



Key Take Aways from the 2022
Trending Topics Webinar Series

Employment Law Annual Update
Speakers: Kat Lee and Emily Meeson

Court cases, legislative and regulatory activities, and other significant developments will affect employers in the months ahead. Many of these changes went into effect at the beginning of the year.

- “Silenced No More” Act (Senate Bill 331) allows for non-disparagement or nondisclosure language to be included in separation/severance agreement if employer:
 1. informs employees they have the right to consult with an attorney regarding any separation agreement, and
 2. provides at least five business days for employee to consult attorney
- Where a former territory manager alleged whistleblower retaliation under CA Labor Code § 1102.5, the court eliminated the McDonnell Douglas burden-shifting test used in § 1102.5 retaliation claims. Now, § 1102.6 is the new standard for retaliation claims. (*Lawson v. PPG Architectural Finishes*)
- After plaintiffs sued for underpayment related to their meal and rest periods, the court held non-exempt employees working more than five hours per day must be provided with a 30-minute lunch break within the first five hours. Employees working more than 10 hours would earn another 30-minute break. (*Ferra v Loews Hollywood Hotel LLC*)
- Employers should be on the lookout for issues as employees return to in-office work, as questions of workplace safety make the day-to-day workplace different.
- Employers should consider:
 - How employees will safely navigate the workplace
 - What COVID-19 precautions should be put in place
 - How employers should negotiate return to in-office work



Emerging Issues in Medical Malpractice Claims

Speakers: Steve O'Brien, Jennifer Veal,
and Margaret Holm

The medical professional liability industry has been uncertain of the potential impact of COVID-19. Unique claims are being filed and plaintiffs' attorneys are seeking way to circumvent protections put into place for medical providers.

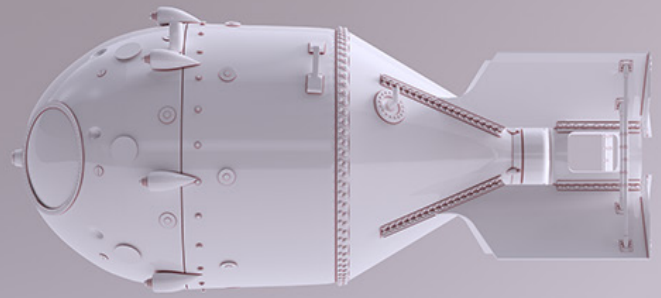
- Current California damages cap is \$250,000
- Fairness for Injured Patients Act will eliminate California's MICRA protections if it passes
- Washington had a generous damages cap -- procedural protections (e.g., certificate of merit, etc.) were tossed out in Washington, and California could be next
- Recent examples include:
 - A jury awarded \$1 million in a wrongful death medical malpractice case. The intermediate court ordered remittitur on \$412,000 pain and suffering damages, and the Washington Supreme Court reversed, holding the jury verdict awards should stand (*Bingaman v. Grays Harbor Community Hospital*)
 - A jury awarded \$24 million to the family of a baby born with brain damage in a negligence case over a fetal heartrate monitor. The court affirmed on appeal (*Wolf v. GE Healthcare*)



**Annual Update: California Legal Trends
& Howell Update**
Speakers: Pat Mendes and Dan Fallon

New California law in various legal areas will affect insurance companies and businesses. The new laws impact personal injury cases, property cases, medical damages, and many other issues affecting the insurance industry.

- According to the *Privette Doctrine*, a property owner delegates responsibility for safety to the contractor. Privette Doctrine exceptions are:
 1. knowledge of dangerous condition, and
 2. control of work by property owner
- Unpaid medical bills, including medical treatment provided on a lien basis, are admissible to prove the reasonable value of plaintiff's past medical damages (*Qadir v. Figueroa*)
- "Reasonable and customary value" update:
 - A hospital must prove reasonable and necessary charges (*State Farm Mutual Automobile Ins. Co. v. Huff*)
 - Jury instructions regarding the reasonable value of medical services can further emphasize the difference between billed and paid costs (*Long Beach Memorial Medical Center v. Kaiser Foundation Health Plan, Inc.*)
- Senate Bill 447, a wrongful death statute, amends Section 377.34 of the Code of Civil Procedure and allows a plaintiff to recover damages for a decedent's pain, suffering, and disfigurement



Jury Verdicts: Nuclear Verdicts® Deep Dive
Speakers: Robert Tyson, Kristina Milone,
and Randy Faust

Year after year, plaintiffs' attorneys develop creative strategies and arguments to convince juries to award Nuclear Verdicts®. Tyson & Mendes has concrete strategies to disarm plaintiffs' arguments and prevent runaway jury verdicts.

- Nuclear Verdicts® are caused by juror anger and are preventable when the right trial methods are employed
- Plaintiffs' attorneys are worried the defense has figured out how to combat their tactics and are collaborating to combat these methods.
 - The defense must overcome its historic aversion to collaboration and learn from each other!
 - The Nuclear Verdicts Defense Institute teaches defense attorneys how to implement the methods for stopping Nuclear Verdicts®: nuclearverdictsdefense.com
- Two methods defense must employ:
 - **Accept responsibility** in every case to defuse juror anger, appear reasonable, and shift focus to others' comparable fault
 - **Give a defense** number to ground damages in common sense
 - Defense number must be given early, often, and not increase during voir dire, opening statement, witnesses, or closing arguments