The Association of Corporate Counsel San Francisco Bay Area Chapter Pro Bono Committee

With co-sponsors

Employment Law Legal Audit for Nonprofit Organizations

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Hello from ACC!

- Welcome & Thank You

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Before We Begin…

- ❑ How does the Clinic work?
- ❑ What will you be doing?
- ❑ Who will you be working with?
- ❑ What happens after the training?

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How Does the Clinic Work?

- ❑ How this training ties into the clinic this afternoon
- ❑ This is primarily an issue-spotting exercise
- ❑ Checklist + ongoing support from Cozen attorneys

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What Will You Be Doing Today?

- ❑ Meeting your team members
- ❑ Meeting the client
- ❑ Using the step-by-step checklist
- ❑ IMPORTANT: Please submit post-clinic action plan!

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Who Will You Be Working With Today?

Your clients are California nonprofits that provide direct services to low income and underserved people.

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After the Training…

- ❑ Keep your Zoom open and check your "name"
- ❑ 1:45 - 2:00 pm: Breakout rooms: Meet your teammates and report to CORP who'll be acting as team reporter
- ❑2:00 – 2:15 pm: Non-profit clients join Zoom and introduce themselves
- ❑2:15 – 4:00 pm: Consultations with clients
- ❑ 4:00 – 4:15 pm: Break – take this time to complete and send your post-clinic action plan to corp@sfbar.org
- ❑ 4:15 – 5:15 pm: Training – "Hard to Get" CLE Happy Hour (CLE #2: 1.0 hour California Credit)

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California Employment Policies and Practices

A Legal and Practical Checkup

Presented By:

Walter M. Stella

Addy Tang

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Today's Topics

- ❑Hiring Inquiries, Background Checks, Offer Letters and Agreements
- ❑Handbook Overview and EEO Update
- ❑ Contractors Interns and Volunteers
- ❑Wage and Hour
- ❑PTO, Paid Sick Leave and Leaves of Absence

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Hiring Inquiries, Background Checks, Offer Letters, and Agreements

Background Checks and References

- **Legal limits:**
  - Federal Fair Credit Reporting Act (FCRA) and California consumer report laws
  - California
    - Investigative Consumer Reporting Agencies Act (ICRAA)
      - Background checks
    - Consumer Credit Reporting Agencies Act
      - Credit checks
      - Can only be ordered if employees works in certain positions
  - Megan's law database
  - References: Consumer report rules do not apply when checked by employer.
  - New cautions: social media

Arrests and Convictions

- Pre-employment inquiries (on applications, interviews, background checks, etc.) do not per se violate Title VII, but USE of criminal record information may violate Title VII.
  - Distinction between arrests and convictions

    https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions
  - Be careful - "Ban the Box" laws!

Ban-the Box

- ❑ Statewide "Ban-the-Box" law that prohibits public and private employers (with 5+ employees) from asking about criminal convictions on any application for employment.
- ❑ Cannot inquire about conviction history prior to extending conditional job offer.
- ❑ Cannot consider, distribute, or disseminate information related to arrests that did not result in convictions, diversion program participation, and/or convictions that were sealed, dismissed, expunged or eradicated.
- ❑ Must conduct individualized assessment if intend to deny hire solely or in part due to conviction history.
- ❑ Must follow fair chance process if individualized assessment leads to decision that conviction is disqualifying.
  - Must comply with applicable local Fair Chance Ordinances as well (San Francisco, Los Angeles).

Expansion of California Labor Code § 432.3

❑ **Salary History Ban: California Labor Code § 432.3**

- **California employers cannot:**
  - seek an applicant's salary history information personally or through an agent, including compensation and benefits;
  - rely on an applicant's salary history information as a factor in determining
    - whether to offer employment to an applicant; or
    - what salary to offer an applicant.
- **Exceptions:**
  - Employers may consider or rely on voluntarily disclosed salary history information.
  - Employers may inquire about the applicant's expected salary in determining the applicant's salary.
- **California employers must provide an applicant with the pay scale for the position upon reasonable request.**

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Pay Transparency: Affirmative Disclosure

- **Effective January 1, 2023, Labor Code 432.3 (the Salary History Ban Law) was amended as follows:**
  - Private or public-sector employers with 15 or more employees must include a pay scale in all job postings (and must provide that information to third parties who post those jobs).
    - "The salary or hourly wage range that the employer reasonably excepts to pay for the position."
  - All employers, regardless of size, must provide a pay scale for a current employee's position at the employee's request.
  - All employers, regardless of size, must disclose the pay scale for the position to applicants upon reasonable request (including those not actually given a job interview).

- The Department of Industrial Relations (DIR) released FAQs (https://www.dir.ca.gov/dlse/california_equal_pay_act.htm) for employers regarding compliance with the new pay transparency obligation.

Offer Letters and Required Paperwork

- ❑ **Are offer letters updated?**
- ❑ **Do new hires get all required notices?**
  - California Wage Theft Prevention Act requires written disclosure of wages and terms of employment http://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf
  - I-9 employment verification process
  - Tax forms (W-4)
  - Required pamphlets: paid family leave, workers' compensation, disability insurance, etc.
  - Notice to new employees, and current employees on request, regarding domestic violence, sexual assault, and stalking protections

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The Ninth Circuit Strikes Down AB 51

- *Chamber of Commerce of the United States, et al. v. Becerra, et al.,* No. 2:19-cv-2456 (E.D. Cal. 2019): On 1/31/2020, the U.S. District Court for the Eastern District Court of California issued a preliminary injunction enjoining the state from enforcing AB 51 with respect to arbitration agreements governed by the Federal Arbitration Act (FAA).
- *Chamber of Commerce v. Bonta*, No. 20-15291 (9/15/2021): The Ninth Circuit in a 2-1 decision reversed in part the District Court's decision and held that the FAA does not fully preempt AB 51.
- On August 22, 2022, the Ninth Circuit withdrew its 9/15/21 decision and granted a rehearing by the same 3-judge panel.
- On February 15, 2023, the Ninth Circuit panel issued its decision that the FAA preempts AB 51 in its entirety.

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SB 699 – Contracts in Restraint of Trade

- ❑ Establishes that any contract that is void under the law is unenforceable regardless of where and when the contract was signed
- ❑ Prohibits an employer or former employer from attempting to enforce a contract that is void regardless of whether the contract was signed, and the employment was maintained outside of California
- ❑ Prohibits an employer from entering into a contract with an employee or prospective employee that includes a provision that is void under the law
- ❑ Establishes that an employer who violates the law commits a civil violation
- ❑ Authorizes an employee, former employee, or prospective employee to bring an action to enforce the law for injunctive relief or the recovery of actual damages, or both
- ❑ Provide that a prevailing employee, former employee, or prospective employee is entitled to recover reasonable attorney's fees and costs

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AB 1076 – Contracts in Restraint of Noncompete Agreements

- Amends Bus. & Prof. Code § 16600, providing that, in accordance with *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, it should be read broadly to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy specified exceptions
- States that this provision is declaratory of existing law
- Makes these provisions applicable to contracts where the person being restrained is not a party to the contract
- Unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy specified exceptions
- Requires employers to notify current and former employees in writing by February 14, 2024, that the noncompete clause or agreement is void
- Makes a violation of these provisions an act of unfair competition pursuant to the UCL

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Handbook Overview and EEO Update

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EEO and Harassment Policies

- ❑ **Are the organization's EEO and Harassment Policies updated?**
- ❑ **FEHA Requirements:**
  - Prohibit discrimination based on breastfeeding and related medical conditions
  - Add military and veteran status to list of protected characteristics
  - 2017- gender identity and expression added to list of protected characteristics
    - *Bostock v. Clayton County*: 2020 U.S. Supreme Court decision (Title VII protects individuals from discrimination on the basis of sexual orientation or gender identity).
  - Include expanded definition of "national origin"
  - 2019 CROWN Act: Race includes hairstyles, hair texture, and other traits historically associated with race
  - Description of age must comport with state law
  - Unpaid interns protected from discrimination and harassment; volunteers protected from harassment

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The Contraceptive Equity Act of 2022

- Effective January 1, 2023, "reproductive health decision-making" was added as a new protected category under the California Fair Employment and Housing Act (FEHA).
- Makes it an unlawful employment practice to discriminate against applicants or employees based on their reproductive health decision-making.
- Prohibits employers from requiring applicants or employees to disclose information relating to reproductive health decision-making as a condition of employment or receiving an employment benefit.
- Reproductive health decision-making is defined as including (but is not limited to): "a decision to use or access a particular drug, devise, productive or medical service for reproductive health."
- Healthcare plans must cover over-the-counter contraceptives (effective 1-1-24).

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Harassment Training

- **Training requirements for employers with 5 or more employees.**
- Requires sexual harassment and abusive conduct prevention training every two years:
  - Two Hours of training for supervisors
  - One Hour of training for non-supervisors
- Requires the CRD to make available a one-hour and a two-hour online training course for employers to use and to make the training videos, existing informational posters, fact sheets, and online training courses available in multiple languages.
  - https://calcivilrights.ca.gov/shpt/
- Training records must be maintained for a minimum of two years.

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Lactation Accommodation

- **Requires every California employer to provide "a reasonable amount of time" to accommodate lactation needs and to include a written policy in an existing handbook or policy manual.**
- **Employer must provide a location, other than a bathroom, to express milk.**
  - The space must be clean, free from hazardous materials, contain a surface to place a breast pump or personal items, a place to sit, access to electricity.
  - Employers must also provide access to a sink with running water and a refrigerator or cooling device
  - Employers with fewer than 50 employees may seek an undue hardship exemption but still must make reasonable efforts to provide a location other than a toilet stall.
- **Best Practice:**
  - Review your policy and practice
  - Identify lactation space
  - Make sure it is compliant

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Pregnant Workers Fairness Act

- Requires "covered employers" to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."
  - Applies only to accommodations.
  - Other existing laws make it unlawful to discriminate on the basis of pregnancy, childbirth or related medical condition.
  - Does not replace federal, state or local laws that are more protective of workers affected by pregnancy, childbirth or related medical condition.
  - Went into effect on June 27, 2023.
  - Final regulation goes into effect on June 18, 2024
- For more information, see EEOC's "What You Should Know About the Pregnant Workers Fairness Act" (https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act)

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Contractors, Interns and Volunteers

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Independent Contractors

- **AB 5 - Effective January 1, 2020**
- Codifies application of the ABC test beyond the Wage Orders – applying it to the California Labor Code and Unemployment Insurance Code: a worker is an independent contractor only if the hiring entity can establish ALL THREE of these factors:
  A. The worker is free from the control and direction of the hiring entity in connection with the performance of their work, both under the contract for the performance of the work and in fact
  B. The worker performs work that is outside the usual course of the hiring entity's business
  C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed
- Presumption that all workers are employees.
- Employees are entitled to benefits such as minimum wage, workers' compensation, unemployment insurance, expense reimbursement, paid sick leave and paid family leave and employers pay half of employees' Social Security tax.
- Exemptions may apply.

Volunteers

- **Who is a volunteer?**
  - A volunteer is an "individual who performs hours of service…for **civic, charitable, or humanitarian** reasons, without promise, expectation or receipt of compensation for services rendered."
  - Can a nonprofit's employees also serve as unpaid volunteers?
- California FEHA applies harassment protections to all volunteers.

Unpaid Interns

- The California DLSE and U.S. DOL have stepped up enforcement against employers that illegally fail to pay minimum wages to interns.
- How do these rules apply to non-profits?
  - "Unpaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible. WHD is reviewing the need for additional guidance on internships in the public and non-profit sectors."
  - Be aware that stipends paid to interns may convert them to employees rather than volunteers!
- California FEHA discrimination and harassment protections apply to paid and unpaid interns.

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Wage and Hour

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California Minimum Wage Increase

- Effective January 1, 2024, the minimum wage is **$16.00 per hour** for all employers regardless of size.
- Some cities and counties have higher minimum wages than the state's rate.

Locality	Effective Date	Rate
Alameda	7/1/2024	$17.00
Berkeley	7/1/2024	$18.67
Oakland	1/1/2024	$16.50
San Francisco	7/1/2024	$18.67
South San Francisco	1/1/2024	$17.25

https://www.dir.ca.gov/dlse/faq_minimumwage.htm

Exempt v. Non-Exempt

- **Are employees properly classified as exempt or non-exempt?**
- **Exempt employees:**
  - Perform "exempt" duties – Is the employee engaged in exempt work that meets the requirements for the exemption more than 50 percent of their work time?
  - Exercise discretion and independent judgment.
  - Managerial, professional, administrative, computer professionals, inside sales, outside sales.
  - Paid on salary basis.
  - In California, exempt employees must be paid a salary that equals at least twice the applicable state minimum wage for full-time employees.
    - In 2024, the California state minimum wage increased to $16.00 per hour for employers of all sizes. Therefore, two times the California minimum salary is $66,560 annually for employers of all sizes.

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Meal Periods and Rest Breaks

- **Meal periods: Employers must provide non-exempt employees who work 5 hours or more with a meal period of at least 30 minutes, and a second meal period of at least 30 minutes for employees who work 10 hours or more. The meal period can be unpaid.**
  - An employer must relieve the employee of ALL duty for the designated period, but NEED NOT ENSURE that the employee does no work. Meal period must begin before end of 5th hour of work, and a second meal period before end of 10th hour of work.
- **Rest breaks: Employers must provide non-exempt employees with a paid 10-minute, off-duty, rest break for every 4 hours worked or a major fraction thereof (3.5 hours or more). Employees may take a second paid rest period if they work more than 6 hours in a day, and a third paid rest break if they work more than 10 hours in a day.**
  - Rest breaks must fall in middle of work periods "insofar as practicable."
- **Employers who fail to provide an employee with meal or rest breaks are subject to one hour of penalty pay (at employee's regular rate of pay), per day, for missed meal periods *and* one for missed rest breaks.**

Cases on Meal and Rest Periods

- ***Donohue v. AMN Services, LLC,* 11 Cal.5th 58 (2021)** - The California Supreme Court ruled that the rounding of time to the nearest time increment is impermissible for meal periods.
- ***Naranjo v. Spectrum Security Services, Inc.*, 2022 Cal. LEXIS 2878 (2022)** – The California Supreme Court reversed a Court of Appeal decision and held that violations of the meal break provisions entitle employees to pursue derivative claims for improper wage statements and waiting time penalties.
- ***Ferra v. Loews H*ollywood Hotel, LLC, 11 Cal.5th 858 (2021)** – California Supreme Court held that premium pay for noncompliant meal, rest and recover periods must be compensated at the employee's regular rate of pay, which must take into account the base hourly pay and all other forms of non-discretionary compensation earned during the same pay period. Overtime and sick pay must be calculated in the same matter. The ruling is retroactive.

Rounding Policies: Roundly Rejected?

❑ ***Camp v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (2022):**

- Longstanding California law was that time rounding policies were legal if the policy was (1) fair and neutral on its face and (2) it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.
- Recognized the administrative and practical difficulty in recording small amounts of time for payroll purposes.
- Employers must pay employees for "all worked performed" and maintain accurate records of time worked by nonexempt employees; no "de minimis" exception.
- In *Camp*, the Court held that if an employer has the ability to capture (and did capture) the exact amount of time worked by an employee, the employer is required to pay the employee for "all time worked," down to the minute.
- Upshot: Even a facially neutral rounding policy may not be a viable defense for employers with electronic timekeeping systems.

Overtime

- **Federal Fair Labor Standards Act (FLSA) requires that non-exempt employees receive an overtime premium for all hours worked over 40 in a week.**
- **California (Labor Code and Wage Orders) requires that non-exempt employees who work more than 8 hours a day or 40 hours in a week receive overtime.**
- Missteps in calculating overtime pay results in numerous class action and PAGA suits.
  - Employees must be paid 1.5 (or 2) times the "regular rate of pay" for all overtime hours worked.
  - Under FLSA and California law, "regular rate of pay" includes all remuneration – not just the employee's hourly rate!
  - Regular rate of pay could include, for example:
    - Per diems, if not really tied to business expenses
    - Non-discretionary bonuses
    - Commissions

What Time is Compensable?

❑Employers must compensate employees for all "hours worked"

- FLSA: Hours worked includes all time during which an employee is required to be on duty, whether at employer's premises or a prescribed workplace; and all time during which an employee is permitted to work, whether or not actually required to do so.
- California: Hours worked includes the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.
- Courts apply a general rule that an employer is liable for time worked if the employer knew or should have known that the employee was working or whether the time was authorized.

❑ Can certain amounts of employee time be disregarded?

De Minimis Rule

- **FLSA – Regulations provide that employers may exclude time that is insubstantial or insignificant (a few seconds or minutes), such that it cannot, as a practical administrative matter, be precisely recorded for payroll purposes.**

- **California – No similar rule/defense under the Labor Code or Wage Orders . . . but DLSE Enforcement Manual adopts the FLSA de minimis rule.**

  - ***Troester v. Starbucks Corp* (2018) 5 Cal. 5th 829** - Relying on de minimis doctrine, lower court granted summary judgment for Starbucks in suit contending that the company was required to compensate employees for post-closing activities.
  - The California Supreme Court Held that the *de minimus* doctrine did not apply to California employers and that even employees who may not be working but who are under the employer's control may be compensated even for time that would be considered *de minimus* under the federal standard.

Off-the-Clock

- **Do non-exempt employees check work email and voicemail or send text messages after-hours? Is the time compensable?**
- **Best practices:**
  - Pay for all hours worked, even if after hours work.
  - Do not issue cellphones, tablets, etc. to non-exempt employees – but if you do, adopt a policy prohibiting them from performing work after work hours, with disciplinary consequences.
  - Educate managers that they should not require/expect non-exempt employees to work "after hours" checking email, voicemail, etc.

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PTO, Paid Sick Leave and Leaves of Absence

Vacation and PTO

- No requirement to provide paid vacation – but strict rules if employer chooses to provide it!
- Use-it-or-lose it policies = illegal in California
- Accrual caps permitted but must be reasonable.
- Accrued and unused vacation must be paid out on termination (Labor Code section 227.3).
- Vacation accrual and payout rules also apply to:
  - PTO
  - "Personal" time
  - "Floating holidays"

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California (and local) Paid Sick Leave

- Is paid sick leave required? Yes, applies to all California employers.
- Employees must accrue paid sick leave at the rate of one hour per 30 hours worked, or 5 days of paid sick leave (or 40 hours whichever is longer) may be provided up front (but check local rules!)
- Under state law, employer can cap accrual at 80 hours or 10 days (whichever is longer) and can limit annual use to 40 hours (but again, check the local rules, because the accrual and use caps are higher).
- Accruals must be reported on itemized wage statements (pay stubs).
- Will a vacation or PTO policy satisfy required paid sick leave? Yes, if compliant.
- Keep in mind of local Paid Sick Leave Ordinances (Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco, Santa Monica).
  - State law preempts some local ordinance requirements (pay out, lending sick leave, written notice), but not if a local ordinance requires more sick leave or a different method of accrual or carryover.

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Leaves of Absence

Do handbook policies cover leaves under federal and California laws?

- ❑ **Family and Medical Leave Act (FMLA) – 50+ employees**
- ❑ **California Family Rights Act (CFRA)-5+ employees**
- ❑ **Temporary Disability Leaves under the ADA (15+) and FEHA (5+ employees)**
- ❑ **Workers' Compensation Act – ALL**
- ❑ **Pregnancy Disability Leave (PDL) – 5+ employees**
- ❑ **Drug/Alcohol Rehabilitation (Labor Code section 1025) – 25+ employees**
- ❑ **Other Labor Code leave provisions: leave for school matters; domestic violence victim; volunteer firefighter; bone marrow and organ donation… – *number of employees varies***
  - *Organ Donation* – Requires employers (15+ employees) to provide a paid leave of absence of up to 30 business days in any one-year period, and an *additional* unpaid leave of absence, up to 30 business days of unpaid leave in any one-year period for organ donation.
- ❑ **All employers with 5+ employees must provide reasonable accommodations for disabled employees – including leaves or other accommodations.**

The California Family Rights Act [CFRA]

- **Effective January 1, 2021, CFRA was amended to cover employers with 5 or more employees (anywhere). It also:**
  - Added grandparents, grandchildren, and siblings as covered family members.
  - Amended the CFRA to include a qualifying military exigency as a basis for CFRA leave.
  - Eliminated the requirement that employees work within a specified radius.
    - Which also eliminated the need for the (separate) New Parent Leave Act
- **AB 1033: Effective January 1, 2022, it amends the Government Code to clarify "parents-in-laws" are covered by the CFRA.**

Leave to Care for a Designated Person

- **AB 1041: Leave to Care for a Designated Person, Effective January 1, 2023**
  - Amends the California Healthy Workplaces, Healthy Families Act of 2014 ("California Paid Sick Leave" law) and the California Family Rights Act ("CFRA") to require employers to permit employees to take protected leave for the care of a "designated person."
  - Defines a "designated person" for California Paid Sick Leave purposes as: "a person identified by the employee at the time the employee requests paid sick days."
  - Defines a "designated person" for CFRA purposes as: "any individual related by blood or whose association with the employee is the equivalent of a family relationship."
    - Employees are not required to identify the designated person in advance but can designate that person at the time sick leave or CFRA leave is requested.
    - Employers may limit employees to one designated person per 12-month period.

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Requirement to Provide Bereavement Leave

❑ AB 1949: Bereavement Leave, effective January 1, 2023

- **Employers with 5 or more employees and all public sector employers are required to provide up to 5 days of unpaid bereavement leave for the death of an employee's family member**
  - Leave is unpaid, but employees must be permitted to use available accrued leave or compensatory time off
  - Leave may be taken intermittently
  - Leave must be used within 3 months of death
- Eligible employees must have at least 30 days of service.
- Qualifying family members: spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law [note: AB 1949 does not require bereavement leave for a "designated person"].
- Employers may request confirming documentation of death within 30 days of first day of leave: e.g., death certificate, published obituary, written verification of death, burial, or memorial service from a funeral home, mortuary, crematorium, religious institution or governmental agency.
- Codified under Section 12945.7 of the California Government Code (not the Labor Code): prohibits discrimination, interference or retaliation against employees who request or take protected bereavement leave.

Reproductive Loss Leave

- **This law incorporates much of the same framework as for California's bereavement leave.**
  - Must be employed for 30 days or more
  - Entitled to up to 5 days following a "reproductive loss event"
    - Does not need to be consecutive, but must generally be completed within 3 months of qualifying event.
- **Employers may not request supporting documentation.**
- **Leave may be capped at 20 days per 12-month period.**
- **Time may be unpaid**
- **This is separate from any other leave (CFRA, disability, bereavement, etc.)**

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Leave for Emergency Conditions

❑SB 1044: Leave for Emergency Conditions, effective January 1, 2023

- Prohibits an employer in the event of an "emergency condition" from taking or threatening adverse action against an employee for refusing to report to, or for leaving, a workplace or affected worksite because the employee has a reasonable belief that the workplace/worksite is "unsafe"
- Also prohibits employers from preventing an employee from accessing their mobile or other communication device to seek emergency assistance, assess safety, or to communicate with a person to verify their safety.
- **Defines "emergency condition" as:**
  - (i) conditions of disaster or extreme peril …caused by natural forces or a criminal act; or
  - (ii) an order to evacuate a workplace, worksite, an employee's home or the school of an employee's child as a result of a natural disaster or criminal act
  - Expressly excludes "health pandemics" and several categories of emergency employees

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Cannabis Use and Testing

❑Cannabis Testing

- Effective January 1, 2024, employers cannot discriminate based on an applicant's or employee's use of cannabis off the job, or based on a drug-screening test that reveals non-psychoactive cannabis (as opposed to THC revealing active impairment).
- However, there is currently no reliable method for testing for active TCH alone, therefore some employers have chosen to discontinue cannabis testing altogether.

❑Prior Cannabis Use

- Employers cannot request information from job applicants relating to prior use of cannabis.
- Cannot inquire or use information about prior cannabis use obtained as part of criminal history unless permitted by law to do so.

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SB 533 - Workplace Violence Prevention Plans

- **Effective July 1, 2024, most employers must establish, implement, and maintain effective workplace violence protection plans**
  - Must record information about every workplace violence incident in a violent incident log.
  - Must review plans and provide training at least once a year.
- **Requires employers to adopt a workplace violence prevention plan that must include, among other things, the following:**
  - The names or job titles of the individuals responsible for implementing and maintaining the workplace violence prevention plan.
  - Procedures to obtain the active involvement of employees in developing, implementing, and reviewing the workplace violence prevention plan, including their participation in identifying, evaluating, and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents.
  - Methods the employer will use to coordinate the implementation of the workplace violation prevention plan among employees in the same facility or department.
  - Procedures for the employer to respond to workplace violence and to prohibit retaliation against employees who make reports of workplace violence.

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SB 428 - Temporary Restraining Orders and Protective Orders; Employee Harassment

- **Effective January 1, 2025, SB 428 expands workplace restraining orders to include not only violence and threats of violence but also harassment. "Harassment" is a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person and that serves no legitimate purpose.**
  - The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress.
  - Employers shall provide the employee who has suffered harassment, unlawful violence, or a credible threat of violence from any individual an opportunity to decline to be named
  - Effective January 1, 2025, a collective bargaining representative will be able to seek a restraining order on behalf of employees who suffer unlawful violence or a credible threat of violence or who suffer harassment that can reasonably be construed to have been carried out at the workplace

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Thank You

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