

## SCOTUS Rules for Baker, Waiting-Time Penalties, the “Epic” Effect, New Salary History Bans: Employment Law This Week: June 11, 2018

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Monday, June 11, 2018

### 1. SCOTUS Rules for Christian Colorado Baker

Our top story: On narrow grounds, the Supreme Court of the United States has found in favor of a baker in Colorado who refused an order for a custom wedding cake from a gay couple because of his religious beliefs. The Colorado Civil Rights Commission found that the baker had engaged in unlawful discrimination after he refused to serve a same-sex couple. The high court found that comments by one member of the Colorado Commission showed religious animus that violated the First Amendment’s free exercise clause. The Supreme Court declined to address the delicate balance between a business’s First Amendment rights and statutory protections under anti-discrimination laws, but the issue is likely to be back in court in the near future. Janene Marasciullo has more:

“The masterpiece cake case does not address employment directly. It addressed . . . it was resolved on First Amendment grounds, and the First Amendment prohibits the state from interfering with one’s free exercise of religion, and that was the basis for the decision. The First Amendment does not necessarily apply to private employers; however, the way the court decided the case, it reiterated and placed a very strong emphasis on the need to treat claims of religion with neutrality and respect. And employers should take away from this that if they have a situation where an employee is requesting a religious accommodation for some reason, that those need to be treated with respect and neutrally, so that they’re not favoring one religion over another because that could lead to a claim of discrimination if that action was coupled with an adverse employment action.”

### 2. California Court Addresses Waiting-Time Penalties

The California Court of Appeal says waiting-time penalties apply regardless of whether there was malicious intent. Labor Code Section 203 states that an employer that “willfully fails to pay” any wages after an employee is terminated or quits is responsible for continuous wages until payment is made. In this case, the employer argued that its failure to pay was not willful because it was not aware of a minimum wage hike. But the court determined that ignorance of the law was no excuse and that “willful failure to pay” requires only that an employer act knowingly.

### 3. Epic Decision Changes Course of Many Cases



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GREEN

Article By

[George Carroll Whipple, III](#)  
[Janene Marasciullo](#)  
[Epstein Becker & Green, P.C.](#)  
[Employment Law This Week](#)[Labor & Employment](#)  
[ADR / Arbitration / Mediation](#)  
[Litigation / Trial Practice](#)  
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[Connecticut](#)  
[Vermont](#)

The Supreme Court's *Epic* decision sends a slew of class action cases into individual arbitrations. In light of its landmark ruling that okayed class waivers in arbitration agreements, the high court has remanded a pending *United Healthcare* class action case back to the U.S. Court of Appeals for the Seventh Circuit. A Michigan federal court just ruled that workers suing Fiat Chrysler for discrimination will have to take their claims to individual arbitration, and a California federal judge did the same for a class of delivery drivers suing a Domino's franchisee. Many other cases are being voluntarily removed to arbitration. The *Epic* ruling applies to an estimated 25 million U.S. employees who are subject to arbitration agreements containing class action waivers.

#### **4. Connecticut and Vermont Adopt Salary History Bans**

Two more states say "no" to salary history inquiries by employers. Connecticut and Vermont are the most recent states to prohibit employers from asking applicants about their salary history. Nine states across the country now have salary history bans, including California, Delaware, and New Jersey. The Connecticut law allows applicants to file lawsuits against an employer that inquires about their past compensation. Vermont's law bans salary history questions but allows employers to ask about an applicant's salary expectations or requirements.

#### **5. Tip of the Week**

Ann Burns, Chief Human Resources Officer for Higher Logic, shares some tips for providing productive management training:

"What manager training can do for all managers is really provide an opportunity for skill building, for an opportunity to look at company policies and procedures, make sure that your managers are aware of what their responsibility is to the company, as well as what their personal liability is in situations, that they act appropriately. Another opportunity is identifying the target management group that you want to do the training for. Some companies will decide that you want to do different levels of training for different groups of people. This year, my company decided to do all managers at the same time, just so we had the opportunity to baseline all managers. We acquired four companies this year in three different states, so we decided providing the opportunity for all managers to come to our headquarters for a two-day workshop was an effective way to kick off the program and meet our goals."

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