variety of insured companies in many types of litigation. His clients have ranged from small businesses to multinational corporations. Mr. Rodolff brings extensive experience and knowledge in the defense of litigation involving premises liability, business, product liability, personal injury, employment, construction defect, and intentional torts.