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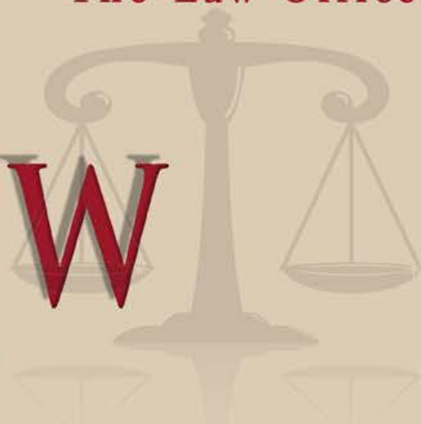

# The Employment Law Newsletter

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## Cases To Watch

- Gerard v. Orange Coast Memorial Med. Center
- United Educators of San Francisco etc. v. CUIAB

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# Hopefully You Will Never Need to Sue Your Employer, but Here are Some Tips Just in Case

**By Ryan J. Carlson**

Filing a lawsuit against anyone, much less your employer, is never an ideal situation. Even though we are lawyers, we never advocate for resorting to legal process unless doing so is absolutely necessary to achieve justice. This is so, in part, because we wish not to contribute to stereotype of being the most litigious country in the world. It is also so because, as we discussed in our first newsletter, a lawsuit is a painstaking, time-consuming and stress-inducing undertaking and clogging the Court system with unnecessary lawsuits does not help to achieve justice, either for you or for others.

Unfortunately, however, filing a lawsuit is sometimes an inescapable reality that must be pursued in order to right an egregious wrong. This issue of the Employment Law Newsletter aims to inform the reader of what preemptive measures he or she can take as an employee so as to set him/herself up with the best case possible. Just to be clear, what this issue does *not* aim to do is teach the reader how to "build" any lawsuit against his or her employer. While following the steps outlined below obviously does not automatically guarantee your success in court, doing so will certainly make the lives of both you and your attorney much easier as your case progresses.

**Tip #1: Read *and understand* what you sign before you sign it!** Chances are you will be required to sign at least some sort of documentation at the inception of your employment (if you are not, that may be a red flag). When it is presented to you, read it and understand it before autographing it! We cannot stress enough the importance of doing so and this applies in every setting, not just the employment world. It is really just a matter of common sense. You do not want to become bound by terms or obligations of which you are unaware. Nor do you want to neglect to understand your rights and the obligations owed to you. Yes, it may be a lengthy document with big words and yes you may be in a situation

Employment Law

Insurance Law

Personal Injury

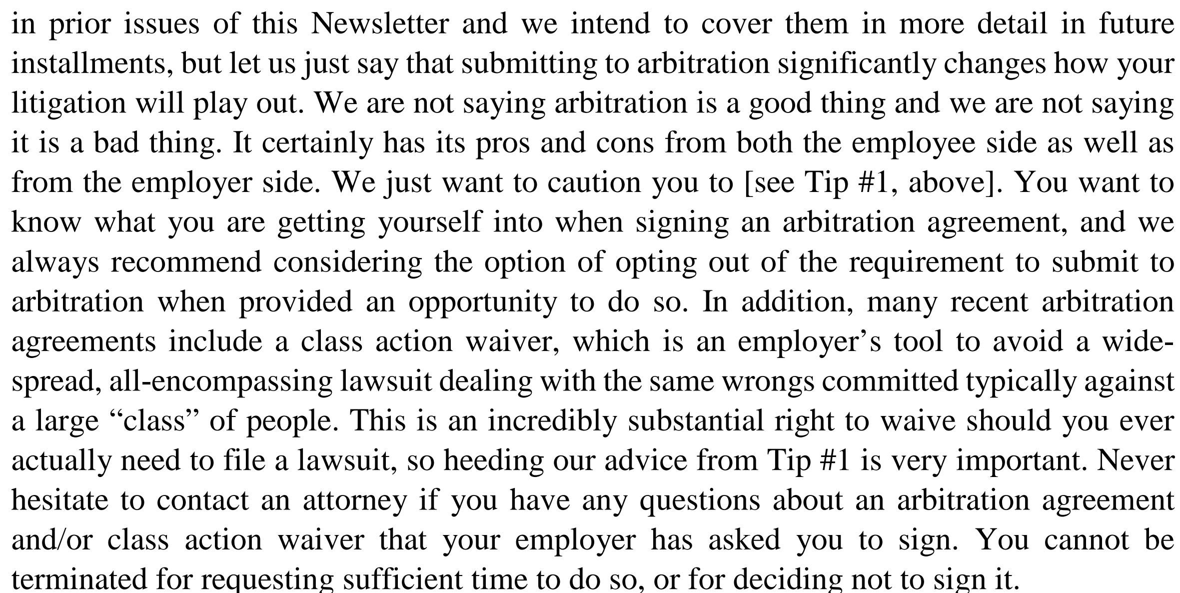
where you just want to sign the darn thing and get to work, but fight the urge. Do not be impulsive and do not rush through the document-signing phase of your employment. Take the appropriate amount of time to understand everything and never hesitate to ask your boss, or even an attorney if really necessary, what a certain term or provision means. If anything, seeking this understanding may show your boss that you employ due diligence before committing to something as important as a job.

**Tip #2: Keep what you sign after you sign it!** After you sign whatever you are signing – whether it be a contract, benefit agreement, arbitration opt out form, or severance documents – retain a copy for your own records. If duplicates are not already provided, simply ask your supervisor for a copy of what you are signing. There are very few instances that justify your supervisor's refusal to satisfy this sort of request, and in fact, in most cases they are actually required to keep a copy of many of these documents and produce them to you upon your request. When you receive the documents, keep them in a safe place that will be easy to locate should the need for the documents ever arise.

**Tip #3: In addition to keeping what you sign, keep your paystubs!** It is hard to think of an employment-based lawsuit wherein access to your paystubs and/or wage information is not vitally important. This information is most commonly used to determine your estimated damages – i.e., the amount of financial harm you have suffered – but it can be used for so much more. In addition to establishing the wages you were paid or owed and setting up a basis for your recovery, your lawyer may notice additional violations that your employer committed by failing to accurately report certain information. Your attorney may also notice additional claims that you never knew you had, like your employer's failure to pay overtime or their unlawful withholding of your earned wages.

**Tip #4: Track your own earnings as they are earned!** This tip may seem somewhat elementary since we should not need to tell you to make sure you are getting paid what you are supposed to be getting paid. How can your attorney pursue a claim for unpaid wages if you cannot establish the true amount you were to be compensated? There are certainly other ways to make that factual connection, but self-kept records are a great place to start *provided that they are kept accurately*. This tip is especially important to those who are paid commissions because their employers often do not make readily available the accountings that break down each sale. We are not suggesting that you keep track of every single minute you spend on the clock because that is what paystubs are for, but we are suggesting that you formulate a method to keep track of the wages you are owed, especially if your wages are based on more than simply clocking in and out on your employer's computer system. When you see a discrepancy between your own accounting and what you are being paid, there is absolutely nothing wrong with inquiring about the difference with the person in charge of payroll. In other words, if you see something, say something. Moreover, if you do see something but do not say something, you may very well be waiving your right to raise an issue in the future. Make sure you are on top of your wages so you do not accidentally relinquish them by failing to point out the shortcoming.

**Tip #5: Beware of the ever-popular arbitration agreement and/or class action waiver!** There has been a nationwide trend towards resorting to arbitration in order to resolve employment-based legal claims. We have briefly discussed the arbitration process



in prior issues of this Newsletter and we intend to cover them in more detail in future installments, but let us just say that submitting to arbitration significantly changes how your litigation will play out. We are not saying arbitration is a good thing and we are not saying it is a bad thing. It certainly has its pros and cons from both the employee side as well as from the employer side. We just want to caution you to [see Tip #1, above]. You want to know what you are getting yourself into when signing an arbitration agreement, and we always recommend considering the option of opting out of the requirement to submit to arbitration when provided an opportunity to do so. In addition, many recent arbitration agreements include a class action waiver, which is an employer's tool to avoid a wide-spread, all-encompassing lawsuit dealing with the same wrongs committed typically against a large "class" of people. This is an incredibly substantial right to waive should you ever actually need to file a lawsuit, so heeding our advice from Tip #1 is very important. Never hesitate to contact an attorney if you have any questions about an arbitration agreement and/or class action waiver that your employer has asked you to sign. You cannot be terminated for requesting sufficient time to do so, or for deciding not to sign it.

**Tip #6: If possible, try to document everything in writing!** When we say "everything" here we do not mean literally everything. There is no need to document what you had for lunch on Tuesday or how bitter the coffee was late in the afternoon last week. However, when a conflict arises – either between you and your co-worker(s) or you and your superiors – and it requires resolution, try to achieve that resolution in written form. The most practical and common way to do this is by expressing your concerns, or detailing those conflicts, via email. This naturally elicits a written response from the powers that be and thus we have a paper trail memorializing the conflict or concern. Obviously, this is not possible in every scenario and maybe even inappropriate in others, but generally speaking it does not hurt to have a written history detailing the issue. If nothing else, it may serve to refresh your memory of otherwise mundane events when they unexpectedly become very significant later on down the road.

**Tip #7: Be a hardworking employee who does things by the book!** The best offense is a good defense, so work hard, do as you are told and follow your company policies and procedures manual as closely as you can (unless you are being told to do something illegal). If the dreaded day does eventually come when you have to sue your employer, doing everything by the book *that they wrote* will remove several defenses they may have to the claims you assert against them. Think of how silly your employer will sound when they try to explain to a jury that they terminated you because you did something they instructed you to do. Conversely, if what they are instructing you to do is illegal, think of how silly they will sound when they try to explain that they fired you for not engaging in illegal acts. Do not give them any reason to take adverse action against you and let them be the one who makes the mistakes.

In closing, once you read, understand, sign, and safely store the paperwork you are given at the inception of your employment, abide by what is written! Follow the rules governing your employment and perform the duties you were hired to perform. Being a model employee will both pave the way towards a successful lawsuit if one becomes necessary and will make the defense of those claims much harder for your employer.