

2024

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2025



New Year, New Look:
**The Top 10 Legal Trends for 2025
In California and Beyond**

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Buchanan

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Countdown: Top 10 Legal Trends for 2025



Trend #10 Social Compliance Audits

Trend #10: Social Compliance Audits

- AB 3234 establishes new reporting obligations for employers who voluntarily choose to conduct a social compliance audit
- AB 3234 **does not mandate** employers to conduct social compliance audits
- AB 3234 **does mandate** when a social audit is conducted that the employer publish a report of the findings and post a clear and conspicuous link to that report on its website
- Takes effect January 1, 2025

Trend #10: Social Compliance Audits

Audit report must contain:

1. The year, month, day, and time the audit was conducted, specifying whether it was performed during a day or a night shift;
2. a statement indicating whether employer did or did not engage in, or support the use of child labor;
3. copies of any written policies and procedures the employer has and had regarding child employees;
4. details about whether the employer has exposed children to any unsafe or hazardous working conditions that could impact their physical or mental health;
5. information specifying whether any children work within or outside regular school hours and/or during night hours; and
6. a statement certifying that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

Trend #10: Social Compliance Audits

- There is little guidance accompanying the bill
- AB 3234 has been chaptered at Labor Code sections 1250 and 1251, meaning it applies to all businesses employing workers in California
- Unanswered questions include:
 - Timing of disclosure
 - Length of time that posting must remain on website
 - Intersection of the law to attorney client privilege
 - Penalties for noncompliance
 - Impact on corporate social responsibility reporting and compliance with global forced labor laws



Trend #9
Sustainability/ESG
Compliance in Financing

Trend #9: ESG – Sustainable Financing

- Considerations in ESG-related financing: Mitigate risks with demonstrated commitment to environmental and social responsibility and good governance
 - Advantageous to Borrowers: May result in lower overall costs
 - Advantageous to financial institutions/lenders: May translate into stronger company profile and reduced risk of default
- Sustainability-Linked Loans
- Green Bonds
- The trend for Sustainable Financing saw a dramatic decline since 2023 amidst backlash related to political controversy and concerns about “Greenwashing”

Trend #9: ESG – Sustainable Financing

- California Assembly Bill 1305: Voluntary carbon market disclosures
 - Regulates companies involved in the market, selling and purchasing of voluntary carbon offsets in California and requires specific disclosures and evidence of due diligence about offset projects
- California Senate Bill 253: Climate Corporate Data Accountability Act
 - Requires public disclosures of greenhouse emissions for companies with more than \$1 billion in global revenue that do business in California
- Other: New York
 - S5437: Requires applicable corporate to prepare a climate related – financial risk report annually
 - S636A: Requires certain companies to report employee gender, race and ethnicity data
- Securities and Exchange Commission (SEC) (effective 5/28/24) adopted rules that require more standardized disclosures made by public companies and public offerings
 - Investors make more informed assessment of climate-related risks and potential investments and issuers have clear reporting requirements

Trend #9: ESG – Sustainable Financing

- ESG related loans expected to be on the rise in 2025
- Challenges are expected with interpreting current regulations and forthcoming regulations
- Shift from voluntary to mandatory requirements
- ESG will remain an option for companies with sustainability goals and commitments to link performance to interest rates and other preferential financial accommodations
 - Trend is not intended that ESG metrics will become standard for all loan documentation
- Potential Ripe ESG considerations: Diversity & Inclusion and Immigration



Trend #8 The Open Banking Rule

Trend #8: Adaptation to the Open Banking Rule

- CFPB finalized the “Personal Financial Data Rights” rule (aka the Open Banking Rule) on October 22, 2024
 - Rule requires financial institutions, credit card issuers, and other financial providers to unlock an individual’s personal financial data and transfer it to another provider at the consumer’s request
 - Goal is to allow consumers **easier access** to their data and facilitate easier transfer of personal data between financial service providers free of charge
- Compliance Deadlines:
 - Large financial institutions **must comply** by April 1, 2026
 - Smaller institutions have more time, but the Rule is phased in through April 1, 2030
- Some exemptions exist for depository institutions with less than \$850 million in total assets

Trend #8: Adaptation to the Open Banking Rule

- The Rule has been immediately challenged in the U.S. District Court for the Eastern District of Kentucky by the Bank Policy Institute and the Kentucky Bankers Association
- Patrick McHenry supports the rule and called for Congress to codify its protections into law
- Regardless of the result of the lawsuit or codification, the Open Banking Rule might signal increased focus on data privacy and consumer protection



Trend #7
Corporate Transparency Act

Trend #7: Corporate Transparency Act

- The Corporate Transparency Act (CTA), effective January 1, 2024
 - Intended to aid law enforcement in combatting illicit activity conducted through anonymous shell companies
 - Requires certain privately held entities to report beneficial ownership information (BOI) to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN)
- Reporting requirements are intended to apply broadly and impact small companies, many of whom have never made federal filings other than those with the Internal Revenue Service
- Many larger or otherwise highly regulated entities are exempt from the CTA

Trend #7: Corporate Transparency Act

The CTA excludes 23 categories of entities from reporting, including:

- Large operating companies
- Public companies
- Inactive entities
- Federally registered investment companies or advisers
- Venture capital fund advisers
- Certain pooled investment vehicles
- Insurance companies and producers
- Public accounting firms
- Tax-exempt entities and entities assisting tax-exempt entities
- Governmental authorities
- Subsidiaries of certain exempt entities

Trend #7: Corporate Transparency Act

When Reporting Companies must file Initial Reports:

- A reporting company that is created or becomes a foreign reporting company before January 1, 2024 must file its initial BOI report by **January 1, 2025**
- A reporting company that is created or becomes a foreign reporting company on or after January 1, 2024
 - Must file its initial BOI report within 90 days, if created or registered in 2024
 - Must file within 30 days if created or registered on or after January 1, 2025 of the earlier of the date on which:
 - It receives actual notice that its creation or registration is effective
 - A SOS or similar office first provides public notice that the company has been created or registered to do business

Trend #7: Corporate Transparency Act

Penalties if a Reporting Company fails to comply:

- Both civil and criminal penalties for violating the CTA, including a fine up to \$10,000, imprisonment for up to two years, or both, for any person for willfully:
 - Providing or attempting to provide false or fraudulent BOI
 - Failing to report complete or updated BOI to FinCEN
- Penalties may also apply to reporting companies and individuals who:
 - Cause a reporting company not to report
 - Are senior officers of a reporting company at the time of its failure to accurately report or update BOI



EMPLOYMENT LAW

Trend #6
Employment Law Changes

Trend #6: Employment Law Changes

- Minimum Wage
 - January 1: Scheduled change to \$16.50 (depending on the outcome of Proposition 32, which would raise the minimum wage to \$18 for employers with 26 or more employees, and \$17 for employers with 25 or fewer employees)
- Leaves of Absence
 - Crime Victim
 - AB 2499: More opportunities to take time off to help a family member who is a victim of a qualifying act of violence (for employers with 25 or more employees)
 - Updated notices required on January 1

Trend #6: Employment Law Changes

- Paid Family Leave

- AB 2123 changes California's paid family leave (PFL) program, eliminating employers' ability to require employees use up to two weeks of accrued vacation before (and as a condition of) receiving PFL wage replacement benefits

- Employer Speech

- Restricts employers' abilities to take adverse action if employees decline to attend an employer-sponsored meeting or receive or listen to any employer communications about the employer's opinion on religious or political matters

Trend #6: Employment Law Changes

- FEHA

- SB 1137: FEHA prohibits discrimination not only based on individual protected characteristics but also on any combination of protected characteristics
- SB 1100: Employers cannot advertise that a position requires a driver's license, unless the employer both reasonably expects driving to be one of the job functions and believes using an alternative form of transportation would not be comparable in travel time or cost to the employer

- Independent Contractors

- Freelance Worker Protection Act: Will impose requirements on employers that form agreements with freelance workers providing “professional services” worth \$250 or more



Trend #5
The Big Employment Change?
(PAGA)

Trend #5: PAGA

- History of PAGA
 - Passed in 2004
 - Following rulings on standing, plaintiffs' counsel began to use PAGA cases as work-around to avoid arbitration agreements (which were effective in class cases)
 - Plaintiff only needed to show one violation, and then could represent all of the other employees
 - 75 percent of penalties went to the state; 25 percent to employees
 - Permitted massive penalties (up to \$100 per pay period per employee)

Trend #5: PAGA

- 2024
 - Proposition on November ballot to reform PAGA
 - Governor and legislative leaders negotiated a compromise in June
 - For all cases filed after June 19, 2024, the negotiated reforms will be in effect

Trend #5: PAGA

- Penalties will be allocated more toward employees, from a 75-25 split of awards distribution of settlement funds to a 65-35 split
- Possible caps on Penalties: If an employer can demonstrate they took “reasonable steps” to comply with labor laws, they can limit their maximum penalty:
 - 15% of the applicable penalty if reasonable steps were taken before the lawsuit was filed; 30% of the applicable penalty for taking reasonable steps promptly after the suit
 - “Reasonable Steps” include:
 - Conducting periodic payroll audits
 - Providing employees with lawful written policies
 - Training supervisors on applicable Labor Code and wage order compliance
 - Taking appropriate corrective action with supervisors

Trend #5: PAGA

- The Cure – AB 2288
 - Options to reduce potential penalties by negotiating with LWDA and plaintiff
 - Can only cure once per year
 - Quick timeframe: 33 days after postmark of LWDA letter
 - Examples:
 - Pay Violations
 - Wage Statements

Trend #5: PAGA

- Standing
 - Now, PAGA plaintiffs have to show that they personally experienced each of the violations they include in their complaint, and that the violations happened within the one-year statutory period
- Stacking
 - Prior PAGA arguably allowed multiple violations per pay period - that is now expressly forbidden
- Manageability
 - Courts can limit the scope of a claim or evidence at trial



Trend #4

AI

17 Bills



“We have a responsibility to protect Californians from potentially catastrophic risks of GenAI deployment. We will thoughtfully — and swiftly — work toward a solution that is adaptable to this fast-moving technology and harnesses its potential to advance the public good.”

Governor Gavin Newsom

Trend #4: AI – Assembly Bills

- AB 1008: Clarifies that personal information under the California Consumer Privacy Act (CCPA) can exist in various formats, including information stored by AI systems
- AB 1831: Expands the scope of existing child pornography statutes to include matter that is digitally altered or generated by the use of AI
- AB 1836: Prohibits a person from producing, distributing, or making available the digital replica of a deceased personality's voice or likeness in an expressive audiovisual work or sound recording without prior consent, except as provided
- AB 2013: Requires AI developers to post information on the data used to train the AI system or service on their websites
- AB 2355: Requires committees that create, publish, or distribute a political advertisement that contains any image, audio, or video that is generated or substantially altered using AI to include a disclosure in the advertisement disclosing that the content has been so altered
- AB 2602: Provides that an agreement for the performance of personal or professional services which contains a provision allowing for the use of a digital replica of an individual's voice or likeness is unenforceable if it does not include a reasonably specific description of the intended uses of the replica and the individual is not represented by legal counsel or by a labor union, as specified

Trend #4: AI – Assembly Bills

- AB 2655: Requires large online platforms with at least one million California users to remove materially deceptive and digitally modified or created content related to elections, or to label that content, during specified periods before and after an election, if the content is reported to the platform
- AB 2839: Expands the timeframe in which a committee or other entity is prohibited from knowingly distributing an advertisement or other election material containing deceptive AI-generated or manipulated content from 60 days to 120 days, amongst other things
- AB 2876: Require the Instructional Quality Commission (IQC) to consider AI literacy to be included in the mathematics, science, and history-social science curriculum frameworks and instructional materials
- AB 2885: Establishes a uniform definition for AI, or artificial intelligence, in California law
- AB 3030: Requires specified health care providers to disclose the use of GenAI when it is used to generate communications to a patient pertaining to patient clinical information

Trend #4: AI – Senate Bills

- SB 896: Requires CDT to update report for the Governor as called for in Executive Order N-12-23, related to the procurement and use of GenAI by the state; requires OES to perform a risk analysis of potential threats posed by the use of GenAI to California’s critical infrastructure (w/high-level summary to Legislature); and requires that the use of GenAI for state communications be disclosed
- SB 926: Creates a new crime for a person to intentionally create and distribute any sexually explicit image of another identifiable person that was created in a manner that would cause a reasonable person to believe the image is an authentic image of the person depicted, under circumstances in which the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress
- SB 942: Requires the developers of covered GenAI systems to both include provenance disclosures in the original content their systems produce and make tools available to identify GenAI content produced by their systems (previously signed)

Trend #4: AI – Senate Bills

- SB 981: Requires social media platforms to establish a mechanism for reporting and removing “sexually explicit digital identity theft”
- SB 1120: Establishes requirements on health plans and insurers applicable to their use of AI for utilization review and utilization management decisions, including that the use of AI, algorithm, or other software must be based upon a patient’s medical or other clinical history and individual clinical circumstances as presented by the requesting provider and not supplant health care provider decision making (previously signed)
- SB 1288: Requires the Superintendent of Public Instruction (SPI) to convene a working group for the purpose of exploring how artificial intelligence (AI) and other forms of similarly advanced technology are currently being used in education
- SB 1381: Expands the scope of existing child pornography statutes to include matter that is digitally altered or generated by the use of AI

A close-up photograph of a person's hand pushing a metal shopping cart. The hand is on the left, gripping a green plastic handle. The cart is moving through a grocery store aisle, with shelves of products visible in the background, though they are out of focus. The lighting is bright, typical of a supermarket.

Trend #3
False and Misleading
Pricing Litigation

Trend #3: False and Misleading Pricing Litigation

- Strikethrough/MSRP pricing
- Comparison pricing
- Perpetual sales
- Dynamic algorithmic pricing
- Drip pricing and junk fees
 - SB 478 amended the CLRA to prohibit “advertising, displaying, or offering a price for a good or service that does not include all mandatory fees or charges”
 - Restitution, actual damage, injunctive relief, punitive damages, and attorney’s fees available

Trend #3: False and Misleading Pricing Litigation

- The FTC Act

- Broad consumer protection act used to enforce consumer privacy rights/ prevent unfair competition, seek monetary redress for consumers
- No private right of action, used only by the FTC
- Typically allege unfairness, failure to disclose, and/or misrepresentations in violation of 15 U.S.C. section 45
- FTC requires that any reference price advertised by a retailer be the "actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time"
- Although the FTC does not define "reasonably substantial," some states have more specific requirements, often — but not always — requiring that the reference price be offered to consumers at least 28 days in any 90-day period

Trend #3: False and Misleading Pricing Litigation

- Private enforcement via class actions and mass arbitrations
 - CA Consumer Legal Remedies Act (CLRA)
 - CA Unfair Competition law (UCL)
 - CA False Advertising Law (FAL)

Trend #3: False and Misleading Pricing Litigation

- Exemplar cases:
 - SelectBlinds settled for \$10 million in the Central District of California over allegations that purportedly limited time discounts were actually available on a year-wide basis
 - *Moody v. Hot Topic Inc.* (C.D. Cal.): Advertising “20% Off Sitewide” for more than a year, such that the regular prices listed on its website were never or seldom offered to consumers
 - *Vizcarra v. Michaels Stores Inc.* (N.D. Cal.): Offering a discount on a perpetual basis can be misleading even if the reference price is the only one displayed on a given page and consumers have to enter a coupon code

Trend #3: False and Misleading Pricing Litigation

- Risk assessment and mitigation
 - Analyze discounting practices online and in stores
 - Look for MSRP prices and strikethrough prices and analyze whether they have been offered to consumers recently
 - Caution marketing team on danger of “perpetual” or long running sales
 - Avoid advertising that creates false urgency; FTC has specifically found that advertisers engage in dark patterns when “creating pressure to buy immediately by saying the offer is good only for a limited time or that the deal ends soon — but without a deadline or with a meaningless deadline that just resets when reached”
 - Consider mandatory arb clause and class action waiver in T&Cs—but beware the mass arb approach



100% RECYCLABLE
REUSABLE
RECYCLE THIS PACKAGE

Trend #2 Greenwashing Litigation

Trend #2: “Greenwashing” Litigation

- Increase in environmentally responsible labeled products led to the rise of false advertising lawsuits (“greenwashing” litigation), alleging these claims about “sustainable” products are false or inflated
- FTC announced it would undergo review of its Green Guides in late 2022
- AG Bonta currently seeking to make six “big oil” corporations — including ExxonMobil, Shell, Chevron, ConocoPhillips, BP and the American Petroleum Institute — give up “illegally obtained profits” earned through deceptive greenwashing practices

Trend #2: “Greenwashing” Litigation

- Private class action lawsuits
 - E.g., *Smith v. Keurig Green Mountain, Inc.*, 2023 WL 2250264 (N.D. Cal. Feb. 27, 2023): California Unfair Competition Law claims filed against Keurig for their alleged false advertising of K-cup coffee pods as recyclable
 - Settled for approximately \$10 million, as the company’s statements concerning specific products were alleged to be inaccurate with respect to recyclability

Trend #2: “Greenwashing” Litigation

- Risk assessment and mitigation
 - Assess compliance with the FTC Green Guides and monitor for updates
 - Keep environmental representations simple and specific
 - Qualify environmental marketing claims where possible
 - Assess whether use of colors, words, or images could be interpreted as an implied environmental claim
 - Track and retain statistics and data necessary to defend your environmental claims
 - Consider mandatory arb clause and class action waiver in T&Cs—but beware the mass arb approach
 - Be accurate!



Trend #1
AdTech Litigation

Trend #1: AdTech Litigation

- Technologies that can give rise to ad tech litigation when used without explicit advance consent:
 - Meta, TikTok, Snap, and/or X pixels
 - LinkedIn ads cookies
 - Google ad cookies
 - Bing ad cookies
 - Session replay software
 - Lead generation software
 - Third party chat software

Trend #1: AdTech Litigation

- “Trap and trace” claims under the California Invasion of Privacy Act section 651
 - Private right of action, many class actions and mass arbitrations
 - *Greenley v. Kochava* (S.D. Cal.): Law is “vague and inclusive as to the form of the collection tool – ‘a device or process’” and held that “courts should focus less on the form of the data collector and more on the result,” and concluded that “software that identifies consumers, gathers data, and correlates that data through unique ‘fingerprinting’ is a process that falls within CIPA’s pen register definition”
 - *Moody v. C2 Educ. Sys. Inc.* (C.D. Cal.): Online tutoring program using TikTok’s pixel, court held that defendant’s marketing tool could plausibly be alleged as a pen register or a trap and trace device
 - *Shah v. Fandom, Inc.*, (N.D. Cal.): (1) sufficiently alleged that the trackers record “addressing information” in the form of IP addresses, (2) “addressing information” pertains to the sender or recipient, (3) statutory definition of pen register not limited to the type most often utilized by law enforcement, and (4) defendant could not meet burden to prove user consented to share IP address with third parties.

Trend #1: AdTech Litigation

- Wiretapping claims under California Invasion of Privacy Act section 631
 - Statutory damages of \$5,000 for each violation for “intercepting” and “communication” while in transit
 - Usually under an aiding and abetting theory
 - Hundreds of putative class actions and arbitrations filed in recent years
 - *Heerde v. Learfield Communications* (C.D. Cal.): Plaintiff alleged when they entered search terms on college athletics websites the terms were simultaneously conveyed to the third parties via the Meta Pixel, court found search terms are the contents of a communication under the law
 - See also *Gershzon v. Meta Platforms* (N.D. Cal.) (same)

Trend #1: AdTech Litigation

- Video Privacy Protection Act of 1988 (federal)
 - 18 USC § 2710 et seq
 - Creates potential liability for any **video tape service provider** who **knowingly discloses**, to any person, **personally identifiable information** concerning any consumer of such provider shall be liable to the aggrieved person
 - Protects “generally a consumer's substantive privacy interest in his or her video-viewing history.” *Eisenberger v. ESPN, Inc.*, 876 F.3d 979, 983 (9th Cir. 2017)
 - Statutory damages of up to \$2,500 per violation, also punitive damages and attorneys' fees
 - *Salazar v. National Basketball Association*, No. 23-1147 (Oct. 15, 2024), court held there was Article III standing and found that by subscribing to the NBA's online newsletter, Plaintiff became a “subscriber” under the VPPA

Trend #1: AdTech Litigation

- CIPA and VPPA risk assessment and mitigation
 - Assess and inventory third party cookies and ad tech running on website, including when the tech fires, and what is being shared with third parties
 - Disable tech not in active use for campaigns, etc.
 - Update privacy policy
 - Consider implementing a consent banner that collects explicit consent before tech fires, including link to T&Cs and privacy policy
 - Consider mandatory arb clause and class action waiver in T&Cs—but beware the mass arb approach
 - High risk sectors include retail and healthcare

Thank You For Joining Us



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