

The Bubbler – May 2018

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Welcome back for this month's edition of the Bubbler! There's plenty to talk about, so let's jump right in.

The California Supreme Court issued [an important decision](#) this week addressing the test for whether a worker is an independent contractor or an employee. The U.S. Supreme Court declined to review a Seventh Circuit decision upholding an employer's rule that a [months-long leave of absence was not a reasonable accommodation](#). The Ninth Circuit held that employers are prohibited from using an employee's [past salary as a legitimate "factor other than sex"](#) for purposes of defeating a Fair Pay Act claim, emphasizing that allowing the inclusion of prior salaries would only perpetuate gender pay disparity. The Fifth Circuit [downsized ERISA fiduciary standards](#) in a ruling that invalidated a set of seven expansive fiduciary rules. The Northern District of Illinois issued an unusual ruling, holding that [two plaintiffs' claims were subject to an enforceable arbitration agreement](#), yet refused to compel arbitration. The DOJ challenged a set of competitors' [no-poaching agreements](#) as per se violations of the Sherman Act, which regulates concerted anti-competitive action. Finally, in the wake of the #MeToo movement, New York (state and city) have implemented [new regulations](#) concerning workplace sexual harassment.

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