

# Daily Journal

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## LABOR & EMPLOYMENT

CALIFORNIA'S TOP LABOR AND EMPLOYMENT LAWYERS

### EDITORS' NOTE

As the U.S. Supreme Court continued to favor businesses by raising the bar for class actions, California lawyers looked to our state Supreme Court for cues on how it would follow the high court's lead.

2014 gave us some answers.

Three long-awaited rulings in *Iskanian*, *Duran* and *Ayala* are set to illuminate the playing field for employment class action and the enforceability of employment contracts requiring workers to arbitrate their grievances.

In *Iskanian*, the court ruled that an arbitration clause can prohibit a class action, handing defense lawyers a win they desperately wanted. But the decision also gave a significant victory to workers — it said they could sue on behalf of themselves and other workers as representatives of the state.

In *Duran*, the court said statistical sampling could be used in class actions — which many employers sought to avoid — but it set a high bar for the use of such sampling.

Finally, the court held in *Ayala* that in an employee misclassification action, a class should be certified if the employer has the right to

exercise control over its independent contractors, regardless of variations in how the employer exercises that right.

Together the rulings create a challenging body of law for our state's labor and employment lawyers, whose accomplishments continue to boost the California Supreme Court as the most influential in the nation.

In reviewing hundreds of nominations from law firms, alternative dispute resolution providers and others, we sought to recognize work that is having a broad impact on the legal community, the nation and society. We honor the best of them.

## Catherine A. Conway

GIBSON DUNN & CRUTCHER LLP

LOS ANGELES

**SPECIALTY:** high-stakes employment class actions

The legal landscape has shifted since the U.S. Supreme Court's 2011 landmark *Wal-Mart v. Dukes* decision, which raised the bar for class certification, Conway said.

"We're not seeing plaintiffs getting wholesale early discovery anymore," she added.

Judges are taking their time to consider whether this is an appropriate case for class treatment, and coming up with unique ways to parse out legal and discovery issues.

"There is less of a rubber stamp," she said. "Judges are paying attention to the details of a case and there is recognition of how burdensome these cases are."

Conway is part of a Gibson Dunn team that is continuing to represent Wal-Mart on its matters, including post-*Dukes* class actions.

"There are a number of cases across the country, with different venues, judges

and plaintiffs," Conway said.

In August 2013, the team secured a win when the U.S. District Court for the Northern District denied certification of a scaled-down version of the nationwide action.

The defense team argued that plaintiffs' amended class failed to meet the requirement for class certification, because they had not corrected the problems identified by the high court in its decision.

Among her other significant matters, last year Conway won the dismissal of a class action involving travel time allegations against RGIS Inc., an inventory service company. *Cross, et al. v. RGIS LLC*, 37-2013-00044583 (San Diego Superior Ct., filed April 17, 2013).



The court ruled that RGIS is not required to pay its employees for their commute time, regardless of the distance involved, as long as it does not require them to use company transportation.

The court's decision is notable not only because it dismissed the claim at the pleadings stage, Conway said, but because it also rejected the standard that has long been applied by the state agency, requiring compensation for travel to distant work sites.

— PAT BRODERICK