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TOP LABOR & EMPLOYMENT LAWYERS 2023



**KATHERINE
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Katherine V.A. Smith is a co-chair of Gibson, Dunn & Crutcher LLP's labor and employment practice group. She has extensive experience representing employers in individual, representative and class action litigation at the trial and appellate level. She joined the firm in 2006.

"I've done employment law my entire career," she said. "It's all about people, and I find it compelling, interesting and understandable. It's a vast and complex field with something always new on the horizon."

The rapid advent of artificial intelligence is a good example of how employment law can change, Smith added. "Was any of that on our radar five or 10 years ago? Now, employers are incorporating AI into how they operate — and how to do so within the law is where we come in."

"Getting up to speed on AI feels like the way we had to pivot when COVID came along, on a dime," Smith continued. "We roll with these challenges and bring to them the employment law lens we bring to every new challenge: how to treat employees with empathy and compassion as much as possible."

For client Lowe's Home Centers LLC, Smith achieved an important win in April 2023 when a state appellate court summarily denied the plaintiff's writ petition and declined to vacate and reverse a trial court's order to compel arbitration despite ongoing PAGA pay and overtime claims. *Lowe's Wage & Hour Cases*, JCCP 5110 (San Bernardino Co. Super. Ct., filed July 21, 2020).

The case required Smith to navigate dueling high court cases. As the U.S.

Supreme Court's *Viking River Cruises* matter was in progress, potentially preempting California's PAGA rules, she obtained a stay of proceedings. After the *Viking River* decision, the trial court granted Smith's motion to compel the plaintiffs' individual claims to arbitration. The court also stayed the non-individual PAGA claims pending the state Supreme Court's forthcoming decision in *Adolph v. Uber Technologies, Inc.* That case is expected to apply *Viking River* to California's PAGA rules.

"It's hard to know how this will play out. You rarely get a binary yes or no," Smith said. "We're now coming up on 20 years of PAGA, and it feels like a lifetime."

Smith attained a rare demurrer — twice — in defense of a Netflix, Inc. vice president accused of harassment and the intentional infliction of emotional distress by a woman who worked for an Indian subsidiary of the streaming service. The court allowed the plaintiff to file an amended complaint, but dismissed that one, too, for failing to allege sufficient facts to sustain the complaint. *Mehta v. Netflix, Inc. et al.*, 21STCV25741 (L.A. Super. Ct., filed July 13, 2021).

"Even on the second go-round, they couldn't fix the problem," Smith said.

—John Roemer