



Lawsuits pertaining to IHSS and other litigation of interest

Status as of October 4, 2011

*** Latest information is highlighted.**

Color Coding of Cases
Toby Douglas, Director, California Department of Health Care Services, Petitioner v. Independent Living Center of Southern California, Inc., et al.
Dominguez v. Schwarzenegger: regarding IHSS wages
Oster et al v. Wagner: regarding Functional Index Score/Rank cuts
Beckwith v. Wagner: regarding disqualifying crimes for IHSS providers and applicants
Northern California ADAPT v. Wagner: regarding Share of Cost Buy-out
Woodruff vs. County of San Diego In-Home Supportive Services Public Authority re: employer roles & wages for IHSS providers
County of Los Angeles v. Los Angeles County Employee Relations Commission re: contact info of agency shop/non-union members
Darling et al. v. Douglas re: ADHC
Leon Brown v. County of Los Angeles, LA-PASC, et al

Plaintiff(s) & Defendant(s)	Court	Case Number	Summary & Relief Sought	Status
<p><i>Toby Douglas, Director, California Department of Health Care Services, Petitioner v. Independent Living Center of Southern California, Inc., et al.</i></p> <p>NOTE: Toby Douglas replaced David Maxwell Jolly as the Petitioner when he became DHCS director.</p>	<p>Supreme Court of the United States (SCOTUS)</p>	<p>09-958</p> <p>Lower court case number: 08-56422, 08-56554</p>	<p>Whether Medicaid recipients and providers may maintain a cause of action under the Supremacy Clause to enforce § 1396a(a)(30)(A) by asserting that the provision preempts a state law reducing reimbursement rates?</p>	<p>Oct 3 2011 Argued. For petitioner: Karin S. Schwartz, Supervising Deputy Attorney General, San Francisco, Cal.; and Edwin S. Kneeder, Deputy Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondents: Carter G. Phillips, Washington, D. C.)</p> <p>Transcript online at: http://www.supremecourt.gov/oral_arguments/argument_transcripts/09-958.pdf</p> <p>This case was consolidated with:</p> <ul style="list-style-type: none"> Toby Douglas, Director, California Department of Health Care Services, Petitioner v. California Pharmacists Association, et al. (case #09-1158) Toby Douglas, Director, California Department of Health Care Services, Petitioner v. Santa Rosa Memorial Hospital, et al. (case #10-283)
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>(regarding state financial</p>	<p>U.S. District Court California Northern District (Oakland)</p>	<p>4:09-cv-02306-CW</p>	<p>Enter a preliminary injunction, pending a decision on the merits, that (1) enjoins the State Defendants from taking any action (a) to implement</p>	<p>Date Filed: May 26, 2009</p> <p>Preliminary Injunction Order on July 26, 2009 (and further clarifying injunctions) have been issued that require the state to pay IHSS providers, in all counties where the State has rescinded its approval of Rate Change Requests that proposed rate decreases to take</p>

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<p>participation in IHSS provider wages)</p> <p>* This case was originally called "Martinez v. Schwarzenegger" – then renamed "Yang v. Schwarzenegger" – then renamed "Dominguez v. Schwarzenegger"</p>			<p>Section 12306.1(d)(6) by reducing the maximum wage of IHSS providers that the State will help fund to \$9.50 per hour and the maximum benefit rate of IHSS providers that the State will help fund to \$.60 per hour, or (b) to approve or implement any county IHSS rate decreases adopted pursuant to Section 12306.1(d)(6), and (2) enjoins the Fresno County Defendants from taking any action to implement a wage and benefit reduction for Fresno County IHSS providers, and conditionally certify the proposed classes for the purpose of such relief.</p>	<p>effect July 1, 2009, at the correct, pre-July 1 rates in their regular paychecks for the pay period ending July 31, 2009. State Defendants must also pay all IHSS providers the correct amount owed for the pay period ending July 15, 2009 in a check or checks that issue no later than ten days after the provider submits his or her timesheet for that pay period, or seven business days from the date of this order, whichever is later.</p> <p>03/2/11: Stipulation and order staying all district court proceedings in this action pending Resolution of related Proceedings in the U.S. Supreme Court</p> <p>Due to Magistrate Judge James Larson's retirement, this case is re-referred to Magistrate Judge Jacqueline Scott Corley for discovery. All matters scheduled before, and deadlines set by, Judge Larson are hereby vacated. All future discovery matters should be addressed to Judge Corley unless otherwise ordered by the presiding judge. (Filed 6/1/2011)</p> <p>Case Management Statement due by 11/10/2011. Further Case Management Conference set for 11/17/2011 02:00 PM.</p>
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>Renamed from "Martinez" and "Yang"</p> <p>(regarding IHSS provider wages)</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	09-16359	<p>Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.</p>	<p>State Defendant's brief was filed on August 7, 2009. This is a preliminary injunction appeal.</p> <p>The Ninth Circuit Court affirmed the lower court ruling on March 3, 2010. The decision states (in part), "<i>The district court properly determined that Section 30(A) of the [federal] Medicaid Act applies to the State's enactment of California Welfare & Institutions Code Section 12306.1(d)(6). The district court correctly held that Plaintiffs demonstrated a likelihood of success on the merits of their Supremacy Clause claim, and did not abuse its discretion in holding that the balance of hardships tips sharply in Plaintiffs' favor. Accordingly, we affirm the district court's order granting the motion for a preliminary injunction</i>"</p> <p>Received notice from the Supreme Court. Petition for certiorari GRANTED on 01/18/2011. Supreme Court Number 09-1158.</p>
<p><i>Dominguez et al v.</i></p>	<p>U.S.</p>	09-1158	<p>Defendant's (State)</p>	<p>U.S. Supreme Court issued docket number on March 24, 2010 –</p>

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<p><i>Schwarzenegger et al</i></p> <p>Renamed from "Martinez" and "Yang"</p> <p>(regarding IHSS provider wages)</p>	<p>Supreme Court</p>		<p>petitioned the U.S. Supreme Court: petition for certiorari, which is a document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ.</p>	<p>which ties this case to David Maxwell-Jolly, Director, California Department of Health Care Services v. California Pharmacists Association, et al.</p> <p>The petition for a writ of certiorari granted on January 18, 2011.</p> <p>The time to file respondents' briefs on the merits is further extended to and including July 29, 2011.</p> <p>See: Toby Douglas, Director, California Department of Health Care Services, Petitioner v. Independent Living Center of Southern California, Inc., et al.</p>
<p><i>Oster et al v. Wagner</i></p> <p>(regarding Functional Index Score/Rank cuts)</p> <p>* This case was originally called V.L. et al v. Wagner.</p>	<p>U.S. District Court California Northern District (Oakland)</p>	<p>4:09-cv-04668-CW</p>	<p>The class action lawsuit is filed on behalf of four low-income Californians who need IHSS to remain safely at home. The plaintiffs include two children with disabilities who need special care, an 81 year old senior who needs IHSS to remain in her apartment, and a young man with autism and bi-polar disorder whose IHSS provider assists him with basic tasks.</p> <p>The cuts in IHSS services are scheduled to take effect November 1, 2009. At least 40,000 people will lose services entirely and an additional 97,000 will have their services cut sharply. Among the services to be cut are help with cooking, food shopping, cleaning and assistance to medical appointments - cost-effective services which frail seniors and those with disabilities</p>	<p>Date Filed: October 1, 2009</p> <p>Judge Claudia Wilken issued an order on October 19, 2009 that stopped the State from moving forward on implementing cuts to eligibility and services that were scheduled to go into effect November 1st. Wilken ruled that the plaintiffs were likely to show at trial that the cuts to services, enacted in the recent state budget, violate federal law. The State said it will appeal the decision.</p> <p>Plaintiffs filed a motion for Civil Contempt Sanctions on November 10, 2009. The motion was heard on November 19, 2009 and Judge Wilken ruled in favor of the plaintiffs.</p> <p>ORDER Granting 314 Stipulation CONTINUING THE FURTHER CASE MANAGEMENT CONFERENCE PENDING RESOLUTION OF DEFENDANTS' PRELIMINARY INJUNCTION APPEAL IN THE 9TH CIRCUIT. Case Management Statement due by 9/6/2011. Case Management Conference set for 9/13/2011</p> <p>CASE REFERRED to Magistrate Judge Jacqueline Scott Corley for Discovery. (Filed on 6/16/2011)</p> <p>Case Management Conference, previously set for Tuesday, April 10, 2012, is continued to Wednesday, April 11, 2012, at 2:00 p.m., in Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94612. Case Management Statement due by April 4, 2012.</p>

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			<p>depend on to avoid more costly placement in institutions such as nursing homes.</p> <p>The plaintiffs in the lawsuit asked the federal court to issue an injunction to stop these IHSS cuts.</p>	
<p><i>Oster et al v. Wagner</i></p> <p>(regarding Functional Index Score/Rank cuts)</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	09-17581	<p>Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.</p>	<p>State filed the motion to appeal on November 18, 2009. This is a preliminary injunction appeal. The State (Appellant's) filed their Opening Brief on December 29, 2009; the Appellant's answering brief was filed March 3, 2010. On April 9, 2010 the State requested that the hearing for oral arguments be expedited.</p> <p>Appellate Judges are Diarmuid F. O'scannlain, A. Wallace Tashima And Carlos T. Bea</p> <p>Case argued before these judges on June 15, 2010. Audio of the hearing is online at http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000005720</p> <p>Submission of this case is withdrawn and the case is deferred pending the United States Supreme Court's decision in the consolidated appeals of Maxwell-Jolly v. Indep. Living Ctr., 572 F.3d 644 (9th Cir. 2009); Maxwell-Jolly v. Calif. Pharmacists Ass'n, 2010 WL 737650 (9th Cir. Mar. 3, 2010); Maxwell-Jolly v. Santa Rosa Mem. Hosp., 2010 WL 2124276 (9th Cir. May 27, 2010); certiorari granted, 2011 WL 134272 (U.S., No. 09-958, Jan. 18, 2011), or until further order of the court. [7628455] (KKW)</p>
<p><i>Beckwith v. Wagner</i></p> <p>(regarding criminal background checks and felony crimes that are disqualifying offenses)</p>	<p>Alameda Superior Court</p>	RG09484051	<p>Requests a writ commanding respondents (CDSS) to rescind and set aside policy reflected in ACL 09-52 that all persons convicted of a felony at any time are ineligible to become or remain IHSS providers and immediately issue a new</p>	<p>Alameda Superior Court Judge David Hunter issued an Alternative Writ on February 9, 2010. The order confirms that the state is not allowed to use all felonies and specified misdemeanors to disqualify individuals from being paid by the IHSS program. The order also says the petitioners must submit a proposed Writ of Mandate for the court's signature.</p> <p>Order re Writ of Mandate Filed March 26, 2010 requires defendants to:</p>

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[Renamed from Ellis v. Wagner]			<p>notice to counties, providers and recipients informing them of this change in policy and that the mandatory conviction disqualification provisions for IHSS providers are limited to the convictions in Welfare & Institutions Code 12301.6. Further, any actions taken on the basis of the policy in ACL 09-52 are null and void and must be set aside.</p>	<p>(1) rescind & refrain from enforcing the policy in ACL 09-52 that said any person who has ever been convicted if a felony or specified misdemeanors is ineligible to be an IHSS provider;</p> <p>(2) refrain from disqualifying applicants or finding persons ineligible to be an IHSS provider on the basis of criminal conviction, other than finding persons ineligible for 10 years following a conviction pursuant to Welfare & Institutions Code 12305.81 (a);</p> <p>(3) notify all individuals previously denied IHSS provider status pursuant to the policy in ACP 09-52 that the policy has been rescinded; that previously disqualified persons may re-apply; and that the standards for disqualification are specified in Welfare & Institutions Code 12305.81 (a)</p> <p>(4) CDSS to post a notice of this order on its website.</p> <p>CDSS filed an appeal on May 24, 2010 and the court automatically stayed the effect of the court’s order pending a decision by a court of appeal – which means that the earlier court order with the limit of three disqualifying crimes was suspended.</p> <p>On August 11, 2010 CDSS issued a draft ACL to counties, Public Authorities and IHSS stakeholders which states, “As a result of the stay, CDSS is reinstating the policy established before the court order was issued by the Alameda County Superior Court.” The draft ACL established the state’s intent to immediately implement the policy for counties and Public Authorities to use all-felonies & specified misdemeanor to disqualify current and prospective providers.</p> <p>On August 24, 2010, Judge David Hunter issued an order which states, “Respondents have recently prepared a draft notice to all County Welfare Directors instructing them that this Court’s rulings in this case are stayed pending disposition of their appeal.....The court hereby orders that the cross-appeals in this case do not operate as a stay of Writ of Mandate issued on March 26, 2010....The Court is satisfied with the showing by one or more Petitioners that they (and/or those individuals to whom they are providing in-home care) will suffer irreparable damage if the Writ of Mandate is stayed pending the appeal.”</p> <p>On October 29, 2010, Judge Hunter issued an order that states, “The Court orders that The Respondents’ appeal in this case does</p>

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				<p>not operate as a stay of the Writ of Mandate issued on march 26, 2010. Petitioners have made an adequate showing that they, other similiarly situated in-home service providers, and/or the individual to whom they are providing in-home care will suffer irreparable damage if the Writ of Mandate is stayed pending the appeal.”</p> <p>Cross appeal dismissed 3-24-11.</p> <p>Original decision made final 5-31-11.</p> <p>9/23/11 Order - Stipulation and Order Extending Time to File Motion for Attorneys' Fees Filed to November 10, 2011.</p>
<p><i>Northern California ADAPT (Bay Area) ET AL v. Wagner</i></p> <p>(regarding the Share of Cost Buy-Out)</p>	<p>San Francisco Superior Court</p>	<p>CPF-09-509912</p>	<p>Motion for preliminary injunction to enjoin the elimination of IHSS buy-out pending timely and adequate notice to affected IHSS beneficiaries.</p>	<p>Filed Oct 19, 2009.</p> <p>The Preliminary injunction hearing was Nov. 30, 2009. The court adopted its tentative ruling as follows: plaintiffs Ramon Avina, Margaret Belton and California Department Of Health Care services' motion for preliminary injunction is denied. The court finds that the injunction is not an appropriate vehicle because the thrust of the complaint is the issue on notice not the elimination of the subsidy by the state.</p> <p>On September 15, 2010: Dismissal without prejudice of 2nd amended complaint fourth cause of action for violation of substantive due process.</p> <p>On October 29, 2010: Order sustaining in part, and overruling in part, demurrer to second amended petition and complaint for declaratory and injunctive relief.</p>
<p><i>Woodruff vs. County of San Diego In-Home Supportive Services Public Authority</i></p>	<p>San Diego Superior Court</p>	<p>37-2008-00096957-CU-OE-CTL</p>	<p>The suit is a class-action wage and hour claim brought by an IHSS provider who contends (a) she is an “employee” of the PA and (b) she worked hours for the PA for which she was not paid minimum wage as required by state law.</p>	<p>4/24/09 The court finds the IHSS Public Authority is Plaintiff's employer only for purposes of Government Code §3500 et seq. (collective bargaining) but also for purposes of "other applicable state or federal laws." §12301.6(b)(2)(B) also refers to "employees of the public authority." §12301.6(f) specifically excludes from the public authority's liability, "liability due to the negligence or intentional torts of the in-home supportive services personnel." There is no such similar exclusion for the public authority's liability for violations of wage and hour laws. The alternate construction advanced by the IHSS Public Authority ignores the "other applicable state or federal laws" language of §12302.25(a). The court finds the IHSS Public Authority is the employer under the In-</p>

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				<p>Home Supportive Services statutes. This construction, as opposed to the construction advanced by the IHSS Public Authority, harmonizes the statute "internally and with related statutes."</p> <p><u>First Cause of Action – Statutory Overtime Compensation</u> The IHSS Public Authority's demurrer is sustained. Neither side provides definitive authority on the issue of whether Labor Code §510 and §1194 apply to public employees.</p> <p><u>Second Cause of Action – Regulatory Overtime Compensation</u> The IHSS Public Authority's demurrer is sustained. As Plaintiff concedes, each of the "industry orders", including Wage Order 2 and Wage Order 4, contain a public-employee exception which excludes public employees from the overtime compensation requirements contained within each of these orders.</p> <p><u>Third Cause of Action – Statutory Minimum Wage</u> The IHSS Public Authority's demurrer is sustained. The parties do not dispute that public employees are covered by State minimum wage requirements. As pled, the complaint does not specifically allege Plaintiff was paid less than minimum wage for hours worked. Rather, the complaint relies on allegations "IHSS does not pay the Employees for their Hours Worked traveling between worksites during a workday . . . and IHSS 'pro-rates' hourly wages when a Recipient's eligibility to receive in-home supportive services terminates prior to the end of a calendar month (which results in many cases in a refusal by IHSS to pay the Employees for Hours Worked by the Employee while the Recipient was eligible to receive in-home supportive services.)"</p> <p><u>Fifth Cause of Action – Penalty Wages</u> The IHSS Public Authority's demurrer is sustained. Labor Code §220(b) specifically provides that "Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation. . . ."</p> <p><u>Seventh Cause of Action – Injunction</u> The IHSS Public Authority's demurrer is sustained. Plaintiff fails to demonstrate a reasonable probability the complaint can be amended to plead a basis for injunctive relief under Business & Professions Code §17203 against the IHSS Public Authority.</p>

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				<p>5/6/11: The court finds the Public Authority does not owe a duty to pay persons, such as Plaintiff, who attended a training/orientation program session in order to have their names listed on the Registry.</p> <p>08/19/11: Request for Dismissal without Prejudice - Party filed by Wilcox, Cynthia.</p> <p>Trial Readiness Conference scheduled 02/24/12: Judge Ronald L. Styn.</p>
<p><i>County of Los Angeles v. Los Angeles County Employee Relations Commission</i></p>	<p>California Supreme Court</p>	<p>S191944</p>	<p>The Court of Appeal decision held that under California's right to privacy, non-union members of a bargaining unit (i.e. agency fee payers) have a reasonable expectation of privacy that their personal information will remain confidential. The Court held that before the home addresses of non-union members can be released, the employer must provide these employees with notice and an opportunity to object to the disclosure of their personal information.</p>	<p>On June 16, 2011, the Supreme Court granted review of this case. The specific issues that the Court granted review on are: Under the state Constitution (Cal. Const., art. I, § 1), do the interests of non-union-member public employees in the privacy of their personal contact information outweigh the interests of the union representing their bargaining unit in obtaining that information in furtherance of its duties as a matter of labor law to provide fair and equal representation of union-member and non-union-member employees within the bargaining unit? (2) Did the Court of Appeal err in remanding to the trial court with directions to apply a specific notice procedure to protect such employees' privacy rights instead of permitting the parties to determine the proper procedure for doing so?</p> <p>On July 5, 2011: Counsel for Real Party in Interest requests 60-day extension of time to September 13, 2011, to file the opening brief.</p> <p>Opening brief on the merits filed 8/16/11. County response brief filed 9/16/11.</p> <p>On application of real party in interest and good cause appearing, it is ordered that the time to serve and file the reply brief on the merits is extended to and including November 7, 2011.</p>
<p><i>Darling et al. v Douglas</i> Re: ADHC</p>	<p>U.S. District Court California Northern</p>	<p>4:09-cv-03798-SBA</p>	<p>Plaintiffs seek to stop the state from eliminating Adult Day Health Care (ADHC) as a Medi-Cal</p>	<p>Plaintiffs reply due for filing on July 12, 2011 to defendant's opposition motion and the hearing on the opposition's motion is scheduled for July 26, 2011.</p>

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	District (Oakland)		benefit, as of September 1, without ensuring that affected people are not harmed, including by being hospitalized or placed in nursing homes.	<p>The hearing in the U.S. District Court scheduled for 7/26/11 on the Motion for a Preliminary Injunction against the state's planned elimination of ADHC as a Medicaid benefit was continued until November 1, 2011. The judge reportedly signed the order today because the termination will now not take effect until at least December 1, 2011, under the new State Plan Amendment approved by CMS.</p> <p>Motion hearing rescheduled to November 8, 2011 at 1:00 pm.</p>
<p><i>Leon Brown v. County of Los Angeles, LA-PASC, et al</i></p> <p>(IHSS overtime case)</p>	Los Angeles Superior Court	BC456619	<p>This class action claims the plaintiff is required to provide Protective Supervision 24-hours-a-day coverage but only receives compensation up to the 283 hour cap. Plaintiff is seeking compensation for unpaid hours of care, including overtime payment.</p>	<p>03/04/2011 Complaint</p> <p>06/13/2011 First Amended Complaint Filed by Attorney for Plaintiff/Petitioner</p> <p>09/01/2011 Answer to First Amended Complaint Filed by Attorney for Defendant/Respondent</p>