

Hi, this is Chris Micheli with the Sacramento Governmental Relations Firm of Aprea and Micheli and an adjunct professor at McGeorge School of Law. In today's podcast, we're going to take a short look at the potential retroactivity of California statutes. Basically, here in the state of California, as in most states, a statute is presumed to operate prospectively. And construing statutes, there's a general presumption against retroactive cases unless the Legislature plainly has directed otherwise. So how might the Legislature plainly direct otherwise? Well, generally it's by means of express language of retroactivity or some sort of source of information that provides a clear and unavoidable implication that the Legislature, in fact, intended to retroactively apply a particular statute.

In addition, a statute is generally construed to preserve its constitutionality. And the burden of establishing the unconstitutionality of the statute rests on the party who attacks it. Remember that courts in this state generally don't declare a legislative classification invalid, unless it's of a character that precludes the assumption that the classification rests upon some rational basis.

The Civil Code in California actually includes a specific codification of this general principle. In Section 3 of the California Civil Code, it says, "No part of this Code is retroactive unless expressly so declared." In addition, the presumption against retroactivity applies with particular force to laws that create new obligations or impose new duties or exact new penalties because of any past transactions.

Now, based upon different decisions of the California Supreme Court, we know that the general rule in this state is basically, if the Legislature clearly intended that an amendment to a statute is going to be, or intended to be, applied retroactively, then the court generally must honor that intent unless there's some sort of constitutional obstacle to doing so. As the court said in the Landgraff case, "The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new duties on persons after the fact."

Now, that is not to say that a statute may never apply retroactively. In fact, in the Myers case, another California Supreme Court decision, they said that a statute's retroactivity is in the first instance a policy determination for the Legislature, and one to which courts defer absent some constitutional objection to its retroactivity. So, as such, the basic rule in California is that a statute may be applied retroactively only if it contains express language of retroactivity.

The California Supreme court has also made the statement that where a statute provides that it clarifies or declares existing law, it's obvious that such a provision is indicative of a legislative intent that the amendment applies to all existing causes of action from the date of the bill's enactment. Now, in accordance with the general rules of statutory construction, the courts generally give effect to this legislative intent, again, unless there's some constitutional limitation to doing so.

Basically, the California courts look at the text of the bill and the legislative materials to determine whether this bill that's making a change in the law or the clarification of existing law, and then it asks itself, "Does the bill represent a clarification?" If it does, then the bill's applied in all instances, both retroactively and prospectively. On the other hand, the courts generally find that if the bill

enacts a change in the law, then the court has to look whether or not the Legislature intended this law change to be applied retroactively.

Now, if we look at the appellate court decisions, I found that we basically keep main points to provide us guidance. And this guidance is to the public, to lawmakers, to bill drafters when they look at whether or not to make a retroactive change for California statute.

The first question is, did the Legislature enact the change of law promptly after an adverse court decision? Because in most instances, the legislative change needs to be made within a few months, less than a year of the court decision.

Has the Supreme Court rendered a final decision? If it has, then the legislative enactment is most likely deemed prospective only. Is there some amount of ambiguity in the statute that was amended? The courts are usually more inclined to allow a retroactive law change when an ambiguous statute was amended by the Legislature.

So again, based upon appellate court decisions and the guidance that they've provided, the Legislature does have the general authority to retroactively declare that certain statutory changes, again, can be applied retroactively, but it's limited to certain specified circumstances. The most important point is that the California Supreme Court has not issued a final ruling on the statute in question, otherwise the Legislature can only make a prospective change in the law. Thanks for joining today's podcast. I hope you enjoyed it.