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# 2013 Laws Go From Depositions to Breastfeeding to Space

Each new year in California brings scores of new laws, and 2013 is no exception. Gov. Jerry Brown signed 873 bills into law last year, with most having taken effect Jan. 1. Among them are laws to protect senior citizens from abusers, homeowners from bureaucratic mortgage lenders and the state treasury from escalating pensions.

One law intends to increase some workers' compensation payments without increasing premiums by shifting disputes over treatment from court to anonymous state-appointed doctors. Another law begins the process of creating the first state-run retirement savings program.

Other new laws make changes to procedures in civil litigation. And several change the rules for how employers deal with employees.

Among the more significant are these:

## LITIGATION AND PROCEDURE

**Deposition Time Limit** — Depositions in Superior Court can't last longer than one day of seven hours without court approval. The new time limit imposed by AB 1875 is modeled on federal rules. It does not apply to depositions of experts or corporate "persons most qualified" nor in employment or complex civil cases.

**E-Filing** — All pleadings and other documents for civil cases in Orange County Superior Court must be filed electronically, using a court-specified vendor. AB 2073 allows the court to run a pilot project to test e-filing until July 2014 and also requires the Judicial Council to adopt rules permitting e-filing statewide.

**Jury Fees** — AB 1481 makes clear that only one party per side must pay the $150 fee to have a jury for a civil trial. The fee must be paid before the initial case management conference.

**Privilege Log** — A party who objects to producing documents or other things during discovery on the ground they are privileged now must provide a privilege log. AB 1354 seeks to codify existing case law into the state Civil Discovery Act.

**Motions to Vacate** — In order to more closely match rules for motions for new trial, AB 2106 declares that courts have 60 days from the date of a notice entering judgment to rule on a motion to vacate or set the judgment aside.

**Police Subpoenas** — AB 2612 increases the fee deposited in advance to subpoena police and certain other government employees from $150 to $275 per day.

**Post-Judgment Interest** — If the Legislature must appropriate money to pay a judgment or settlement against the state, post-judgment interest does not begin to run until 180 days after, according to SB 1504, rather than 30 days.

**Service of Process** — Fixing an unintended omission in the Code of Civil Procedure, AB 1720 declares that gated communities must admit licensed private investigators to serve court documents, just as they do with licensed process servers.

## LIABILITY

**Party Buses** — Companies chartering vehicles in which to hold parties, so-called party buses, now must have a chaperone "designee" on each vehicle to "ensure compliance" with laws against underage drinking. AB 45 imposes fines and allows misdemeanor prosecution for repeat violators.

**Public Safety Employees** — Employers must assume liability when police and firefighters use their personal vehicles for work. AB 2298 also declares that insurers can't raise rates on police and firefighters involved in accidents when driving for work with employer permission.

**Space Flight** — AB 2243 provides limited immunity to "space flight entities" whose passengers are injured by a trip into space — provided the passenger has signed a written "warning statement" and the injury wasn't intentional or caused by gross negligence.

## EMPLOYMENT

**Breastfeeding** — California's expansive Fair Employment and Housing Act civil rights law now includes breastfeeding discrimination within its definition of discrimination based on sex, thanks to AB 2386.

**Religious Dress** — Employees' special clothing or grooming for religious purposes also is now protected under the Fair Employment and Housing Act. Further, AB 1964 prohibits segregating employees in religious garb in a storeroom or other site out of public view.

**Social Media** — AB 1844 declares that employers may not ask or require employees to provide their user names or passwords for social media sites.

**Enforcement Proceedings** — A bill reorganizing several state agencies, SB 1038, replaces administrative enforcement actions by the Fair Employment and Housing Commission with civil suits brought by the state Department of Employment and Housing.

**Handicapped Access Suits** — SB 1186 bans pre-litigation demands for payment by someone accusing a business of violating handicapped access regulations. The law also reduces the statutory damages for access violations and includes provisions meant to prevent a plaintiff from "stacking" claims against a defendant.

**MISCELLANEOUS**

**Autonomous Vehicles** — Soon, cars without drivers will be able to prowl the streets of California — provided someone is sitting in the driver's seat in case something goes wrong. SB 1298 gives the DMV until 2015 to come up with appropriate regulations.

**Proof of Insurance** — Under AB 1708, auto insurers may give policyholders proof of insurance electronically in a format that can be shown to police on a cell phone, tablet or similar device.

# Don't Assume Non-Sports Aren't Risky Too, High Court Rules

In 1992, the California Supreme Court ruled that someone injured playing sports generally couldn't sue the other player who caused the injury. In the 20 years since, intermediate appellate courts have disagreed about whether that holding also applies to people injured when engaged in other kinds of active recreational pursuits.

For instance, various appellate courts have blocked injury lawsuits by people hurt while riding motorcycles, bicycles, inner tubes and river rafts. Yet other courts have allowed suits by people injured while dancing or jumping onto a docked boat.

Now, ruling on the last day of 2012, the Supreme Court has declared that its 1992 precedent does apply to "recreational activities" that wouldn't necessarily qualify as sports.

In a case involving a doctor who broke her wrist riding in an amusement park bumper car driven by her 9-year-old son, the court ruled that the doctrine curtailing liability "is not limited to activities classified as sports, but applies as well to other recreational activities 'involving an inherent risk of injury to voluntary participants … where the risk cannot be eliminated without altering the fundamental nature of the activity.'" *Nalwa v. Cedar Fair L.P.*

The idea of the doctrine, known as the "primary assumption of risk," is that the plaintiff accepted the possibility of being injured when he or she participated in a risky pastime. The 1992 case involved a man injured playing touch football. The Supreme Court decided that allowing people to sue for injuries on the gridiron could threaten the game itself because, even in touch football, being hit is an "inherent" part of the sport.

Allowing lawsuits over the inherent risks football or other sports "'would work a basic alteration — or cause abandonment' of the activity," the Supreme Court explained in the current case. Suits against other players or sponsors "for failing to eliminate or mitigate the activity's inherent risks would threaten the activity's very existence and nature."

That rationale applies to bumper cars, too, the court majority concluded. "You pretty much can't have a bumper car unless you have bumps," the injured doctor herself conceded in a deposition. "Indeed, who would want to ride a *tapper* car at an amusement park?" a lower court justice wrote about the case.

The court acknowledged that its previous rulings on primary assumption of the risk all dealt with sports. But the language it used, even in the original case, referred to "activity" as well as sport, it noted.

In an earlier case, the Supreme Court declined to apply the assumption of risk doctrine to a roller coaster injury because it held that, under California statutes, a roller coaster is a "common carrier" with heightened duties to protect passengers. That approach doesn't fit bumper cars, the court held this time, because someone on a train or bus or roller coaster is completely at the mercy of the operator or carrier.

But riders on bumper cars "are not passively carried or transported from one place to another," the court said. "They actively engage in a game, trying to bump others or avoid being bumped themselves."


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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.