

## Employment Law Toolkit

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## **Cozen O'Connor**

- About Our Firm

The materials in this binder are for educational purposes only and to give you general information and a general understanding of the law, and are current as of the revision date in the footer of each document. The materials do not provide legal advice. By using the materials in this binder, you understand there is no attorney-client relationship between you and Cozen O'Connor. Furthermore, these materials should not be used as a substitute for competent legal advice from a licensed attorney in your state.

## HIRING FORMS AND NOTICES CHECKLIST

## HIRING FORMS AND NOTICES CHECKLIST For California Employees

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Date of Hire

### Recommended Forms and Notices

Form/Notice	Date Given	Date Rec'd	Date Filed/Sent
Employment Application			
Offer Letter			
Background Check Disclosures and Authorization			
Employment Agreement			
Commission Agreement			
Confidentiality and Nondisclosure Agreement			
Initial Safety Training Verification			
Employee Emergency Information/Contacts			
Employee Handbook Receipt			
Code of Conduct/ Ethics Policy			
Health Insurance and Benefits Information			
Property Return Agreement			
Direct Deposit Authorization			

**Required Forms and Notices**

<b>Form/ Notice</b>	<b>Date Given</b>	<b>Date Rec'd</b>	<b>Date Filed/Sent</b>
New Hire Notice, Labor Code Section 2810.5			
California Employee Withholding Certificate, Form DE-4			
Employee Withholding Allowance Certificate, Form W-4			
Employment Eligibility Verification, Form I-9			
Disability Insurance Provisions Pamphlet, Form DE 2515			
Paid Family Leave pamphlet, Form DE 2511			
Sexual Harassment Information Sheet, Form CRD-185 [or employer's own version]			
Anti-Harassment Policy [employer's policy]			
Notice of Rights of Victims of Domestic Violence, Sexual Assault, Stalking, and Crime pamphlet [updated 3/2021]			
Workers' Compensation Time of Hire Pamphlet			
Lactation Accommodation Policy [employer's policy]			
Notice of CFRA Rights and Obligation, California Code of Regulations Section 11095 ( <i>Recommended for new hires</i> )			
Family Care & Medical Leave & Pregnancy Disability Leave pamphlet, Form CRD-100-21 ( <i>Recommended for new hires</i> )			
Personal Chiropractor or Acupuncturist Designation, Form DWC 9783.1 [if no workers' compensation medical provider network]			
Predesignation of Personal Physician, Form DWC 9783 [if no workers' compensation medical provider network]			
General Notice of COBRA Continuation Coverage Rights			
Children's Health Insurance Program Notice			
Permit to Employ and Work, Form B1-4 [if a minor]			
New Employee(s) Report, Form DE-34 [send to Employment Development Department]			

Form/ Notice	Date Given	Date Rec'd	Date Filed/Sent
Report of Independent Contractor(s), Form DE 542 [send to Employment Development Department]			
<i>San Francisco Fair Chance Ordinance – Know Your Rights</i> handout (for <i>job applicants</i> )			
<i>San Francisco Paid Parental Leave Form</i> ( <i>Recommended for new hires, required for employees taking parental leave</i> )			

## WORKPLACE POSTER CHART

# WORKPLACE POSTER CHART

## For California Employers

California and federal law impose a number of workplace posting requirements, which are listed below. In addition:

- For each poster, there may be size specifications and posting location requirements, and some must also be posted in Spanish and other languages.
- Employers should check local ordinances for additional posters that may be required (San Francisco posters and selected Bay Area and Southern California posters are included in this chart).
- Depending on the industry or type of work, additional health and safety postings may be required. Employers should check with Cal-OSHA.
- Employers should periodically check -- at least annually -- to ensure that they have the most current version of required posters. Posters are frequently updated by the agencies that administer them.
- There are many services that offer the convenience of all-in-one posters or provide employers with a comprehensive posters packet. Employers that use these services remain responsible for ensuring that they are meeting all workplace posting requirements.
- This chart lists the most common posters required for most California workplaces. For additional information, please visit these websites:
  - U.S. Equal Employment Opportunity Commission  
<https://www.eeoc.gov/employers/eeo-law-poster>
  - U.S. Department of Labor  
<https://www.dol.gov/general/topics/posters>
  - California Department of Industrial Relations  
<http://www.dir.ca.gov/wpnodb.html>
  - California Civil Rights Department  
<https://civildrights.ca.gov/Publications/>

CHART BEGINS ON NEXT PAGE →



POSTER TITLE	WHICH EMPLOYERS MUST POST?	WHERE TO GET	FORM NO./ CURRENT VERSION
<b>CALIFORNIA POSTERS</b>			
Healthy Workplaces, Healthy Families – Paid Sick Leave	All	<a href="http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf">http://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf</a>	(v. 11/14)
Notice to Employees: Unemployment Insurance, Disability Insurance, Paid Family Leave	All	<a href="http://www.edd.ca.gov/pdf_pub_ctr/de1857a.pdf">http://www.edd.ca.gov/pdf_pub_ctr/de1857a.pdf</a>	DE 1857A Rev. 44 (v. 12/20)
California Law Prohibits Workplace Discrimination and Harassment	All	<a href="https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Workplace-Discrimination-Poster_ENG.pdf">https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Workplace-Discrimination-Poster_ENG.pdf</a>	CRD-E07P-ENG (v. 01/23)
Transgender Rights in the Workplace	All	<a href="https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/The-Rights-of-Employees-who-are-Transgender-or-Gender-Nonconforming-Poster_ENG.pdf">https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/11/The-Rights-of-Employees-who-are-Transgender-or-Gender-Nonconforming-Poster_ENG.pdf</a>	CRD-E04P-ENG (v. 11/22)
Family Care and Medical Leave and Pregnancy Disability Leave	5 or more employees	<a href="https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CFRA-and-Pregnancy-Leave_ENG.pdf">https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/CFRA-and-Pregnancy-Leave_ENG.pdf</a>	CRD-100-21ENG (v. 01/23)
Your Rights and Obligations as a Pregnant Employee	5 or more employees	<a href="https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Your-Rights-and-Obligations-as-a-Pregnant-Employee_ENG.pdf">https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2023/01/Your-Rights-and-Obligations-as-a-Pregnant-Employee_ENG.pdf</a>	CRD-E09P-ENG (v. 01/23)
Whistleblowers Are Protected	All	<a href="http://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf">http://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf</a>	May use own version
California Minimum Wage	All	<a href="https://www.dir.ca.gov/iwc/MW-2023.pdf">https://www.dir.ca.gov/iwc/MW-2023.pdf</a>	MW-2023
Wage Orders	All private	<a href="https://www.dir.ca.gov/iwc/wageorderindustries.htm">https://www.dir.ca.gov/iwc/wageorderindustries.htm</a>	Post applicable Order(s) for industry or occupation
Payday Notice	All	<a href="http://www.dir.ca.gov/dlse/PaydayNotice.pdf">http://www.dir.ca.gov/dlse/PaydayNotice.pdf</a>	DLSE 8 (v. 06/02) or may use own version
Notice to Employees: Injuries Caused by Work	All	<a href="https://www.dir.ca.gov/dwc/NoticePoster.pdf">https://www.dir.ca.gov/dwc/NoticePoster.pdf</a>	DWC 7 (v. 01/16)
Safety and Health Protection on the Job	All	<a href="https://www.dir.ca.gov/dosh/dosh_publications/shpstr eng012000.pdf">https://www.dir.ca.gov/dosh/dosh_publications/shpstr eng012000.pdf</a>	(v. 11/23)

Emergency Phone Numbers	All	<a href="http://www.dir.ca.gov/dosh/dosh_publications/s500pstr.pdf">http://www.dir.ca.gov/dosh/dosh_publications/s500pstr.pdf</a>	S-500 (v. 03/90)
No Smoking signage	All	Check Cal-OSHA website.	
Access to Medical and Exposure Records	All using hazardous/toxic substances	<a href="http://www.dir.ca.gov/dosh/dosh_publications/Access_En.pdf">http://www.dir.ca.gov/dosh/dosh_publications/Access_En.pdf</a>	(v. 01/15)
Cal/OSHA citations	If citation is received	Provided by California Division of Occupational Safety and Health (Cal/OSHA)	(v. 10/17)
Annual Summary of Injuries and Illnesses	11 or more employees	<a href="https://www.dir.ca.gov/dosh/DoshReg/AppendixB300AFinal.pdf">https://www.dir.ca.gov/dosh/DoshReg/AppendixB300AFinal.pdf</a>	Form 300A (v. 07/07)
Prop. 65 Warning Notice	10 or more employees	Administered by the California Office of Environmental Health Hazard Assessment	
Notice of Workers' Compensation Carrier	All	Obtain from employer's workers' compensation insurer	
Time Off to Vote	All (10 days prior to statewide elections)	<a href="http://elections.cdn.sos.ca.gov/pdfs/tov-english.pdf">http://elections.cdn.sos.ca.gov/pdfs/tov-english.pdf</a>	
Human Trafficking	Farm labor contractors	<a href="https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/HTPoster_ENG.pdf">https://oag.ca.gov/sites/all/files/agweb/pdfs/ht/HTPoster_ENG.pdf</a>	Model or may use own version
<b>FEDERAL POSTERS</b>			
Employee Rights Under Fair Labor Standards Act	All	<a href="https://www.dol.gov/whd/regs/compliance/posters/minwagep.pdf">https://www.dol.gov/whd/regs/compliance/posters/minwagep.pdf</a>	WHD-1088 (v. 04/23)
Federal Minimum Wage for Contractors	Federal contractors	<a href="https://www.dol.gov/sites/dolgov/files/WHD/posters/mw-contractors.pdf">https://www.dol.gov/sites/dolgov/files/WHD/posters/mw-contractors.pdf</a>	WH-1089 (v. 11/20)
Job Safety and Health: It's the Law	All	<a href="https://www.osha.gov/sites/default/files/publications/osh3165.pdf">https://www.osha.gov/sites/default/files/publications/osh3165.pdf</a>	OSHA 3165-04R 2019
Know Your Rights: Workplace Discrimination is Illegal	15 or more employees	<a href="https://www.eeoc.gov/sites/default/files/2023-06/22-088_EEOC_KnowYourRights6.12ScreenRdr.pdf">https://www.eeoc.gov/sites/default/files/2023-06/22-088_EEOC_KnowYourRights6.12ScreenRdr.pdf</a>	(v. 6/23)
Employee Polygraph Protection Act	All private	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/eppac.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/eppac.pdf</a>	WH 1462 (v. 02/22)
Your Rights Under USERRA	All	<a href="https://www.dol.gov/sites/dolgov/files/VETS/files/USEERRA-Poster.pdf">https://www.dol.gov/sites/dolgov/files/VETS/files/USEERRA-Poster.pdf</a>	(v. 05/22)
Employee Rights Under the National Labor Relations Act	Federal contractors	<a href="https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/eo_posters/employeerightsposter11x17_2019final.pdf">https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/eo_posters/employeerightsposter11x17_2019final.pdf</a>	(v. 05/22)
Employee Rights and Responsibilities	50 or more employees	<a href="https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf">https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf</a>	WH 1420 (v. 04/23)

Under Family and Medical Leave Act			
Paid Sick Leave for Federal Contractors	Federal contractors	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh1090.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh1090.pdf</a>	WH 1090 (v. 03/22)
Pay Transparency Nondiscrimination Provision	Federal contractors	<a href="https://www.dol.gov/sites/dolgov/files/OFCCP/pdf/pay-transp_%20English_formattedESQA508c.pdf">https://www.dol.gov/sites/dolgov/files/OFCCP/pdf/pay-transp_%20English_formattedESQA508c.pdf</a>	(v. 01/16)
Employee Rights Under the Davis Bacon Act	Certain federal contractors	<a href="https://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf">https://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf</a>	WH 1321 (v.10/17)
Employee Rights on Government Contracts, Walsh Healy Poster	Certain federal contractors	<a href="https://www.dol.gov/whd/regs/compliance/posters/govc.pdf">https://www.dol.gov/whd/regs/compliance/posters/govc.pdf</a>	WH 1313 (v. 04/09)
Migrant and Seasonal Agricultural Worker Protection Act Notice	Agricultural employers and farm labor contractors	<a href="https://www.dol.gov/whd/regs/compliance/posters/mspaensp.pdf">https://www.dol.gov/whd/regs/compliance/posters/mspaensp.pdf</a>	WH 1376 (v. 07/18)
Employee Rights Under the H-2A Program	Employers with H-2A workers	<a href="http://www.dol.gov/whd/posters/pdf/WHD1491Eng_H2A.pdf">http://www.dol.gov/whd/posters/pdf/WHD1491Eng_H2A.pdf</a>	WHD 1490 (v. 04/12)
Employee Rights Under the H-2B Program	Employers with H-2B workers	<a href="https://www.dol.gov/whd/posters/pdf/H2B-eng.pdf">https://www.dol.gov/whd/posters/pdf/H2B-eng.pdf</a>	WH 1505 (v. 2018)
<b>SAN FRANCISCO POSTERS</b>			
SF Minimum Wage	SF employers	<a href="https://sf.gov/sites/default/files/2023-06/July2023%20Minimum%20Wage%20Poster.pdf">https://sf.gov/sites/default/files/2023-06/July2023%20Minimum%20Wage%20Poster.pdf</a>	(v. 07/23)
SF Paid Sick Leave	SF employers	<a href="https://sf.gov/sites/default/files/2022-12/Paid%20Sick%20Leave%20Poster%20-%20Post.pdf">https://sf.gov/sites/default/files/2022-12/Paid%20Sick%20Leave%20Poster%20-%20Post.pdf</a>	(v. 02/22)
SF Health Care Security Ordinance	SF employers with 20 or more employees and nonprofits with 50 or more	<a href="https://sf.gov/sites/default/files/2022-12/2023%20HCSO%20poster.pdf">https://sf.gov/sites/default/files/2022-12/2023%20HCSO%20poster.pdf</a>	(v. 01/23)
SF Family Friendly Workplace Ordinance	SF employers with 20 or more employees	<a href="https://sf.gov/sites/default/files/2022-12/Family%20Friendly%20Workplace%20Poster%202022_0.pdf">https://sf.gov/sites/default/files/2022-12/Family%20Friendly%20Workplace%20Poster%202022_0.pdf</a>	(v. 2022)
SF Fair Chance Ordinance	SF employers and contractors	<a href="https://sfgov.org/olse/sites/default/files/FCO%20poster2020_0.pdf">https://sfgov.org/olse/sites/default/files/FCO%20poster2020_0.pdf</a>	(v. 2020)
SF Paid Parental Leave Ordinance	SF employers and contractors	<a href="https://sfgov.org/olse/sites/default/files/2020%20parental%20leave%20poster%20Print.pdf">https://sfgov.org/olse/sites/default/files/2020%20parental%20leave%20poster%20Print.pdf</a>	(v. 2020)
SF Lactation in the Workplace	SF employers and contractors	Employer policy required only	Effective 01/18

SF Consideration of Salary History	SF employers and contractors	<a href="https://sf.gov/sites/default/files/2022-12/Consideration%20of%20Salary%20History%20Poster%20upload.pdf">https://sf.gov/sites/default/files/2022-12/Consideration%20of%20Salary%20History%20Poster%20upload.pdf</a>	Effective 01/18
SF Formula Retail Employee Rights	SF formula retail employers	<a href="http://sfgov.org/olse/sites/default/files/Document/FRE RO_Poster_2016_04_06_%20published_0.pdf">http://sfgov.org/olse/sites/default/files/Document/FRE RO_Poster_2016_04_06_%20published_0.pdf</a>	
SF City Contractor (various posters)	SF contractors	<a href="https://sf.gov/labor-law-posters">https://sf.gov/labor-law-posters</a>	
<b>SELECTED LOCAL POSTERS (BAY AREA and SOUTHERN CALIFORNIA)</b>			
Oakland Minimum Wage and Paid Sick Leave	Oakland employers	<a href="https://cao-94612.s3.us-west-2.amazonaws.com/documents/Measure_FF_English_Poster_Set_2024.pdf">https://cao-94612.s3.us-west-2.amazonaws.com/documents/Measure_FF_English_Poster_Set_2024.pdf</a>	(v. 2023)
Emeryville Minimum Wage and Paid Sick Leave	Emeryville employers	<a href="https://www.ci.emeryville.ca.us/DocumentCenter/View/14155/2023-MWO-PSL-Workplace-Poster-English?bidId=">https://www.ci.emeryville.ca.us/DocumentCenter/View/14155/2023-MWO-PSL-Workplace-Poster-English?bidId=</a>	(v. 07/23)
Berkeley Minimum Wage and Paid Sick Leave	Berkeley employers	<a href="https://berkeleyca.gov/sites/default/files/documents/MWO-and-Labor-Notice-Multi-Year-English%20FY24%20%28002%29.pdf">https://berkeleyca.gov/sites/default/files/documents/MWO-and-Labor-Notice-Multi-Year-English%20FY24%20%28002%29.pdf</a>	(v. 2023)
San Jose Opportunity to Work	San Jose employers	<a href="https://www.sanjoseca.gov/home/showpublisheddocument/20073/636686520677200000">https://www.sanjoseca.gov/home/showpublisheddocument/20073/636686520677200000</a>	(v. 03/17)
San Jose Minimum Wage	San Jose employers	<a href="https://www.sanjoseca.gov/home/showpublisheddocument/106162/638337448022600000">https://www.sanjoseca.gov/home/showpublisheddocument/106162/638337448022600000</a>	(v. 01/24)
Los Angeles Minimum Wage and Paid Sick Leave	Los Angeles employers	<a href="https://wagesla.lacity.org/sites/g/files/wph1941/files/2023-02/2023-MWO-Poster-EN-11_0.pdf">https://wagesla.lacity.org/sites/g/files/wph1941/files/2023-02/2023-MWO-Poster-EN-11_0.pdf</a>	(v. 07/23)
Los Angeles Fair Chance Initiative for Hiring		<a href="https://bca.lacity.org/Uploads/fciho/Ban%20the%20Box%20Poster%20-%20Private%20Employers%2C%20as%20of%208.23.18.pdf">https://bca.lacity.org/Uploads/fciho/Ban%20the%20Box%20Poster%20-%20Private%20Employers%2C%20as%20of%208.23.18.pdf</a>	(v. 08/18)
Santa Monica Minimum Wage and Paid Sick Leave	Santa Monica employers	<a href="https://santamonica.gov/media/Minimum_Wage/Notifications/23-24%20Notices/2023-24_Notification_English.pdf">https://santamonica.gov/media/Minimum_Wage/Notifications/23-24%20Notices/2023-24_Notification_English.pdf</a>	(v. 07/23)
San Diego Minimum Wage and Earned Sick Leave	San Diego employers	<a href="https://www.sandiego.gov/sites/default/files/2024-mwo-notice-english.pdf">https://www.sandiego.gov/sites/default/files/2024-mwo-notice-english.pdf</a>  <a href="https://www.sandiego.gov/sites/default/files/esl_notice_english.pdf">https://www.sandiego.gov/sites/default/files/esl_notice_english.pdf</a>	(v. 01/24)  (v. 12/21)

## RECORDS RETENTION OVERVIEW

## RECORDS RETENTION OVERVIEW

Category	Document	Time Period	
HIRING	Resumes	1 year	ADEA, ADA, Title VII
		2 years	FEHA, CFRA
	Job applications	1 year	ADEA, ADA, Title VII
		2 years	CFRA
		4 years after record made or 4 years after action	FEHA
	References	1 year	ADEA, ADA, Title VII
		2 years	CFRA
		4 years after record made or 4 years after action	FEHA
	Requests to employment/ staffing agencies	1 year after making the request	
	I-9 Forms and verification records	The later of:	
3 years from date of hire OR 1 year after termination		IRCA	
PERSONNEL	Name, addresses and Social Security numbers	4 years	FICA
	Personnel actions	1 year after action	ADEA, ADA, Title VII
		4 years after record made or 4 years after action	FEHA
	Merit, incentive and seniority systems	1 year after record made	ADEA
2 years after record made		EPA	
DISCRIMINATION	Discrimination charges	Until final disposition of case	Title VII, ADEA, ADA, FEHA
	Form EEO-1	1 year	Title VII
	Accommodation requests	1 year	ADA
	Affirmative action records	5 years	Title VII
FAMILY AND MEDICAL LEAVE	Medical certifications, notices, records of premium payments, dates/hours of leave taken, dispute records	3 years after leave ends	FMLA
	Requests for leave	2 years	CFRA
WAGE AND HOUR	Payroll records	1 year	ADA, Title VII
		2 years	EPA
		3 years	FLSA, Cal. Labor Code
		4 years	Cal. Unemp. Ins. Code
	Job title and wage rate history	3 years after	Cal. Labor Code

		termination	432.3
	Notices of overtime/training opportunities	1 year	ADEA
	Written training agreements	Duration of the training program	FLSA
	Job classifications, terms and conditions of employment	3 years	Cal. Labor Code (Fair Pay Act)
	Collective bargaining agreement	3 years after agreement ends	EPA
		3 years after agreement made	FLSA
PAID SICK LEAVE	Hours worked, paid sick days accrued/used	3 years	Cal. Labor Code
BENEFITS	Records pertaining to employee benefits plans	1 year after termination of plan	ADEA
	Summary Plan Description data	The later of:	
		6 years OR 1 year after plan termination	ERISA, FMLA
	Records that relate to welfare and pension benefits	The later of:	
6 years OR 1 year after plan termination		ERISA, FMLA	
HEALTH AND SAFETY	Records of toxic exposure	30 years after termination of employment	OSHA
	Work injuries	5 years following injury	OSHA, Cal-OSHA

**SAMPLE CHECKLIST FOR  
INTERNAL INVESTIGATIONS**



## SAMPLE CHECKLIST FOR INTERNAL INVESTIGATIONS

This checklist is intended to be used by employers as a general reference for conducting an internal investigation, to help guide the determination as to whether an investigation should be initiated, as well as to determine the steps that should be considered to conduct and complete an investigation. Because an investigation has the potential to both prevent and create legal liability, and because each investigation raises unique legal and factual issues, it is important to consult with legal counsel if the employer has any questions about whether and how to proceed.

### IS THE COMPANY PREPARED TO INVESTIGATE?

- Does the organization have a reasonable basis for conducting an investigation?
- Are the organization and legal counsel familiar with the various state and federal laws addressing employee privacy and confidentiality?
- Are there collective bargaining agreements, company policies and procedures, or trade practices that may affect your investigation, the process of interviewing employees, or the gathering of documentation?
- Is the organization prepared to objectively evaluate all information that is discovered as part of the investigation?
- Is the organization prepared to take reasonable actions to correct any problems that are uncovered or confirmed during the course of the investigation?
- Is the organization prepared to call in professionals to deal with potentially violent or dangerous situations?

### WHEN TO CONDUCT AN INTERNAL INVESTIGATION

- Has an employee, vendor, or customer made a complaint of any form of harassment, threatening behavior, or intimidation?
- Has the organization been made aware of an unsafe business practice or a violation of applicable state or federal safety requirements?
- Has there been a death or serious injury at the place of employment?
- Has there been a threat of violence at the organization?
- Has a member of the organization's management team reportedly observed acts of harassment or inappropriate behavior involving employees?
- Have employees commented on inappropriate behavior, even though they insist they are not making official complaints?
- Has an employee complained of unfair or unlawful treatment?
- Is the organization concerned about workplace wrongdoing, unsafe practices, or illegal actions?

## THE BASICS OF CONDUCTING AN INVESTIGATION

- Has the organization determined what information it is trying to gather?
- Has the organization established a timeline to ensure that the investigation is promptly conducted and concluded?
- Has the organization evaluated the situation to determine whether the investigation should be handled by a qualified outsider or by someone within the organization (human resources, corporate counsel, or other individual)?
- Has the organization determined whether the investigation should be conducted under the attorney-client privilege? If so, has the organization taken steps to ensure the privilege is maintained during the course of the investigation?
- Has the investigator reviewed all relevant files and records before beginning witness interviews?
- Is the organization familiar with applicable state and federal laws affecting employee investigations and interviews?
- Has the investigator determined which employees and non-employees are most likely to have information about the subject of the investigation?
- Has the investigator determined the order in which employees and non-employees will be interviewed?
- Has the investigator determined what information to seek in each interview?
- Has the investigator prepared interview questions? Are they open-ended to elicit the most information?
- Is the investigator prepared to cover information and subjects that may arise, unanticipated, in an interview?
- Has the organization taken steps to protect employee privacy, but avoided promises of confidentiality?
- Has the investigator gathered sufficient information to reach a conclusion? Are there other witness to interview or documents to review?

## POST-INVESTIGATION BASICS

- Has the organization assessed the investigator's conclusions and determined a course of action? If the investigation involved allegations of harassment or similar misconduct, is the action sufficient to stop the harassment and prevent future occurrence?
- Has the organization communicated with the complainant and accused regarding the results of the investigation?
- Has the investigator prepared a written report?
- Is the organization monitoring the workplace to ensure employees are not harassed or retaliated against as a result of their participation in the investigation?
- Does the organization have a system to maintain careful records of workplace investigations, which includes keeping those records in a secure place?
- Does the organization have a system to provide reminders during the course of the investigation to periodically review the information that has been obtained and to consider whether additional information should be gathered?
- Has the organization thoroughly analyzed and verified the investigation findings?
- Does the report of findings summarize the information gathered, all conclusions, and the subsequent actions that should be taken?

## ADMINISTRATIVE EXEMPTION CHECKLIST

## ADMINISTRATIVE EXEMPTION CHECKLIST (CALIFORNIA)

The following checklist will assist in evaluating whether an employee qualifies for the Administrative exemption from overtime. All criteria must be met for the exemption to apply.

- The employee’s duties and responsibilities involve either (check one):**
  - The performance of office or non-manual work directly related to management policies or general business operations of his or her employer or his or her employer's customers.
  - The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.
- The employee customarily and regularly exercises “discretion and independent judgment.”**
- The employee (check one):**
  - Regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity.
  - Performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge.
  - Executes, under only general supervision, special assignments and tasks.
- The employee is “primarily engaged” (i.e. spends at least 51% of his or her time) in duties which meet the test for the Administrative exemption.**
- The employee earns a monthly salary equivalent to no less than two times the California state minimum wage for full-time employment (40 hours per week).** (In 2023, the California state minimum wage increased to \$15.50 per hour for employers of all sizes. Therefore, two times the California minimum salary is \$64,480 annually for employers of all sizes.)

## ADMINISTRATIVE EXEMPTION (CALIFORNIA)

### Notes:

- This checklist is to be used only as a guideline to determine exempt or non-exempt status, and completion of this checklist does not ensure that the analysis of the position as exempt will be recognized as accurate by the Division of Labor Standards Enforcement.
- Job title is not determinative of whether an employee meets the requirements for the Administrative exemption.
- The phrase "customarily and regularly exercises discretion and independent judgment" means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the administrative exemption, this phrase has been most frequently misunderstood and misapplied by employers and employees alike in cases involving the following:
  - Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards.
  - Misapplication of the phrase to employees making decisions relating to matters of little consequence. For example, routine clerical work, done by bookkeepers, secretaries, bank tellers and clerks, often will not satisfy the requirement that the employee have the authority to decide matters of significance.
- The exemption is commonly misapplied to employees engaged in production aspects of the employer's business as opposed to administrative functions.
- The following are examples of employees who might qualify for the Administrative exemption if, and only if, they meet the criteria set forth above:
  - Employees who regularly and directly assist a proprietor or exempt executive or administrator. Included in this category are those executive assistants and administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers. Generally, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence and interviews must be delegated.
  - Employees who perform, only under general supervision, work along specialized or technical lines requiring special training, experience or knowledge. Such employees are often described as "staff employees," or functional, rather than department heads. They include employees who act as advisory specialists to management, or to the employer's customers. Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians. Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers. Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers, purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.
  - Employees who perform special assignments under only general supervision. Often, such employees perform their work away from the employer's place of business. Typical titles of such persons are buyers, field representatives, and location managers for motion picture companies. This category also includes employees whose special assignments are performed entirely or mostly on the employer's premises, such as customers' brokers in stock exchange firms and so-called "account executives" in advertising firms.

## EXECUTIVE EXEMPTION CHECKLIST

## EXECUTIVE EXEMPTION CHECKLIST (CALIFORNIA)

The following checklist will assist in evaluating whether an employee qualifies for the Executive exemption from overtime. All criteria must be met for the exemption to apply.

- The employee's duties and responsibilities involve either (check one):**
  - Management of the enterprise in which he or she is employed.
  - Management of a customarily recognized department or subdivision of the enterprise.
- The employee customarily and regularly directs the work of two or more other employees.**
- The employee customarily and regularly exercises "discretion and independent judgment."**
- The employee has the authority to hire or fire other employees or the employee's suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.**
- The employee is "primarily engaged" (i.e. spends at least 51% of his or her time) in duties which meet the test for the Executive exemption.**
- The employee earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (40 hours per week).** (In 2023, the California state minimum wage increased to \$15.50 per hour for employers of all sizes. Therefore, two times the California minimum salary is \$64,480 annually for employers of all sizes.)



## EXECUTIVE EXEMPTION (CALIFORNIA)

### Notes:

- This checklist is to be used only as a guideline to determine exempt or non-exempt status, and completion of this checklist does not ensure that the analysis of the position as exempt will be recognized as accurate by the Division of Labor Standards Enforcement.
- This exemption is sometimes referred to as the “Managerial” exemption.
- Job title is not determinative of whether an employee meets the requirements for the Executive exemption.
- With respect to the requirement that management duties must be exercised over the entire enterprise or a customarily recognized department or subdivision thereof, the phrase "customarily recognized department or subdivision thereof" is intended to distinguish between " a mere collection of employees assigned from time to time to a specific job or series of jobs" and "a unit with permanent status and function." Thus, in order to meet the criteria of a managerial employee, one must be more than merely a supervisor of two or more employees. The managerial exempt employee must be in charge of the unit, not simply participate in the management of the unit.
- Management includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.
- To qualify for the Executive exemption, the executive or manager must supervise two or more employees. This may be one full-time and two half-time employees. Note that the DLSE advises that a managerial employee supervising as few as two employees rarely would spend as much as 50% of his or her time primarily engaged in managerial duties.
- The phrase "customarily and regularly exercises discretion and independent judgment" means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the Executive exemption, the most frequent cause of misapplication of the phrase "discretion and independent judgment" is the failure to distinguish discretion and independent judgment from the use of independent managerial skills. An employee who merely applies his or her memory in following prescribed procedures or determining which required procedure out of the company manual to follow, is not exercising discretion and independent judgment.

## TERMINATION CHECKLIST

# TERMINATION CHECKLIST

## For California Employees

- Appropriate departments have been notified of termination (including but not limited to Human Resources, IT, Payroll, and Security)
- Employee notified of reason for termination
- Final paycheck, including all wages and accrued vacation/PTO, given to employee
- Final expense check issued to employee
- Separation package offered
- Unemployment insurance "For Your Benefit" pamphlet (California Employment Development Dept. DE 2320)
- Notice to Employee of Change in Relationship provided (employer-prepared form or letter)
- Notice to Terminating Employees provided (California Dept. of Health Services form 9061)
- COBRA or Cal/COBRA election forms provided (employer or health plan administrator to provide)
- HIPAA Notice of Creditable Coverage provided (check with health plan administrator)
- Retirement plan election forms provided
- Inventory taken of employee's company files, computer, desk, and work area
- Company equipment and property returned:
  - credit cards
  - computer and electronic equipment
  - paper and computer files in employee's possession
  - building entry passcard or badge
  - other
- Exit interview conducted

# LABOR AND EMPLOYMENT DUE DILIGENCE CHECKLIST

# LABOR AND EMPLOYMENT DUE DILIGENCE CHECKLIST

## For California Employers

The following is a summary checklist of the subjects and types of information employers may need to examine in connection with labor and employment due diligence for a corporate merger or acquisition.

### **Employment Litigation and Related Issues**

Determine if any of the following exist over the past five years (or longer if corporate obligations are continuing):

- Employment lawsuits, judgments and settlement agreements, filed in federal or state court
- EEOC or state agency lawsuits/judgments/settlements
- Other federal or state agency lawsuits/judgments/settlements filed or entered into within the past five years
- Charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) or similar state or local agencies
- Unfair labor practice charges
- Charges or complaints filed by employees with any other federal, state or local agency
- Audits or correspondence from federal, state and local agencies (such as the U.S. Department of Labor, Office of Federal Contract Compliance Programs, etc.)
- Compliance agreements, conciliation agreements, or consent decrees
- Workers' compensation claims
- Demand or complaint letters from employees

### **Employment Policies and Practices**

Review current handbook and make sure it has required/suggested policies. Make sure the policies are up-to-date and accurately reflect the company's practices. Verify with Human Resources or appropriate management personnel.

- Current employee handbook(s)
- Employment policies regarding:
  - Equal employment opportunity
  - Harassment
  - Investigations
  - Conduct/discipline/termination
  - Complaint/grievance procedures
  - Attendance policies, including no-fault policies
  - Leaves of absence (FMLA/CFRA/ADA/PDL)
  - Lactation accommodation
  - Sick leave
  - Paid time off
  - Employee classifications
  - Expense reimbursement
  - Meal and rest breaks
  - Off-the-clock policies and practices
  - Ethics/codes of conduct
  - Fair pay/pay transparency
  - Local employment law requirements

### **Employee Files**

- Personnel files/location, content and access
- Releases for background checks
- Medical information

## **Individual Employee Issues**

- Employees on leave of absence
- Employees on short/long-term disability
- Pending internal complaints/grievances
- Employees with high rates of absenteeism
- Independent contractor agreements
- Employment agreements
- Trade secret and confidentiality agreements
- Employee stock agreements
- Employee loans
- Employment contracts – verbal and/or implied
- Pay equity
- Salary History Bans and Pay Transparency

## **Training**

- Harassment
- General equal employment opportunity
- Managing within the law
- Wage and hour compliance
- Safety

## **Safety**

- Workplace Illness and Injury Prevention Program
- Injury and illness records
- Workplace Violence Restraining Orders and Prevention Plan

## **Benefits**

- ERISA benefits plan documents, including summary plan descriptions
- Form 5500(s)
- COBRA
- Determination letters (for tax-qualified plans)
- Affordable Care Act compliance

- Benefits vendor agreements
- Local ordinances (including living wage ordinances, minimum wage ordinances, paid sick leave ordinances, background check ordinances, etc.)

### **Labor Issues**

- Current collective bargaining agreements
- Pending grievances
- Grievance settlements within past five years
- Arbitration decisions within past five years
- Documentation concerning recent strikes, organizing, or other concerted activity
- Employee handbook review for work rule issues

### **Government Contractors**

- Affirmative Action Plans
- Goals and Timetables/progress
- OFCCP audits and compliance agreements
- Logs/applicant, hiring, promotion, termination
- EEO-1 reports/surveys
- Statement of subcontractor compliance
- Self-assessments
- Pay transparency

### **Other Employment Documentation and Agreements**

- I-9 forms
- Audit reports
- Job descriptions
- Job tests, including validation studies where applicable
- Application forms
- New hire notices (Labor Code section 2810.5)
- Employment contracts
- Staffing Agency agreements



- Data on current employees (job title, location, hire date, pay rate, race/gender/age)
- Arbitration agreements
- Workplace posters
- Nondisclosure/noncompete/confidentiality agreements
- Patent, invention and other types of IP agreements
- Severance agreements
- Stock purchase agreements
- Safety/Workplace Injury and Illness Prevention Program
- WARN Act issues
- Pay Data Reporting

# Your Annual Employment Law Check-Up



101 Montgomery Street, Suite 1400  
San Francisco, CA 94104  
(415) 644-0914

401 Wilshire Boulevard, Suite 850  
Santa Monica, CA 90401  
(310) 393-4000

501 West Broadway, Suite 1610  
San Diego, CA 92101  
(619) 234-1700

# Annual Employment Law Check-Up For California Employers

**DISCLAIMER:** These materials are for educational purposes only and to provide general information and a general understanding of the law. The materials do not provide specific legal advice. By using the materials in this document, you understand that there is no attorney-client relationship between you and Cozen O'Connor. Furthermore, these materials should not be used as a substitute for competent legal advice from a licensed attorney in your state.

# Annual Employment Law Check-Up For California Employers

**NOTE: Whenever possible, audits, whether handled by your supervisors, committee, or legal counsel, should be conducted at the direction of in-house or outside legal counsel to protect the audit findings under the attorney-client privilege.**



## Overview

Company Name: \_\_\_\_\_

Number of Employees: \_\_\_\_\_

Number of Exempt: \_\_\_\_\_

Number of Non-Exempt: \_\_\_\_\_

Are any of your employees unionized?  Yes  No

If yes, what union(s)? \_\_\_\_\_

Are you in the process of negotiations with any union(s)?  Yes  No

If yes, which union(s)? \_\_\_\_\_

Do you have a separate agreement covering management employees?  Yes  No

If yes, does it contain an express statement that employment is at will?  Yes  No

Do you have individual employment agreements with any employees?  Yes  No

Have you checked to ensure that you have provided all legally mandated postings – federal, state, local?  Yes  No

# Annual Employment Law Check-Up For California Employers



## Pre-Hiring Background

When were your employment application and selection rules last reviewed?

---

Do you conduct any pre-employment testing?

Yes  No

If yes, what type (physical, psychological, drug, skill level, intelligence, etc.) and for which employee groups?

---

---

Do you check references?

Yes  No

Do you perform background checks?

Yes  No

If yes, for which employee groups? \_\_\_\_\_

Have you reviewed your hiring policies to ensure compliance with any applicable state and local “ban the box” or fair chance laws?

Yes  No

Have you revised all application, hiring and other materials to delete questions that could seek juvenile criminal history?

Yes  No

Have you revised hiring procedures to delete questions seeking salary history?

Yes  No

# Annual Employment Law Check-Up For California Employers



## Personnel Policies and Procedures

Do you have written Personnel Policies?  Yes  No

Specify the type (for example, Employee Handbook, Manager's Manual, Training Manuals, etc.):

---

Identify the employee groups covered by the written Personnel Policies:

---

Identify the employee groups not covered by the written Personnel Policies:

---

Do your Personnel Policies contain the following provisions:

Probationary employment  Yes  No

Regular employment  Yes  No

Temporary or provisional employment  Yes  No

Disciplinary grounds  Yes  No

Performance evaluations  Yes  No

Personnel files  Yes  No

Vacation or PTO  Yes  No

Paid sick leave  Yes  No

Reasonable accommodation  Yes  No

Lactation accommodation  Yes  No

Family and medical leave  Yes  No

Pregnancy disability leave  Yes  No

Other leave (jury duty, bereavement, military, etc.)  Yes  No

Voluntary and involuntary transfers  Yes  No

Layoffs  Yes  No

Job abandonment  Yes  No

Reemployment  Yes  No

Use of company equipment  Yes  No

## Annual Employment Law Check-Up For California Employers

- |  |                          |     |                          |    |
|--|--------------------------|-----|--------------------------|----|
| Computer use/electronic communications   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Social media   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Bring Your Own Device (B.Y.O.D.)   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Confidentiality/trade secrets  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Overtime   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Off-the-clock  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Meal and rest breaks   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Grievance procedure  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Equal employment opportunity   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Discrimination, harassment and retaliation   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Internal complaint procedure for discrimination/harassment   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Pay transparency   | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Defend Trade Secrets Act language  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Are your Personnel Policies distributed to employees?  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Do all employees sign a form acknowledging receipt of the Personnel Policies?                                  | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Do all employees sign to acknowledge receipt of the Policy against discrimination, harassment and retaliation? | <input type="checkbox"/> | Yes | <input type="checkbox"/> | No |
| Date Personnel Policies were last reviewed? _____  |                          |     |                          |    |

# Annual Employment Law Check-Up For California Employers



## Performance Reviews

Do you conduct formal performance evaluations?  Yes  No

If yes, how frequently are formal reviews given? \_\_\_\_\_

Are evaluations properly documented?  Yes  No

Are employees given an opportunity on the review to write their comments?  Yes  No

Do employees sign their evaluations?  Yes  No

Are informal, feedback reviews conducted between the formal reviews?  Yes  No

Have performance criteria been established in advance and communicated to all employees?  Yes  No

Is there a formal means of relating compensation to performance?  Yes  No

If yes, is it consistently applied throughout the company?  Yes  No

Are narrative evaluations provided in addition to numerical ratings?  Yes  No

Do supervisors discuss reviews with each employee?  Yes  No

Is the HR department involved in ensuring compliance with performance review policies throughout the company?  Yes  No

Are supervisors taught that their records of evaluation may potentially be used **in an attempt to support** a claim of wrongful discharge or discrimination/retaliation lawsuit?  Yes  No

Are supervisors taught that their records of evaluation may potentially be used **as a defense** against a wrongful discharge or discrimination/retaliation lawsuit?  Yes  No

Does your performance evaluation form meet your needs?  Yes  No

When was your performance evaluation form last updated? \_\_\_\_\_



# Annual Employment Law Check-Up For California Employers



## Wage and Hour Analysis

For your exempt employees, what exemption categories apply to their positions?

- Professional
- Executive
- Administrative
- Commissioned Sales
- Outside Sales
- Computer Software Professional
- Other

Have you evaluated the exempt duties *and* ensured compliance with minimum salary or rates for each exempt employee or job category?  Yes  No

Do you have volunteers?  Yes  No  
(Note: only nonprofits and public employers may use unpaid volunteers.)

Do you use unpaid interns?  Yes  No

If so, do they satisfy all requirements for an unpaid internship, pursuant to the DOL and DLSE guidelines?  Yes  No

Do you have commissioned employees?  Yes  No

If so, is their Commission Plan in writing?  Yes  No

Is the Commission Plan provided to employees?  Yes  No

Do you require employees to sign a copy of the Commission Plan?  Yes  No

Do you require employees to sign an acknowledgment of receipt of the Commission Plan?  Yes  No

When was the Commission Plan last reviewed? \_\_\_\_\_

Do you require supervisor authorization before working overtime, for your non-exempt employees?  Yes  No

On what basis/bases do you calculate overtime? \_\_\_\_\_

---

Do you have a Meal Period/Rest Break Policy?  Yes  No

If so, do your employees sign off on the policies?  Yes  No

Do you employ meal period waivers?  Yes  No

Do you have an “on-duty” meal period agreement?  Yes  No

Do you have Independent Contractors?  Yes  No

Do you use an Independent Contractor Agreement?  Yes  No

If yes, when was your Agreement last reviewed? \_\_\_\_\_

# Annual Employment Law Check-Up For California Employers



## Progressive Discipline

Do you have a progressive discipline policy?

Yes  No

If yes:

Have your managers and supervisors been trained on how to use and comply with the policy?

Yes  No

Are performance problems brought to the employee's attention and documented by managers and supervisors when they occur?

Yes  No

Are the reasons supporting discipline promptly and thoroughly documented?

Yes  No

Is the documentation properly placed in the employee's personnel file?

Yes  No

# Annual Employment Law Check-Up For California Employers



## Management Training

Do you provide training for your managers and supervisors in any of the following areas?

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| Equal employment opportunity (discrimination) law   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Sexual harassment<br>(Note: Beginning January 1, 2020, employers in California with 5 or more employees must provide managers with 2 hours of sexual harassment training, and non-managers with 1 hour of training, every two years.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Selecting/hiring the right employees  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| How to manage successful performance  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Performance evaluations   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Progressive discipline  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Avoiding wrongful discharge claims  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Sexual orientation and gender identity discrimination   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| FMLA, CFRA, pregnancy, worker's comp, and other leave requests  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Sick leave compliance   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| ADA compliance, including engaging in the interactive process   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Conducting an internal investigation  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Wage and hour compliance  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Managing effectively under a collective bargaining agreement  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Workplace violence prevention and response  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

# Annual Employment Law Check-Up For California Employers



## Litigation

Have any employees or former employees filed a charge against your company with any governmental agency during the last five years (i.e., CRD, EEOC, LWDA, OSHA, NLRB)?  Yes  No

If yes, how many? \_\_\_\_\_

What was the result? \_\_\_\_\_

Was a lawsuit filed?  Yes  No

What was the result? \_\_\_\_\_

Have any other lawsuits been filed against you in the last five years alleging wrongful discharge, discrimination, sexual harassment or any other employment-related claims?  Yes  No

If yes, how many? \_\_\_\_\_

What was the result? \_\_\_\_\_

Have any employees filed a complaint with the California Labor Commissioner (or DLSE) or the U.S. Department of Labor in the last five years?  Yes  No

If yes, how many? \_\_\_\_\_

What was the result? \_\_\_\_\_

Was a lawsuit filed?  Yes  No

What was the result? \_\_\_\_\_

Have any wage and hour lawsuits been filed?  Yes  No

If yes, how many? \_\_\_\_\_

What type? \_\_\_\_\_

What was the result? \_\_\_\_\_

What was the result? \_\_\_\_\_

# Annual Employment Law Check-Up For California Employers

## Other

Identify three top areas of your company's employment practices that you would like to see improved.

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

If there are any other concerns or issues relating to your labor and/or employment policies that have not been addressed in this "check-up," please identify.

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## EMPLOYMENT DETERMINATION GUIDE

### Purpose:

This worksheet is to be used by the proprietor of a business to determine whether a worker is most likely an employee or an independent contractor.

### General Information:

Generally, whether a worker is an employee or an independent contractor can be determined through the application of the factors contained in common law or employment and statutory provisions of the [California Unemployment Insurance Code](#).

If a worker is an employee under common law, the business that employs the worker must report the worker's earnings to the Employment Development Department (EDD) and must pay employment taxes on those wages. If the worker is an independent contractor and the business pays the worker \$600 or more in payments, the business must file a Form 1099-MISC with the Internal Revenue Service (IRS). The business must also file a *Report of Independent Contractor(s)* (DE 542) with the EDD within 20 days of either making payments totaling \$600 or more, or entering into a contract for \$600 or more with an independent contractor in any calendar year. For more detailed information regarding your independent contractor reporting requirements, view the latest revision of the *California Employer's Guide* (DE 44) available on the EDD website at [www.edd.ca.gov/Payroll\\_Taxes/Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm).

The basic test for determining whether a worker is an independent contractor or an employee is whether the principal has the right to control the manner and means by which the work is performed. When the principal has the "right of control," the worker will be an employee even if the principal never actually exercises the control. If the principal does not have the right of control, the worker will generally be an independent contractor.

If, on the face of the relationship, it is not clear whether the principal has the "right of control," there are secondary factors that are considered to determine the existence or nonexistence of the right of control.

The enclosed worksheet addresses the basic test and secondary factors through a series of questions. If use of the worksheet clearly demonstrates that a worker is an employee, you should contact the EDD and arrange to report the worker and pay the relevant taxes. You may also want to contact the IRS and your workers' compensation insurance carrier to ensure that you are in compliance with federal tax laws and with state workers' compensation statutes.

If after completing the worksheet you are not sure whether the worker is an independent contractor or employee, you may request a written ruling by completing a *Determination of Employment Work Status* (DE 1870) or contact the Taxpayer Assistance Center for advice by calling 888-745-3886. The DE 1870 is designed to analyze a working relationship in detail and serves as the basis for a written determination from the EDD on employment status.

## WORKSHEET ON EMPLOYMENT STATUS

Questions 1 – 3 are significant questions. If the answer to any of them is "Yes," it is a strong indication that the worker is an employee.

1. Do you instruct or supervise the person while he or she is working? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors are free to do jobs in their own way, using specific methods they choose. A person or firm engages an independent contractor for the job's end result. When a worker is required to follow company procedure manuals and/or is given specific instructions on how to perform the work, the worker is normally an employee.

2. Can the worker quit or be discharged (fired) at any time? Yes \_\_\_\_\_ No \_\_\_\_\_

If you have the right to fire the worker at will and without cause, it indicates that you have the right to control the worker.

Independent contractors are engaged to do specific jobs and cannot be fired before the job is complete unless they violate the terms of the contract. They are not free to quit and walk away until the job is complete. For example, if a shoe store owner hires a licensed painter to paint the store, and the work had started, the store owner would not be able to just terminate the painter without there being a good reason or just cause for doing so.

3. Is the work being performed part of your regular business? Yes \_\_\_\_\_ No \_\_\_\_\_

Work which is a necessary part of the regular trade or business is normally done by employees. For example, a sales clerk is selling shoes in a shoe store. A shoe store owner could not operate without sales clerks to sell shoes. On the other hand, a plumber engaged to fix the pipes in the bathroom of the store is performing a service on a one-time or occasional basis that is not an essential part of the purpose of the business enterprise. A certified public accountant engaged to prepare tax returns and financial statements for the business would also be an example of an independent contractor.

A "No" answer to questions 4 – 6 indicates that the individual is not in a business for himself or herself and would, therefore, normally be an employee.

4. Does the worker have a separately established business? Yes \_\_\_\_\_ No \_\_\_\_\_

When individuals hold themselves out to the general public as available to perform services similar to those performed for you, it is evidence that the individuals are operating separately established businesses and would normally be independent contractors. Independent contractors are free to hire employees and assign the work to others in any way they choose. Independent contractors have the authority to fire their employees without your knowledge or consent. Independent contractors can normally advertise their services in newspapers and/or publications, the Internet, yellow page listings, radio, television, and/or seek new customers through the use of business cards.

5. Is the worker free to make business decisions which affect his or her ability to profit from the work? Yes \_\_\_\_\_ No \_\_\_\_\_

An individual is normally an independent contractor when he or she is free to make business decisions which impact his or her ability to profit or suffer a loss. This involves real economic risk, not just the risk of not getting paid. These decisions would normally involve the acquisition, use, and/or disposition of equipment, facilities, and stock in trade which are under his or her control. Further examples of the ability to make economic business decisions include the amount and type of advertising for the business, the priority in which assignments are worked, and selection of the types and amounts of insurance coverage for the business.

6. Does the individual have a substantial investment in their job which would subject him or her to a financial risk of loss? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks. To the extent necessary for the specific type of business, independent contractors provide their own business facility.



Questions 7 – 13 are additional factors that should be considered. A "Yes" answer to any of the questions is an indication the worker may be an employee, but no one factor by itself is deciding. When those factors are considered, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed. However, the greater the number of "Yes" answers to questions 7 – 13, the greater the likelihood the worker is performing services as an employee.

7. Do you have employees who do the same type of work? Yes \_\_\_\_\_ No \_\_\_\_\_

If the work being done is basically the same as work that is normally done by your employees, it indicates that the worker is an employee. This applies even if the work is being done on a one-time basis. For instance, to handle an extra workload or replace an employee who is on vacation, a worker is hired to fill in on a temporary basis. This worker is a temporary employee, not an independent contractor.

(Note: If you contract with a temporary agency to provide you with a worker, the worker is normally an employee but may be an employee of the temporary agency. You may refer to the EDD *Information Sheet: Temporary Services and Employee Leasing Industries* [DE 231F] on the subject of temporary service and leasing employers.)

8. Do you furnish the tools, equipment, or supplies used to perform the work? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors furnish the tools, equipment, and supplies needed to perform the work. Independent contractors normally have an investment in the items needed to complete their tasks.

9. Is the work considered unskilled or semi-skilled labor? Yes \_\_\_\_\_ No \_\_\_\_\_

The courts and the California Unemployment Insurance Appeals Board have held that workers who are considered unskilled or semi-skilled are the type of workers the law is meant to protect and are generally employees.

10. Do you provide training for the worker? Yes \_\_\_\_\_ No \_\_\_\_\_

In skilled or semi-skilled work, independent contractors usually do not need training. If training is required to do the task, it is an indication that the worker is an employee.

11. Is the worker paid a fixed salary, an hourly wage, or based on a piece rate basis? Yes \_\_\_\_\_ No \_\_\_\_\_

Independent contractors agree to do a job and bill for the service performed. Typically, payments to independent contractors for labor or services are made upon the completion of the project or completion of the performance of specific portions of the project.

12. Did the worker previously perform the same or similar services for you as an employee? Yes \_\_\_\_\_ No \_\_\_\_\_

If the worker previously performed the same or similar services for you as an employee, it is an indication that the individual is still an employee.

13. Does the worker believe that he or she is an employee? Yes \_\_\_\_\_ No \_\_\_\_\_

Although belief of the parties is not controlling, intent of the parties is a factor to consider when making an employment or independent contractor determination. When both the worker and principal believe the worker is an independent contractor, an argument exists to support an independent contractor relationship between the parties.

## Interpretations of Answers

Depending on the services being performed and the type of occupation, this questionnaire may produce a variety of results. There may be some factors which lean toward employment and some which lean toward independence. The answers to questions 1 – 6 provide a strong indication of the presence or absence of right to control. The answers to questions 7 – 13 when joined with other evidence may carry greater weight when indicating the presence or absence of direction and control.

1. If all of the answers to questions 1 – 3 are "No" and all of the answers to questions 4 – 6 are "Yes," there is an indication of independence. When this is the case, there are likely to be a number of "No" answers to questions 7 – 13 which add to the support of the determination.
2. If all of the answers to questions 1 – 3 are "Yes" and all of the answers to questions 4 – 6 are "No," it is very strong indication that the worker in question is an employee. When this is the case, there are likely to be a number of "Yes" answers to questions 7 – 13 which add to the support of the determination.
3. If the answer to question 1 or 2 is "Yes" or the answer to any one of questions 4 – 6 is "No," there is a likelihood of employment. At the very least, this pattern of answers makes the determination more difficult since the responses to questions 7 – 13 will probably be mixed. In such situations, the business owner would be well advised to complete a DE 1870, giving all of the facts of the working relationship and requesting a ruling from the EDD.
4. If the answer to question 3 is "Yes" and the answer to question 4 is "No," there is a likelihood of employment. Given this pattern of answers, it is probable that the answers to questions 5 and 6 will also be "No." When this happens you may also see more "Yes" answers to the last group of questions (7 – 13). This scenario would support an employment determination.

These four scenarios illustrate only a few combinations of answers that could result from the use of this Employment Determination Guide, depending on the working relationship a principal may have with a worker and the type of occupation. The more the pattern of answers vary from the above four situations, the more difficult it is to interpret them. In situations 1 and 2, there is a greater chance that the interpretation will be accurate, and they present the least risk to the business owner of misclassifying the worker. With other combinations of answers, the EDD recommends that business owners complete a DE 1870, giving a complete description of the working relationship and requesting a ruling from the EDD.

**NOTE:** Some agent or commission drivers, traveling or city salespeople, homeworkers, artists, authors, and workers in the construction industry are employees by law even if they would otherwise be considered independent contractors under common law. If you are dealing with workers in any of these fields, access *Information Sheet: Statutory Employees* (DE 231SE) from the EDD website at [www.edd.ca.gov/Payroll\\_Taxes/Forms\\_and\\_Publications.htm](http://www.edd.ca.gov/Payroll_Taxes/Forms_and_Publications.htm) or contact the Taxpayer Assistance Center at 888-745-3886.

# SOME EXAMPLES OF INDEPENDENT CONTRACTORS AND COMMON LAW EMPLOYEES

## Independent Contractors

An attorney or accountant who has his or her own office, advertises in the yellow pages of the phone book under "Attorneys" or "Accountants," bills clients by the hour, is engaged by the job or paid an annual retainer, and can hire a substitute to do the work is an example of an independent contractor.

An auto mechanic who has a station license, a resale license, buys the parts necessary for the repairs, sets his or her own prices, collects from the customer, sets his or her own hours and days of work, and owns or rents the shop from a third party is an example of an independent contractor.

Dance instructors who select their own dance routines to teach, locate and rent their own facilities, provide their own sound systems, music and clothing, collect fees from customers, and are free to hire assistants are examples of independent contractors.

A repairperson who owns or rents a shop, advertises the services to the public, furnishes all of the tools, equipment, and supplies necessary to make repairs, sets the price for services, and collects from the customers is an example of an independent contractor.

**NOTE:** Payroll tax audits conducted by the EDD have disclosed misclassified workers in virtually every type and size of business. However, certain industries seem more prone to have a higher number of misclassified workers than others. Historically, industries at higher risk of having misclassified workers include businesses that use:

- Construction workers
- Seasonal workers
- Short-term or "casual" workers
- Outside salespersons

## Employees

An attorney or accountant who is employed by a firm to handle their legal affairs or financial records, works in an office at the firm's place of business, attends meetings as needed, and the firm bills the clients and pays the attorney or accountant on a regular basis is an example of an employee.

An auto mechanic working in someone's shop who is paid a percentage of the work billed to the customer, where the owner of the shop sets the prices, hours, and days the shop is open, schedules the work, and collects from the customers is an example of an employee.

Dance instructors working in a health club where the club sets hours of work, the routines to be taught and pays the instructors from fees collected by the club are examples of employees.

A repairperson working in a shop where the owner sets the prices, the hours and days the shop is open, and the repairperson is paid a percentage of the work done is an example of an employee.

**SAMPLE OFFER LETTER  
EXEMPT POSITION**

**SAMPLE OFFER LETTER**  
**\*\* EXEMPT POSITION \*\***

XYZ Company  
[Date]

**PERSONAL AND CONFIDENTIAL**

[Name]  
[Address]

**Re:                   Offer of Employment**

Dear [Name]:

I am pleased to confirm our offer of employment as an [Title] at XYZ Company. Your employment will begin on your first day of work with XYZ Company on [Date]. The terms of your employment with XYZ Company are as follows:

A.       Compensation

Your starting monthly salary will be \$[amount], which equates to an annual salary of \$[amount]. You will be paid on [insert regular paydays].

B.       Schedule

Our offices are open from 8:00 a.m. until 6:00 p.m. As a full-time Exempt employee you are expected to work a normal workweek of no fewer than 40 hours per week from Monday through Friday between 8:00 a.m. and 6:00 p.m. Employees in exempt positions are not entitled to overtime compensation and are expected to work the hours necessary to complete assignments on a schedule that satisfies the requirements and responsibilities of the job.

C.       Benefits

The first three months of employment are considered an introductory period. Beginning on the first day of the month following completion of the three-month introductory period, full time employees are eligible to participate in the group health insurance plan offered by XYZ Company. You will be eligible to participate in XYZ Company's group health plans on [Date].

When you become eligible to participate, XYZ Company will pay the monthly premium for your coverage. If you wish to cover dependants, you will be responsible for paying the premium for dependant coverage, and the premiums will be deducted from your end-of-the month paychecks for the following month's coverage.

Finally, XYZ Company maintains a Section 125 Flexible Spending Account for dependent childcare, which you may elect to participate in at your sole discretion. We will provide you details of this plan when you begin your employment.

D. Profit Sharing and 401(k)

XYZ Company has established a profit sharing plan for its employees. Contributions, if any, to this plan are at the **sole discretion** of XYZ Company. You should be aware that XYZ Company is not, and will not be, obligated to make any contribution to this plan on an annual basis. Please see Human Resources for details concerning this plan, including eligibility requirements.

XYZ Company also has established a 401(k) plan, which is funded completely by the employee. XYZ Company does not contribute to an employee's 401(k) plan. An employee is eligible to participate in the 401(k) plan on the first day of the quarter following completion of 250 hours with XYZ Company. Once again, please see Human Resources for details concerning the 401(k) plan. We estimate that you will be eligible to participate in the plan on [date].

E. Vacation and Sick Pay

In addition to the other benefits described above, you are entitled to [number] days of vacation per year. Vacation is accrued on a semi-monthly basis, beginning on your first day of employment, at the rate of [number] hours per pay period. Since XYZ Company encourages employees to take vacation, we do not allow employees to accrue more than 1.75 times their yearly accrual. In your case, the maximum accrual would be [number] days, and if you reach the maximum accrual, you will not accrue any additional vacation time until you use some vacation. Any unused, accrued vacation will be paid out upon termination.

XYZ Company also provides its employees with paid sick leave, in compliance with California law [and the San Francisco Paid Sick Leave Ordinance]. You will be provided with information regarding paid sick leave on your first day of work.

F. Employment Authorization

Your employment is contingent upon verification of your identity and authorization to work in the U.S. for XYZ Company. You must comply with any applicable U.S. Citizenship and Immigration Services (USCIS) employment verification requirements.

G. At-Will Employment

Employment with XYZ Company is employment at-will. This means that both you and XYZ Company are free to terminate the employment relationship at any time, with or without cause or and with or without advance notice. Likewise XYZ Company may reassign you or change the terms and conditions of your employment at any time with or without cause or notice. This term of employment is not subject to change or modification of any kind except if in writing and signed by the President of XYZ Company.

H. Entire Agreement

This offer of employment and the Nondisclosure Agreement [attached as Exhibit 1] contain the entire agreement between you and XYZ Company with respect to any benefit conferred upon you, and all prior agreements, representations, or understandings between us, whether oral or written, are expressly superseded by this offer of employment.

Your employment is conditioned upon your execution of XYZ Company's Nondisclosure Agreement [attached as Exhibit 1].

In order to indicate your acceptance of this offer, please sign and date this letter in the space provided below and sign and date the Nondisclosure Agreement, and return both to Human Resources no later than [date]. Please feel free to contact Human Resources or me if you have any questions about this employment offer or any point covered in this letter. We look forward to working with you as a member of our team.

Very truly yours,

XYZ Company

\*\*\*\*\*

I hereby agree to the terms of this offer letter and accept employment with XYZ Company. I understand and agree that this letter supersedes any and all prior representations or agreements, whether written or oral. I also agree that the terms of employment set forth in this letter may not be modified, except by written agreement signed by the President of XYZ Company.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

SAMPLE



**SAMPLE OFFER LETTER  
NON-EXEMPT POSITION**

**SAMPLE OFFER LETTER**  
**\*\* NON-EXEMPT POSITION \*\***

XYZ Company  
[Date]

**PERSONAL AND CONFIDENTIAL**

[Name]  
[Address]

**Re:                    *Offer of Employment***

Dear [Name]:

I am pleased to confirm our offer of employment as an [Title] at XYZ Company. Your employment will begin on your first day of work with XYZ Company on [Date]. The terms of your employment with XYZ Company are as follows:

A.        Compensation

Your schedule will consist of 40 hours per week, 8 hours each day. Your hourly rate of pay will be \$[Amount] per hour, for an estimated annual salary which equates to an annual salary of \$[Amount].

B.        Schedule

Our offices are open from 8:00 a.m. until 6:00 p.m. Your schedule will be 8:00 a.m. to 5:00 p.m., with an hour unpaid lunch. You may take two 10-minute rest breaks each day (one in the morning and one in the afternoon). Depending upon business needs, XYZ Company, in its sole discretion, may alter or amend your schedule.

C.        Benefits

The first three months of employment are considered an introductory period. Beginning on the first day of the month following completion of the three-month introductory period, full-time employees are eligible to participate in the group health insurance plan offered by XYZ Company. You will be eligible to participate in XYZ Company's group health plans on [Date].

When you become eligible to participate, XYZ Company will pay the monthly premium for your coverage. If you wish to cover dependants, you will be responsible for paying the premium for dependant coverage, and the premiums will be deducted from your end-of-the month paychecks for the following month's coverage.

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D. Profit Sharing and 401(k)

XYZ Company has established a profit sharing plan for its employees. Contributions, if any, to this plan are at the **sole discretion** of XYZ Company. You should be aware that XYZ Company is not, and will not be, obligated to make any contribution to this plan on an annual basis. Please see Human Resources for details concerning this plan, including eligibility requirements.

XYZ Company also has established a 401(k) plan, which is funded completely by the employee. XYZ Company does not contribute to an employee's 401(k) plan. An employee is eligible to participate in the 401(k) plan on the first day of the quarter following completion of 250 hours with XYZ Company. Once again, please see Human Resources for details concerning the 401(k) plan. We estimate that you will be eligible to participate in the plan on [date].

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In addition to the other benefits described above, you are entitled to [number] days of vacation per year. Vacation is accrued on a semi-monthly basis, beginning on your first day of employment, at the rate of [number] hours per pay period. Since XYZ Company encourages employees to take vacation, we do not allow employees to accrue more than [1.75] times their yearly accrual. In your case, the maximum accrual would be [number] days, and if you reach the maximum accrual, you will not accrue any additional vacation time until you use some vacation. Any unused, accrued vacation will be paid out upon termination.

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Employment with XYZ Company is employment at-will. This means that both you and XYZ Company are free to terminate the employment relationship at any time, with or without cause or and with or without advance notice. Likewise XYZ Company may reassign you or change the terms and conditions of your employment at any time with or without cause or notice. This term of employment is not subject to change or modification of any kind except if in writing and signed by the President of XYZ Company.

H. Entire Agreement

This offer of employment and the Nondisclosure Agreement [attached as Exhibit 1] contain the entire agreement between you and XYZ Company with respect to any benefit conferred upon you, and all prior agreements, representations, or understandings between us, whether oral or written, are expressly superseded by this offer of employment.

Your employment is conditioned upon your execution of XYZ Company's Nondisclosure Agreement [attached as Exhibit 1].

In order to indicate your acceptance of this offer, please sign and date this letter in the space provided below and sign and date the Nondisclosure Agreement, and return both to Human Resources no later than [date]. Please feel free to contact Human Resources or me if you have any questions about this employment offer or any point covered in this letter. We look forward to working with you as a member of our team.

Very truly yours,

XYZ Company

\*\*\*\*\*

I hereby agree to the terms of this offer letter and accept employment with XYZ Company. I understand and agree that this letter supersedes any and all prior representations or agreements, whether written or oral. I also agree that the terms of employment set forth in this letter may not be modified, except by written agreement signed by the President of XYZ Company.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

SAMPLE

# SAMPLE EMPLOYMENT AGREEMENT

## SAMPLE EMPLOYMENT AGREEMENT For California Employees (Short Form)

This Employment Agreement ("Agreement") is made between XYZ Company ("Company") and \_\_\_\_\_ ("Employee") as of [insert date].

In consideration of the mutual covenants set forth in this Agreement, the parties agree as follows:

1. *Employment.* Company hereby employs the Employee on the terms and conditions set forth in this Agreement.
2. *Term of Employment.* Employee is an at-will employee, and as such may be terminated at any time for any reason, with or without cause, and may terminate this Agreement at any time for any reason, with or without cause. Upon termination of employment, Employee shall be entitled to all compensation earned through the last day worked, and shall not be entitled to any additional compensation.
3. *Salary.* Company shall pay Employee a salary of \$\_\_\_\_\_ per month (annualized to \$\_\_\_\_\_), for the services of the Employee, payable at regular payroll periods. Employee shall also be entitled to participate in health insurance programs offered to other similarly situated employees.
4. *Duties and Position.* Employee shall be employed in the capacity of \_\_\_\_\_. The Employee's duties may be reasonably modified at the Company's discretion from time to time. Employee is a full-time, [exempt] \_\_\_\_\_ employee.
5. *Employee to Devote Full Time to Company.* The Employee will devote his or her full time, attention, and energies to the business of Company, and, during this employment, will not engage in any other business activity that interferes with his ability to fulfill his duties at Company. Employee is not prohibited from making personal investments in any other businesses, provided that those investments do not require active involvement in the operation of said companies.
6. *Confidentiality and Ownership of Proprietary Information.* Employee agrees, during and after the term of this employment, not to reveal confidential information or trade secrets of Company [or any of its grant recipients or any of its donors or sponsors] to any person, firm, corporation, or entity. Employee may disclose the fact of his/her work on any Company products in the public domain, but may not disclose confidential information about those works not yet in the public domain to any person, firm, corporation or entity. Should Employee reveal or threaten to reveal this information, Company shall be entitled to an injunction restraining the Employee from disclosing same, or from rendering any services to any entity to whom said information has been or is threatened to be disclosed, the right to secure an injunction is not exclusive, and Company may pursue any other remedies it has against the Employee for a breach or threatened breach of this condition, including the recovery of damages from the Employee. [This Agreement hereby incorporates by reference the Nondisclosure Agreement signed by the Employee on [date].]

[You are hereby informed that an individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.]

7. *Reimbursement of Expenses.* The Employee may incur reasonable and necessary expenses in connection with Employee's duties, including expenses for entertainment, travel, and similar items. Company shall reimburse Employee for all reasonable and necessary business expenses after the Employee presents an itemized account of expenditures, pursuant to Company policy. Mileage reimbursement shall be at the rate set forth by the IRS yearly.

8. *Vacation and Sick Leave.* The Employee shall be entitled to a yearly paid vacation of \_\_\_ weeks (\_\_\_ days). Employee shall also be entitled to \_\_\_ paid sick days yearly. Accrual and use of vacation and sick days shall be governed by Company's employment policies.

9. *Prior Agreements Superseded.* This Agreement supersedes any prior Agreement between Company or any predecessor of Company and the Employee.

10. *Arbitration.* Consistent with applicable law, any claim or controversy that arises out of or relates to this Agreement, or the breach of it, shall be resolved by binding arbitration pursuant to the [JAMS or AAA] rules governing employment disputes, as such rules may be amended from time to time. A copy of the current [JAMS or AAA] rules are attached to this Agreement. Judgment upon the award rendered may be entered in any court with jurisdiction.

13. *Limited Effect of Waiver by Company.* Should Company waive a breach of any provision of this Agreement by the Employee, that waiver will not operate or be construed as a waiver of any further breach by the Employee.

14. *Severability.* If, for any reason, any provision of this Agreement is held to be invalid, all other provisions of this Agreement shall remain in effect.

15. *Assumption of Agreement by Company's Successors and Assignees.* Company's rights and obligations under this Agreement will inure to the benefit of and be binding upon Company's successors and assignees.

16. *Oral Modifications Not Binding.* This instrument is the entire Agreement between Company and Employee regarding the subject matter covered by this Agreement. It may be altered only by a written agreement signed by both parties. Oral changes have no effect.

Date: \_\_\_\_\_  
XYZ Company

Date: \_\_\_\_\_  
Employee

**SAMPLE EMPLOYEE  
NONDISCLOSURE AGREEMENT**



## SAMPLE EMPLOYEE NONDISCLOSURE AGREEMENT For California Employees (Short Form)

This Agreement is entered into between \_\_\_\_\_ (“Employee”) and XYZ Company (the “Company”). In exchange for the consideration set forth in this Agreement, Employee agrees as follows:

*Duties, No Conflict.* I will perform for Company such duties as may be designated by Company from time to time. During my period of employment by Company, I will devote my best efforts to the interests of Company and will not engage in other employment or in any business-related activities determined by Company to be detrimental to the best interests of Company without the prior written consent of Company.

*Prior Work.* All previous work done by me for Company relating in any way to the conception, reduction to practice, creation, derivation, design, development, manufacture, sale or support of products or services for Company is the property of Company, and I hereby assign to Company all of my right, title and interest in and to such previous work.

*Proprietary Information.* My employment status creates a relationship of confidence and trust between Company and me with respect to any information: (a) related to the business of Company; or (b) related to the business of any client or customer of Company, which may be made known to me by Company or by any client or customer of Company, or learned by me in such context during the period of my employment.

All such information has commercial value in the business in which Company is engaged and is hereinafter called “Proprietary Information.” By way of illustration, but not limitation, Proprietary Information includes any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of Company, and includes, without limitation, respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information. “Proprietary Information” also includes proprietary or confidential information of any third party who may disclose such information to Company or to me in the course of Company’s business.

*Ownership and Nondisclosure of Proprietary Information.* All Proprietary Information is the sole property of Company, Company’s assigns, and Company’s customers, and Company, Company’s assigns and Company’s customers shall be the sole and exclusive owner of all patents, copyrights, mask works, trade secrets and other rights in the Proprietary Information. I hereby do and will assign to Company all rights, title and interest I may have or acquire in the Proprietary Information. At all times, both during my employment by Company and after termination of such employment, I will keep in confidence and trust all Proprietary Information, and I will not use or disclose any Proprietary Information or anything directly relating to Proprietary Information without the written consent of Company, except as may be necessary in the ordinary course of performing my duties as an employee of Company. Notwithstanding this paragraph, I understand that I am not assigning my rights to any invention described in Exhibit A to this Agreement and set forth in California Labor Code Section 2870. [Nothing in this Agreement prohibits me from reporting possible violations of federal or state law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal or state law or regulation. I understand that I do not need

the prior authorization of the Company to make any such reports or disclosures and I am not required to notify the Company that I have made such reports or disclosures.]

*Ownership and Return of Materials.* All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists, and all other tangible media of expression) furnished to me by Company shall remain the property of Company. Upon termination of my employment, or at any time on the request of Company before termination, I will promptly (but no later than five (5) days after the earlier of said termination or Company's request) destroy or deliver to Company, at Company's option, (a) all materials furnished to me by Company, (b) all tangible media of expression which are in my possession and which incorporate any Proprietary Information or otherwise relate to Company's business, and (c) written certification of my compliance with my obligations under this sentence.

*No Violation of Rights of Third Parties.* My performance of all the terms of this Agreement and as an employee of Company does not, and will not, breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me prior to my employment with Company, and I will not disclose to Company, or induce Company to use, any confidential or proprietary information or material belonging to any previous employer or others. I am not a party to any other agreement which will interfere with my full compliance with this Agreement. I agree not to enter into any agreement in the future, whether written or oral, in conflict with the provisions of this Agreement.

*[Defend Trade Secrets Act Notice.* You are hereby informed that an individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal; and does not disclose the trade secret, except pursuant to court order.]

*Survival.* This Agreement (a) shall survive my employment with Company; (b) does not in any way restrict my right or the right of Company to terminate my employment at any time, for any reason or for no reason; (c) inures to the benefit of successors and assigns of Company; and (d) is binding upon my heirs and legal representatives.

*Injunctive Relief.* A breach of any of the promises or agreements contained herein will result in irreparable and continuing damage to Company for which there will be no adequate remedy at law, and Company shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

*Governing Law.* This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of California.

*Severability.* If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

*Waiver, Amendment, Modification.* The waiver by Company of a term or provision of this Agreement, or of a breach of any provision of this Agreement by me, shall not be effective unless such waiver is in writing signed by Company. No waiver by Company of, or consent by Company to, a breach by me, will constitute a waiver of, consent to or excuse of any other or subsequent breach by me. This Agreement may be amended or modified

only with the written consent of both me and Company. No oral waiver, amendment or modification shall be effective under any circumstances whatsoever.

*Entire Agreement.* This Agreement represents my entire understanding with Company with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral.

I certify and acknowledge that I have carefully read all of the provisions of this Agreement and that I understand and will fully and faithfully comply with such provisions.

COMPANY  
Signature \_\_\_\_\_ Date \_\_\_\_\_

EMPLOYEE  
Signature \_\_\_\_\_ Date \_\_\_\_\_

SAMPLE

## Exhibit A

Section 2870 of the California Labor Code states that:

(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

SAMPLE

**SAMPLE INDEPENDENT  
CONTRACTOR AGREEMENT**

## SAMPLE INDEPENDENT CONTRACTOR AGREEMENT

This will confirm the terms of your work for XYZ Company as [describe work to be performed]. This Agreement is between XYZ Company (referred to as "Company" in this Agreement), and whose principal place of business is [address], and \_\_\_\_\_ (referred to as "Contractor" in this Agreement), whose principal place of business is [address]. This Agreement becomes effective on [date]. [This Agreement will terminate on [date].]

WHEREAS, Contractor is an independent contractor who offers services to the general public and Company desires to retain the services of Contractor,

NOW, THEREFORE, Contractor agrees to perform services and Company agrees to retain Contractor, under the following terms and conditions:

*Qualification as an Independent Contractor.*

- a. By signing this contract, Contractor and Company declare that Contractor is and shall be, at all times during the term of this contract, free from control and direction in connection with the performance of the services pursuant to this contract.
- b. By signing this contract, Contractor and Company recognize and declare that the services to be performed pursuant to this contract are outside the usual course of business of Company.
- c. By signing this contract, Contractor declares that it is customarily engaged in an independently established trade, occupation, or business of the same nature as the services to be provided pursuant to this Agreement.

*Scope of Work:* Contractor agrees to perform the following services: [insert description]. Contractor's services will be referred to as "Work" in this Agreement.

*Fees and Invoices:* Contractor will submit an invoice each month that services are performed. The invoice will include an invoice number and a brief description of services. All fees are payable within [30 days after invoicing and satisfactory completion of services]. Contractor's fees will be based on a rate of [insert payment rate based on time or project].

*Contractor's Expenses:* Contractor will be responsible for all expenses in performing the Work specified in this Agreement including, but not limited to, Contractor's overhead, license fees, memberships and dues, travel expenses, meals, insurance premiums, and any salary or other compensation paid to Contractor's employees or contract workers.

*Relationship Between Parties:* Contractor is an independent contractor and neither Contractor nor anyone retained or hired by Contractor as Contractor's employees or contract personnel are, or shall be deemed, Company's employees. Contractor is not authorized to contract on behalf of Company nor claim to represent Company as Company's agent or spokesperson either during or after the period of retention. By signing this contract, Contractor declares that Contractor is an independent contractor, and not an employee of Company. Therefore, Contractor has the sole right to control and direct the means, manner and method by which the Work required by this Agreement will be performed. Contractor sets Contractor's own work hours and works at Contractor's office or any other place Contractor chooses. Contractor performs work for other companies and has the right to continue to do so. In addition, Contractor agrees to furnish all equipment, labor and materials needed for the Work required by this Agreement. Contractor has the right to hire assistants as subcontractors, or to use employees to do the Work. Contractor's employees or contract personnel are not employees of Company. Contractor is solely responsible for all wages, costs, and expenses of such employees or contract personnel and has the sole and exclusive right to supervise and control them. Company will not require Contractor or Contractor's employees or contract personnel to devote full time to performing the Work required by this Agreement.

*No Benefits:* Neither Contractor nor Contractor's employees or contract workers are eligible for workers' compensation or unemployment insurance benefits from Company, and therefore Contractor and Contractor's employees or contract workers will not apply for such benefits. Also, neither Contractor nor Contractor's employees or contract personnel may participate in any employee benefit plan of Company, including but not limited to pension, profit sharing, stock option, health, vacation pay, or sick pay plan. Contractor agrees that in the event a court or government agency determines that Contractor is an employee rather than an independent contractor, Contractor waives any right to recover from Company, and promises not to seek from Company, employee benefits of any kind to which an employee of Company would have been entitled during the period prior to the court or government agency's ruling.

*Workers' Compensation Coverage:* If Contractor hires others to perform any work under this Agreement, Contractor will cover them with workers' compensation insurance as required by law and provide Company with a certificate of coverage. If Contractor is not a corporation, Contractor will also obtain workers' compensation coverage for Contractor.

*Responsibility for Taxes:* Since Contractor is an independent business, Contractor is responsible for all income, Social Security, self-employment, unemployment and other taxes that may be due as a result of payments to Contractor under this Agreement. Upon request, Contractor will provide Company with proof that such payments have been made. No taxes will be withheld from Company's payments to Contractor. Contractor will complete an IRS Form W-9 certifying that Contractor is not subject to backup withholding. Company will provide Contractor with an IRS Form 1099 at the end of each year showing all fees paid to Contractor during the year. In the event of an audit, Contractor agrees to promptly cooperate with Company and provide copies of Contractor's state and federal income tax returns, and other documents as Company may reasonably request.

*Permits, Certificates and Licenses:* Contractor will comply with all federal, state and local laws requiring business permits, certificates and licenses necessary to perform the Work described in this Agreement.

*Liability Insurance:* Contractor agrees to maintain a liability insurance policy of at least [amount] to cover any negligent acts committed by Contractor or Contractor's employees or agents while performing services under this Agreement. Contractor also agrees to have Company named as an additional insured under the policy. Contractor will provide a copy of the declarations page of the policy to Company no later than the effective date of this Agreement.

*Indemnification.* Contractor agrees to indemnify and hold harmless Company from any and all claims by Contractor, which may arise out of and in the course of the performance of services under this Agreement. Any and all claims for unemployment benefits and/or claims for workers' compensation benefits, by Contractor or Contractor's employees, are hereby expressly waived by Contractor.

*Intellectual Property:* Contractor hereby assigns and transfers to Company all of Contractor's rights in the Work. The rights assigned include, but are not limited to, all title and interest in all copyright, trademark, patent and any other proprietary rights. Contractor will assist Company if necessary, at no additional cost to Company except for reasonable out-of-pocket expenses, in obtaining and enforcing all copyrights and other intellectual property rights. If Contractor hires employees or contract workers to assist Contractor in completing the Work, Contractor will, as soon as practical, provide Company with each person's name, address and telephone number. Contractor is responsible for obtaining an assignment from each person, in writing, of all intellectual property rights in the Work to Company in a form to be approved by Company.

*Confidentiality:* In the course of Contractor's relationship with Company, Contractor may have access to confidential trade secret information (referred to in this Agreement as Confidential Information) including, but not limited to, formulas, customer lists, designs, processes, inventions, methods, business strategies, plans, and operations. All of the Confidential Information will remain the sole property of Company and will not be used or duplicated by Contractor except in connection with the Work to be done by Contractor under this Agreement. Contractor will keep the Confidential Information in the strictest confidence and will not disclose it by any means to any third party, except with Company's prior written approval, and only to the extent necessary to do the Work. Contractor may disclose the Confidential Information to [his/her/its] employees or contract personnel only to the extent necessary to do the Work and only after they have agreed in writing to the provisions of this Paragraph. Upon termination of this



Agreement, Contractor will return to Company all of the Confidential Information in Contractor's possession, including computer files, written documents and notes, and will cease to make any further use of it. Contractor's obligations under this Paragraph will remain in effect during the term of this Agreement and will continue after its termination.

*Termination of Agreement.* This Agreement will terminate on the completion of the Work as described in this Agreement. [or: Either party may terminate this Agreement at any time by [10] business days' written notice to the other party.<sup>1</sup>] In addition, notwithstanding the foregoing, Company may terminate this Agreement immediately and without prior written notice to the Contractor if the Contractor is convicted of any crime or offense, fails or refuses to comply with the written policies or reasonable directive of the Company, is guilty of serious misconduct in connection with performance under this Agreement, or materially breaches provisions of this Agreement.

*Headings.* Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

*Binding Effect, Entire Agreement, Modifications, Waiver.* This Agreement will be binding on the heirs, successors and assigns of the parties. It may not be assigned without the written consent of both parties. This is the entire agreement between Company and Contractor. It supersedes all prior agreements, if any. It can only be changed by a written agreement signed by Company and Contractor. If any part of this Agreement is deemed unenforceable, the remaining portions will continue in full force and effect. A waiver of a breach of any portion of this Agreement will not be considered to be a waiver of any future breaches. This Agreement will be governed by California law.

By signing below, Contractor and Company acknowledge and agree to the terms set out in this Agreement.

CONTRACTOR

By: Signature \_\_\_\_\_ Date \_\_\_\_\_

COMPANY

By: Name Printed \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

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<sup>1</sup> Note that the ability to terminate at-will is an indication of an employer-employee relationship. Therefore, the company should consider including in the agreement specific grounds for its termination.



## **SAMPLE AT-WILL EMPLOYMENT POLICY**

## SAMPLE AT-WILL EMPLOYMENT POLICY

Your employment with XYZ Company is employment “at-will.” This means that both you and XYZ Company have the right to terminate your employment at any time, with or without advance notice, and with or without cause. Employees also may be demoted or disciplined and the terms of their employment may be altered at any time, with or without cause and with or without notice, at the discretion of XYZ Company. Any such demotion, discipline or other change in employment status shall not change the at-will nature of your employment in any way. No one other than the President of XYZ Company has the authority to alter this arrangement, to enter into an agreement for employment for a specified period of time, or to make any agreement contrary to this policy, and then only in writing signed by the President of XYZ Company.

SAMPLE

**SAMPLE EQUAL EMPLOYMENT  
OPPORTUNITY POLICY**

# SAMPLE EQUAL EMPLOYMENT OPPORTUNITY POLICY

## California Employees

XYZ Company is an equal opportunity employer. XYZ Company treats employees and applicants based on their qualifications, ability to do the job and level of competence. XYZ Company will not discriminate against employees or applicants on the basis of race (including protective hair styles, hair texture, and other traits historically associated with race), color, national origin (including language use restrictions, English proficiency, accent, or other physical, cultural or linguistic characteristics associated with a national origin group, and possession of a driver's license issued under Vehicle Code section 12801.9), immigration status, ancestry, religion and religious creed (including religious dress and grooming), political affiliation, citizenship, sex, gender, gender identity (including transgender identity and transitioning), gender expression, sexual orientation, age, pregnancy, childbirth, breastfeeding and related medical conditions, marital status, registered domestic partner status, military or veteran status, legally protected medical condition (including cancer), physical or mental disability, genetic information or characteristics, AIDS/HIV status, family care status, domestic partner status, status as a victim of domestic violence, reproductive health decision-making, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding employee wages, requesting a reasonable accommodation on the basis of disability, pregnancy, or bona fide religious belief or practice, or any other protected classification under federal, state or local law.

In order to ensure equal employment opportunities for disabled individuals, XYZ Company will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified employee with a disability, unless undue hardship would result. XYZ is committed to engaging in a timely interactive process to identify and implement reasonable accommodations. If an employee with a disability believes he or she needs a reasonable accommodation, the employee should contact Human Resources.

XYZ Company also will make reasonable accommodations in accordance with applicable law for disabled veteran employees and in connection with an employee's religious beliefs and practices. Furthermore, XYZ Company is committed to engaging in a timely interactive process to determine effective reasonable accommodations for an employee who is a victim of domestic violence, sexual assault or stalking who requests an accommodation for the victim's safety at work. An employee who believes he or she needs an accommodation should contact Human Resources.

**SAMPLE POLICY AGAINST HARASSMENT,  
DISCRIMINATION AND RETALIATION**

# SAMPLE POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION For California Employees

## **GENERAL**

The Company is committed to providing all employees with a safe and respectful working environment that is free from sexual harassment, as well as harassment and discrimination on the basis of the following protected categories: race (including protective hair styles, hair texture, and other traits historically associated with race), color, national origin (including language use restrictions, English proficiency, accent, or other physical, cultural or linguistic characteristics associated with a national origin group, and possession of a driver's license issued under Vehicle Code section 12801.9), immigration status, ancestry, religion and religious creed (including religious dress and grooming), political affiliation, citizenship, sex, gender, gender identity (including transgender identity and transitioning), gender expression, sexual orientation, age, pregnancy, childbirth, breastfeeding and related medical conditions, marital status, registered domestic partner status, military or veteran status, legally protected medical condition (including cancer), physical or mental disability, genetic information or characteristics, AIDS/HIV status, family care status, domestic partner status, status as a victim of domestic violence, reproductive health decision-making, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding employee wages, requesting a reasonable accommodation on the basis of disability, pregnancy, or bona fide religious belief or practice, or any other protected classification under federal, state or local law.

As such, the Company maintains a strict policy that forbids harassment and other harassment and discrimination against applicants or employees by co-workers, supervisors, managers and professionals. As used in this policy, the term "employees" shall include interns, whether paid or unpaid. The Company's policy also prohibits discrimination, harassment, disrespectful, or unprofessional conduct based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics.

The Company will not tolerate harassment by its employees of non-employees with whom the Company has a business, service or professional relationship. The Company also does not tolerate harassment of employees by non-employees, such as clients, vendors, contingent workers, and guests.

Through enforcement of this policy and by education of employees, the Company will seek to prevent, correct, and discipline behavior that violates this policy. This policy applies at all Company locations, Company-sponsored social or other events, and other activities at which you represent the Company. It applies to all areas of employment, including recruiting, hiring, training, promotion, compensation, benefits, transfer, disciplinary action, and social and recreational programs. It is the responsibility of every employee to conscientiously follow this Policy.

Anyone having questions about this Policy should discuss them with the President.

The Company does not prohibit an employee from, as permitted by law, disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employees to exercise their rights under California's Fair Pay Act. The Company also complies with any applicable restrictions on requesting or using salary history information.

## **EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION**

It is the Company's Policy to employ, retain, promote, terminate and otherwise treat all employees and job applicants on the basis of merit, qualifications and competence. Therefore, it is a violation of the Company's policy to unlawfully discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment, if that discriminatory treatment is, in whole or in part, based on a protected classification under federal, state or local law. Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

## REASONABLE ACCOMMODATION

Consistent with the law, the Company is committed to engaging in a timely interactive process to identify and implement reasonable accommodations for qualified individuals with disabilities; for pregnancy, childbirth and related medical conditions; for disabled veterans; for employees who are victims of domestic violence, sexual assault or stalking; and for applicants and employees based on their religious beliefs and practices. The Company also supports lactating employees by providing accommodations, including lactation breaks and a lactation space, to an employee who wishes to express breast milk during the work day. If you believe you need a reasonable accommodation for any of these reasons, please contact the President. A request for reasonable accommodation should be as specific as possible. The Company will not retaliate against any employee or applicant for requesting a reasonable accommodation and will not knowingly tolerate or permit retaliation by management, employees or coworkers.

## HARASSMENT PREVENTION

Harassment, whether sexual or on another protected basis, includes verbal, physical and visual conduct that unreasonably interferes with an employee's work performance or creates an intimidating, offensive or hostile working environment. Prohibited harassment can take many forms, including but not limited to offensive language, jokes, and other verbal, graphic, or physical conduct. Some behavior which may be appropriate in a social setting amongst friends will not be appropriate and will not be tolerated in the work environment or in the context of a work relationship. Insulting or derogatory comments or pictures or slurs implicating a protected characteristic, whether intended jokingly or not, are always inappropriate.

The Company understands that victims of harassment are often embarrassed and reluctant to report acts of harassment for fear of being blamed, concerns about retaliation, or because it is difficult to discuss matters of harassment, including sexual harassment, openly with others. However, no employee should have to endure harassing conduct, and the Company therefore encourages all employees to report any incidents of harassment immediately so that complaints can be quickly and fairly resolved (see REPORTING AND INVESTIGATION PROCEDURE below). If you find conduct in the workplace to be unwelcome or offensive, you may immediately inform the person engaging in the conduct in a clear and unambiguous manner that the conduct is unwelcome or offensive and that you want the conduct to stop.

### Sexual Harassment

Impermissible sex harassment, which includes sexual harassment, sex/gender/gender identity/gender expression harassment, and harassment because of pregnancy, childbirth, breastfeeding, or related medical conditions, may take many forms. Sexual harassment may include unwelcome solicitation of sexual favors (coercion), unwelcome sexual advances, or other unwelcome written, verbal, physical or visual conduct with sexual overtones. Here are examples of these categories:

**Coercion:** This is called "quid pro quo" sexual harassment. It occurs when a supervisor/manager of an employee conditions continued employment or an employment benefit (a promotion, pay raise, transfer, etc.) on submission to or acceptance of unwelcome sexual advances.

**Unwelcome Sexual Behavior:** This occurs when any employee continues to express unsolicited sexual interest in another employee after being put on notice that the interest is unwelcome. If both employees consent to a relationship, however, it is not sexual harassment.

**Hostile Working Environment:** This occurs when sexual conduct interferes with an employee's work performance and creates an intimidating, hostile, or offensive work environment. Here are some examples:

- Sexually derogatory comments, slurs, jokes, remarks, emails or text messages
- Leering, making sexual gestures, or displaying sexually suggestive objects, pictures, cartoons, posters, or screensavers
- Assault, blocking normal movement, restraint, touching or other physical interference with work directed at an individual
- Unwelcome sexual advances or invitations

- Use of computers, including the Internet and the email system, to transmit, communicate or receive sexually-suggestive, pornographic, or sexually explicit pictures, messages or material
- Threats and demands to submit to certain conduct or to perform certain actions in order to keep or get a job, to avoid the loss of job benefits, security or promotion

These examples are not an exhaustive list of the kinds of conduct that should not occur in the workplace. The point is that any unsolicited, unwelcome or offensive conduct that has sexual overtones is simply unacceptable in the workplace. Furthermore, sexually harassing conduct need not be motivated by sexual desire to be in violation of this policy or the law.

### **Harassment Generally**

Prohibited harassment includes not just sexual harassment but also harassment based on any protected category. This includes, but is not limited to, racial slurs, ethnic jokes, derogatory or insensitive jokes or pranks, ridiculing or demeaning comments, posting offensive statements, posters or cartoons, assault or other unwelcome physical conduct, intentionally excluding someone from normal workplace conversations and making them feel unwelcome, or other similar conduct. These types of acts can create a hostile working environment, which will not be tolerated. "I was joking" or "I didn't mean it that way" are not defenses to allegations of harassment, nor is being under the influence of alcohol or other substances.

### **ABUSIVE CONDUCT AND BULLYING**

In addition, the Company does not tolerate abusive conduct or bullying toward any person in the workplace. This includes conduct in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to the Company's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance.

### **REPORTING AND INVESTIGATION PROCEDURE**

If you believe that you are the victim of harassment, discrimination, or retaliation, or you witness work-related harassment, discrimination, or retaliation by any of the Company's personnel or any other person, you should promptly report it. Depending on what will make you the most comfortable, you can report it to the President or the Board. This complaint procedure is specifically designed so that individuals in the workplace have a mechanism that allows them to bypass a supervisor or co-worker the individual believes is engaged in prohibited conduct under this policy. No one, not even the highest-ranking individuals in the Company, is exempt from the requirements of this policy.

Any supervisor or manager who receives a complaint or observes harassing or other inappropriate conduct must promptly (ideally within 24 hours) inform the President, or the Board if the complaint concerns the President, so that an investigation may be initiated. Failure to promptly report will subject to a supervisor or manager to discipline.

The Company takes all complaints of discrimination, harassment, and retaliation seriously. Please provide all known details of the incident or incidents, names of individuals involved and names of any witnesses. It would be best to communicate your complaint in writing, but this is not mandatory.

Every reported complaint will be investigated in an objective, timely, fair, impartial and thorough manner in accordance with all legal requirements. The Company will reach reasonable conclusions based on the evidence collected. Typically, the investigation will include the following steps: an interview of the employee who lodged the complaint to obtain complete details regarding the alleged discrimination, harassment or retaliation; interviews of anyone who is alleged to have committed the alleged misconduct; interviews of any employees who may have witnessed, or who may have knowledge of, the alleged misconduct; and a review of relevant documentation or reading, writing or visual materials. The Company will make every effort to preserve the confidentiality of the subject matter of the investigation to the extent possible and will disclose sensitive information only to the extent needed to conduct a thorough inquiry. All employees have an obligation to cooperate with any investigation.



The investigation will be documented and the Company will advise the complaining party, as well as other individuals as appropriate, of the results of the investigation and whether appropriate corrective action has been taken.

As an overview, under this Policy complaints will be:

- Responded to in a timely manner
- Kept confidential to the extent possible
- Investigated impartially by qualified personnel in a timely manner
- Documented and tracked for reasonable progress
- Given appropriate options for remedial action and resolution
- Closed in a timely manner

### **CORRECTIVE ACTION**

Should the Company's investigation result in a finding of misconduct, the Company will take appropriate remedial and/or disciplinary action to stop the misconduct and to prevent further harassment, discrimination or retaliation. Any employee who is found after investigation to have engaged in harassment, discrimination or retaliation in violation of this policy will be subject to disciplinary action, depending on the circumstances, up to and including termination. The Firm will also take appropriate corrective action if it learns that any third party in the workplace has engaged in improper harassment. Violation of the law may also lead to personal legal and financial liability for the responsible individual.

### **NO RETALIATION**

Adherence to this policy and cooperation in the Company's efforts to enforce the policy is essential. The Company will not tolerate any reprisals or retaliation against anyone who in good faith reports known or suspected prohibited harassment or discrimination or for appropriately initiating, assisting or participating in any discrimination or harassment investigation, action or proceeding.

### **TRAINING**

All Company managers, supervisors and employees are required to complete sexual harassment and abusive conduct prevention training as required by law. Non-supervisory employees will receive one hour of prevention training, and supervisors/managers will receive two hours of prevention training, every two years.

For additional information regarding harassment prevention, see the California Civil Rights Department's online Sexual Harassment Prevention Training programs, which can be accessed at: <https://calcivilrights.ca.gov/shpt/>.

### **ADDITIONAL INFORMATION**

The Company encourages all staff members to use the Company's procedures for resolving complaints. Employees should also be aware that the California Civil Rights Department and the federal Equal Employment Opportunity Commission (EEOC) investigate and prosecute complaints of unlawful harassment, retaliation or discrimination in employment. If employees believe they have been harassed or have been discriminated or retaliated against for pursuing their rights under this policy or participating in an investigation under this policy, they may file a complaint with the appropriate agency. The Company will not tolerate, nor does the law allow, retaliation against an employee for filing a complaint, or otherwise participating in an investigation, proceeding or hearing conducted by any government agency or commission. Employees can contact the EEOC at eec.gov or (800) 669-4000, or the Civil Rights Department at calcivilrights.ca.gov or (800) 884-1684.

\*\*\*\*\*

**ACKNOWLEDGMENT OF RECEIPT OF COMPANY'S POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION**

By my signature below, I acknowledge that I have received a copy of [COMPANY'S] POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION, effective [DATE].

I understand and agree that it is my responsibility to read and familiarize myself with this Policy. I understand that the Company is committed to providing a work environment that is free from harassment, discrimination and retaliation. My signature certifies that I understand that I must abide by the rules and requirements described in this Policy.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_

SAMPLE

## SAMPLE OVERTIME POLICY

# SAMPLE OVERTIME POLICY

## For Employees Working in California

Non-exempt employees may be required to work overtime for business needs. XYZ Company pays employees for their hours worked according to the law. Non-exempt employees generally receive overtime compensation for hours worked in excess of 8 hours in a day or 40 hours in a work week and as otherwise provided by applicable law.

For purposes of calculating overtime hours, XYZ Company's work week runs from 12:01 a.m. Monday to 12:00 midnight on Sunday. Non-exempt employees will be paid one and one-half (1-1/2) times the employee's regular hourly rate for all hours worked over eight (8) hours in one day, or over forty (40) hours in one seven (7) day work week, or for the first eight (8) hours on the seventh (7th) consecutive day of work in a work week. Double time will be paid for any work in excess of eight (8) hours on any seventh (7th) consecutive day of work in a work week, or after twelve (12) hours worked in one day.

Absence from work for paid holidays, vacation, illness, bereavement, or jury duty is not counted as time worked for the purpose of computing overtime.

Your manager must approve all overtime work *in advance*. It is against XYZ Company policy to work overtime without prior approval. Working unauthorized overtime is grounds for discipline, up to and including termination.

Exempt employees are expected to work as much as is necessary to complete their job responsibilities. No overtime or additional compensation is provided to exempt employees.

## **SAMPLE TIMEKEEPING/OFF-THE-CLOCK POLICY**

# SAMPLE TIMEKEEPING/OFF-THE-CLOCK POLICY

XYZ Company requires all non-exempt employees to record their time worked [*on a time sheet or specify timekeeping system*] for payroll purposes. An employee's time sheet is the record of his or her hours worked, from which his or her payroll check is computed. Employees must take care to ensure that their time sheet is an accurate record of the time worked. If for any reason an employee fails to accurately record his or her time worked, the employee should see Human Resources immediately so that the error or omission can be corrected.

The following rules must be observed regarding timekeeping:

- Employees must accurately record the actual time worked during each and every work day.
- Employees must not begin work prior to their scheduled shift time and must not end work after the scheduled end of their shift. Exceptions are permissible only when the employee has received advance approval from Human Resources or the employee's manager.
- Employees must record their actual out and in time for meal periods or whenever they leave the office for any reason other than XYZ Company business.
- Employees must accurately enter time for vacation and other time off.
- Overtime must be authorized by Human Resources or the employee's manager before the overtime is worked.
- Any modifications or alterations on an employee's time card must be initialed by the employee's manager.
- Employees should review and sign their time cards at the end of each pay period, provided that they are completed correctly.

Note: You may not begin working until you have clocked in, and you may not work after you have clocked out. Working "off-the-clock" for any reason is a violation of XYZ Company policy. If you forget to clock in or out, or if you believe your time records are not recorded accurately, you must notify Human Resources or your manager immediately so the time can be accurately recorded for payroll purposes.

Violations of this policy are subject to disciplinary action up to and including termination.

# **SAMPLE FAMILY FRIENDLY WORKPLACE POLICY**

# SAMPLE SAN FRANCISCO FAMILY FRIENDLY WORKPLACE POLICY [EMPLOYERS WITH 20+ EMPLOYEES]

XYZ Company complies with the San Francisco Family Friendly Workplace Ordinance (“FFWO”). Pursuant to the FFWO, eligible employees may request a “flexible or predictable working arrangement” required to assist with caregiving responsibilities for: 1) a child under age 18 for whom the employee has assumed parental responsibility (including a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis to that child); 2) a person who is age 65 or older and in a family relationship with the employee; or 3) a person with a “serious health condition” in a “family relationship” with the employee (including persons to whom the employee is related by blood, legal custody, marriage, or domestic partnerships, as a spouse, domestic partner, child, parent, sibling, grandchild or grandparent).

Eligible employees are those who: 1) have been employed by XYZ Company for six months or more; 2) are employed in San Francisco or teleworking and assigned to a San Francisco office; and 3) regularly work at least eight hours per week.

[*Optional:* Flexible or predictable working arrangements may include changes related to the number of hours the employee is required to work, the times the employee is required to work, where the employee is required to work, work assignments or other factors, or predictability in a work schedule.]

Requests for a flexible or predictable working arrangement must be in writing and submitted to Human Resources. Requests must be submitted on XYZ Company’s Flexible or Predictable Working Arrangement Request Form. Requests should be submitted well in advance of the date the employee is requesting to have the change take effect. Upon receiving the written request for a flexible or predictable working arrangement, XYZ Company will respond to the request within 21 days. XYZ Company may require verification of caregiving responsibilities. XYZ Company will consider requests in compliance with the FFWO, and may deny requests if able to demonstrate undue hardship. XYZ Company will provide a written response that includes an explanation for the denial and notifies the employee of their right to request reconsideration within 30 days and file a complaint with OLSE. Upon receiving a request for reconsideration, XYZ Company will arrange a meeting with the employee to discuss the request within 21 days. XYZ Company will send a final written decision to you within 14 days after the meeting. The FFWO does not guarantee employees a specific outcome.

XYZ Company will not retaliate against any employee for requesting a flexible or predictable working arrangement under the FFWO, for exercising any right under the FFWO, or based on the employee’s caregiver status. Nothing in this policy or the FFWO creates a right to be paid when XYZ Company does not have sufficient work for the employee. Furthermore, time off under this policy (including, but not limited to, a part-time schedule or other reduced work schedule) may run concurrently with leaves of absence or other time off for which the employee is eligible, as permitted by law.

For more information, please refer to the FFWO poster located in the [e.g. *break room*] or contact Human Resources.



## **SAMPLE APPEARANCE AND GROOMING POLICY**

## SAMPLE APPEARANCE AND GROOMING POLICY

How our Company image is presented to our customers, suppliers, and the public at large is important to us. Because our employees are a reflection of our Company image, we expect employees to observe high standards in their personal presentation.

Accordingly, employees are expected during business hours or whenever representing the Company to maintain a neat and clean appearance that is appropriate for the workplace setting and for the work being performed. This is particularly true if your job involves dealing in person with customers or visitors.

Jewelry and visible body art/tattoos are permitted unless, in the Company's discretion, they conflict with an employee's ability to perform effectively in their position or in the specific work setting. Body art containing symbols or words that may be offensive to others must be covered at all times in the workplace.

The Company also wishes to remind employees that offensive body odor and poor personal hygiene is not professionally acceptable. In addition, perfume, cologne, aftershave, or other products with fragrances, should be used minimally or avoided altogether, as some individuals may be sensitive to strong fragrances.

If your supervisor feels your personal appearance is inappropriate, you may be asked to leave work until you can return properly dressed or groomed. If you have any questions regarding what is appropriate, or if you require a reasonable accommodation, please consult your supervisor or Human Resources. Nothing in this policy is intended to prohibit hair styles, hair textures and other traits historically associated with race, nor does this policy restrict employees' clothing or appearance on the basis of gender.

# **SAMPLE RELIGION REASONABLE ACCOMMODATION POLICY**

## SAMPLE RELIGION REASONABLE ACCOMMODATION POLICY

The Company respects the sincerely held religious beliefs, practices and observances of its employees. The Company also understands that an employee's religious beliefs, practices or observances may come into conflict with workplace obligations, including schedules, job responsibilities, or policies and procedures. At an employee's request, the Company will attempt to provide a reasonable workplace accommodation for the employee's sincerely held religious beliefs and practices, provided that doing so does not impose an undue hardship on Company or the employee's department, or interfere with the employee's ability to perform the essential functions of his or her position.

An employee who needs an accommodation must submit a written request to his or her supervisor [or Human Resources]. The request must detail the nature of the employee's requested accommodation, the reason(s) for the request, and the timing or duration of the requested accommodation. Employees may be required to provide appropriate documentation to support the request. The Company will evaluate the employee's request based on whether a work conflict exists due to a sincerely held religious belief or practice and whether there is a reasonable accommodation (whether the employee's requested accommodation or another accommodation) that would not create an undue hardship.

SAMPLE

**SAMPLE FORM – REQUEST FOR  
RELIGIOUS ACCOMMODATION**

## SAMPLE FORM - REQUEST FOR RELIGIOUS ACCOMMODATION

**To be completed by Employee:**

Reason for request (e.g. job or schedule conflict, dress/appearance policy conflict, time to pray): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requested religious accommodation (please be specific and include information regarding timing and duration (whether the accommodation is temporary or permanent): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Length of time accommodation needed: \_\_\_\_\_

Specific Days/Shifts needed: \_\_\_\_\_

In some cases the Company may need to obtain documentation or other confirmation regarding your religious practice or belief. If requested, can you obtain documentation or other authority to support your need for an accommodation?  Yes  No

I understand that the Company may not be able to grant my requested accommodation but that the Company will attempt to provide a reasonable accommodation for my sincerely held religious beliefs or practices, provided that doing so does not create an undue hardship on the Company.

Employee name (printed): \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\*

**Go to Next Page**

**To be completed by Supervisor or Human Resources:**

Describe the impact (if any) of Employee's suggested accommodation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Employee's requested accommodation accepted?       Yes       No

Alternative accommodations (list in order of preference):

1. \_\_\_\_\_

2. \_\_\_\_\_

Discussed with Employee on: \_\_\_\_\_

Accommodation agreed upon (please be specific and include duration and timing): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If no agreement on an accommodation, explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Supervisor or Human Resources)

SAMPLE

## **SAMPLE LACTATION ACCOMMODATION POLICY**



## SAMPLE LACTATION ACCOMMODATION POLICY

It is the Company's policy to provide a positive atmosphere of support for breastfeeding employees and to provide lactation accommodations consistent with applicable laws.

Breastfeeding employees are permitted to use their normal paid rest break times for expressing breast milk during work hours. Break time that exceeds an employee's paid rest break time will be unpaid for non-exempt employees, and the employee should indicate this additional break time on the employee's time record.

Company will designate a private area (other than a bathroom) for employees to express milk in private. Company will provide a space that is clean and free of hazardous materials, contains a chair and surface space for a breast pump and other personal items, and has access to electricity. The designated area will provide a refrigerator [or, if a refrigerator cannot be provided, a suitable cooling device] where the employee can store breast milk (clearly labeled with the employee's name and date), as well as access to a sink with running water. The designated area will be in close proximity to the employee's work area and shielded from view and intrusion by others. The designated area may be the employee's regular work area if it meets these requirements. If the designated room is used for multiple purposes, the Company will notify employees that lactation takes precedence over other uses for the room. Employees are responsible for keeping the designated lactation room clean for the next user.

Employees who require lactation accommodation regarding breaks or location should submit a written request to Human Resources, which will respond within five business days to the employee's request. The Company will engage with the employee in an interactive process to determine appropriate lactation periods and location. No employee will be retaliated against for exercising the right to request lactation accommodation or for exercising rights regarding lactation accommodation under applicable laws. California employees have a right to file a claim with the California Labor Commissioner's office for any violation of a right under this policy or state law.

**NOTE FOR EMPLOYERS:** Employers must have a written Lactation Accommodation policy that must be distributed upon hire, included in any handbook and must be provided to any employee who inquires about or requests parental leave.

## SAMPLE REMOTE WORK POLICY

# SAMPLE REMOTE WORK POLICY

It is the policy of the Company to maintain a safe and healthy workplace and minimize the transmission of the coronavirus in the outbreak of the COVID-19 pandemic. To protect our workforce and ensure business continuity during the COVID-19 pandemic, the Company is implementing a work from home arrangement for all employees whose job duties allow them to work remotely and consistent with local orders to maximize remote work.

Telecommuting/teleworking is the concept of working remotely on a full- or part-time basis from a location other than the Company's own offices. It could mean that employees are working full-time from their homes. Telecommuting may be appropriate for some employees and jobs, but not for others. Whether and to what extent telecommuting is appropriate for a given employee or job is determined by the nature of the employee's job duties. Telecommuting is not an entitlement, it is not a companywide benefit, and it in no way changes the terms and conditions of employment with the Company. Your employment continues to be on an at-will basis.

## **Compensation and Work Hours**

The employee's compensation, benefits, work status and work responsibilities will not change because of telecommuting. The amount of time the employee is expected to work per day or pay period will not change as a result of telecommuting. If employees are unsure of what hours they are expected to work while telecommuting, they should consult their manager.

Telecommuting employees who are not exempt from overtime and meal and rest period requirements must comply with all Company policies regarding overtime and meal and rest periods, and must accurately and timely record all hours worked and meal periods taken using [the Company's timekeeping tools]. Hours worked outside of or in excess of those scheduled per day and per workweek (including time spent reading and/or responding to emails or other communications, or making or taking telephone calls) require the advance approval of management.

Telecommuting is not a substitute for family care arrangements. Employees must determine how to provide primary care for dependents during telework hours.

## **Equipment/Tools**

The Company will reimburse employees for all expenses that are necessary and reasonable for the performance of their job duties. This may include reimbursing employees for some or all of the costs of computer hardware, computer software, phone lines, cell phone, data usage, home internet, email, voice-mail, connectivity to host applications, and other applicable equipment as deemed necessary, consistent with applicable law.

The use of equipment, software, data supplies when provided by the Company for use at the remote work location is limited to authorized persons and for purposes relating to Company business. The Company will also provide for repairs to company equipment.

## **Security**

When telecommuting, employees must designate an appropriate remote workspace and must maintain this workspace in a safe condition, free from hazards. Consistent with the Company's expectations of information security for employees working at the office, telecommuting employees will be expected to take appropriate measures to ensure the protection of confidential and/or proprietary Company information that are accessible from their remote offices. Employees remain subject to the same applicable confidentiality policies and procedures as they are in the Company's offices.

## **Office Supplies**

Office supplies that are reasonable and necessary will be provided by the Company. Out-of-pocket expenses for office supplies will not be reimbursed unless by prior written approval of the employee's manager.

## **Communication**

Employees must be available by phone and email during core business hours, unless an accommodation is approved by the employee's manager, in writing. Employees will need to communicate with their manager regularly, within normal working hours, to make sure all expectations are being met. If necessary, employees can forward

office calls to an appropriate phone number for conducting business. If a personal cell phone will be used, employees should consider modifying voicemail greetings to be appropriate for receiving business calls.

Telecommuting employees remain obligated to comply with all company rules, practices and instructions. Employees who are capable of working remotely will continue to do so unless notified otherwise by the Company. The Company will closely monitor the status of the COVID-19 pandemic and evaluate if and when it would be safe for employees to return to the workplace again.

SAMPLE

## SAMPLE CFRA POLICY

# FAMILY AND MEDICAL LEAVE POLICY UNDER THE CALIFORNIA FAMILY RIGHTS ACT

The Company provides eligible employees with up to 12 weeks of family and medical leave in any 12-month period pursuant to the California Family Rights Act (CFRA). To be eligible for this leave, employees must meet the following eligibility requirements:

- have been employed by the Company for at least 12 months (which need not be consecutive); and
- have worked for the Company for at least 1250 hours during the 12-month period immediately preceding the commencement of the leave.

Eligible employees may use the CFRA leave only for the following reasons:

- To bond and/or care for a newborn child;
- For placement with the employee of a child for adoption or foster care and to care for the newly placed child;
- To care for the employee's spouse, registered domestic partner, child (including adult children), parent, parents-in-law, grandparent, grandchildren, sibling, child of a domestic partner with a serious health condition, or other designated person who is an individual related by blood or whose association with the employee is equivalent of a family relationship;
- For the employee's own serious health condition; and/or
- Because of any qualifying exigency arising out of the fact that an employee's spouse, registered domestic partner, child, child of a registered domestic partner, or parent is a covered military member on covered active duty or called to covered active duty status (or has been notified of an impending call or order to covered active duty) in the reserves component of the armed forces in support of contingency operations or regular armed forces for deployment to a foreign country. This leave also is available for family members of active duty service members on a rest and recuperation leave, as set forth below.

"Serious health condition" means an illness, injury (including, but not limited to, on-the-job injuries), impairment, or physical or mental condition of the employee or a covered family member that involves either inpatient care or continuing treatment. It generally will not include conditions like the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), or routine dental problems, unless complications arise. Pregnancy, childbirth, or related medical conditions do not constitute a "serious health condition" under CFRA.

## 1. Duration of Leave

Employees may be granted a maximum of 12 weeks of CFRA leave in any 12-month period. The 12-month period will be calculated backward from the date on which the employee first takes the leave.

Leave for the birth, adoption or foster care placement of a child must be concluded within one year of the birth or placement of the child. If an employee uses less than 12 weeks to care for a newly arrived child, the remainder of the 12 weeks of leave can be used for any permissible CFRA leave purposes. If both parents are employed by the Company, both may request CFRA leave for the birth, adoption or foster care placement of a child.

If there is a medical need, leave may be taken intermittently or on a reduced-work schedule basis. If the need for intermittent leave is foreseeable based on a planned medical treatment, the Company reserves the right to require the employee to temporarily transfer to an equivalent position that better accommodates the recurring periods of leave.

The Company also permits intermittent leave for bonding with a new child. Intermittent leave for the birth of a child, to care for a newborn child or for the placement of a child for adoption or foster care generally must be taken in at least two-week increments under the CFRA, with shorter increments allowed on two occasions.

If the leave is related to the "qualifying exigency" of being notified of deployment 7 or fewer days prior to deployment, an employee may take up to 7 days of leave, starting from when the covered family member is provided notice of the deployment. If the leave is related to the "qualifying exigency" of spending time with a covered service member on rest and recuperation, an employee may take up to 15 days of leave for each instance of rest and recuperation.

To the fullest extent permitted by law, leaves under CFRA will run concurrently with any other applicable leave requirements under federal, state or local law, including but not limited to leaves under the federal Family and Medical Leave Act (“FMLA”).

## **2. Employee Leave Obligations**

### **a. Provide Notice of the Need for Leave**

Employees who wish to take CFRA leave must timely notify the Company of their need for CFRA leave. To trigger CFRA leave protections, employees must inform their immediate manager of the need for CFRA-qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this either by requesting CFRA leave specifically or by explaining the reasons for leave so as to allow the Company to determine that the leave is CFRA-qualifying.

Calling in “sick,” without providing the reasons for the needed leave, will not be considered sufficient notice for the Company to know that an employee wishes to use CFRA leave under this policy. Employees must respond to the Company’s lawful questions to determine if absences are potentially CFRA-qualifying. If an employee fails to explain the reasons for leave, the leave may be denied. When employees seek leave due to CFRA-qualifying reasons for which the Company has previously provided, they must specifically reference the qualifying reason for the leave (e.g., due to a “serious health condition” of the employee or family member) or the need for CFRA leave.

If employee’s leave is for a “designated person,” employee is not required to identify the designated person in advance, but can designate such person at the time the employee requests leave. However, the employee cannot designate more than 1 person in any 12-month period.

### **b. Timing of Employee Notice**

Employees must provide 30 days’ advance notice of the need to take CFRA leave when they anticipate needing to take such a leave. When 30 days’ notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide the Company with notice of the need for leave as soon as they can. Employees who fail to give 30 days’ notice for foreseeable leave without a reasonable excuse for the delay, or who otherwise fail to satisfy CFRA notice obligations may have CFRA leave delayed or denied, to the extent permitted by applicable law.

Employees must also follow the Company’s usual and customary notice and procedural requirements when requesting CFRA leave, absent unusual circumstances, to the extent permitted by applicable law. If employees fail to comply with these requirements, and no unusual circumstances justify the failure to comply, CFRA leave may be delayed or denied provided that employees have not otherwise provided timely notice as required by the CFRA, to the extent permitted by applicable law.

### **c. Submit Medical Certifications Supporting Need for Leave**

Depending on the nature of CFRA leave sought, employees may be required to submit medical certifications supporting their need for CFRA-qualifying leave consistent with applicable law.

It is the employee’s responsibility to provide the Company with timely, complete and sufficient medical certifications. Whenever the Company requests that an employee provide a medical certification, the employee must provide the requested certification within 15 calendar days after the request, unless it is not practicable to do so despite the employee’s diligent, good-faith efforts. The Company will inform the employee if the submitted medical certifications are incomplete or insufficient and provide the employee at least seven (7) calendar days to cure deficiencies. The Company may deny leave to an employee who does not timely cure deficiencies or who does not timely submit requested medical certifications, to the extent permitted by applicable law.

- **Initial Medical Certifications:** Employees requesting leave because of their own or a covered relation’s serious health condition, or to care for a covered service member, at the election of the employer must supply medical certification supporting the need for such leave from their health care

provider or, if applicable, the health care provider of their covered family or service member. If an employee provides at least 30 days' notice of medical leave, the employee should submit the medical certification before leave begins. A new initial medical certification will be required for a serious medical condition lasting beyond a single leave year.

For leaves requested because of an employee's own serious health condition, the certification shall be sufficient if it includes all of the following:

- (A) The date on which the serious health condition commenced.
- (B) The probable duration of the condition.
- (C) A statement that, due to the serious health condition, the employee is unable to perform one or more of the essential functions of the employee's position.

For leaves requested to care for the serious health condition of a covered family member, the certification shall be sufficient if it includes all of the following:

- (A) The date on which the serious health condition commenced.
- (B) The probable duration of the condition.
- (C) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care.
- (D) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

If the Company has a good-faith, objective reason to doubt the initial medical certification regarding an employee's own serious health condition, it may require the employee to obtain a second opinion at the Company's expense. If the opinions of the initial and second health care providers differ, the Company may, at its expense, require the employee to obtain a third, final and binding certification from a health care provider designated or approved jointly by the Company and the employee.

- **Medical Recertification:** The Company may require the employee to provide recertification of the employee's own serious health condition, consistent with applicable law and at the Company's expense. The Company will notify the employee if recertification is required and will give the employee at least 15 calendar days to provide medical recertification.
- **Return to Work Release:** Unless notified that providing such certifications is not necessary, an employee returning to work from a CFRA leave that was taken because of the employee's own serious health condition must provide the Company with a return-to-work release. The release should also indicate whether the employee will require a reasonable accommodation to perform the essential functions of the employee's position. The Company may delay and/or deny job restoration until the employee provides a return to work release.

### 3. State Funded Benefit Programs

Employees who take a CFRA leave for their own serious health condition, to care for a child, spouse, parent, grandparent, grandchild, sibling, child of a registered domestic partner, or registered domestic partner with a serious health condition, or to bond with a new child, may be eligible to receive partial wage replacement benefits through California's State Disability Insurance (SDI) and Paid Family Leave (PFL) programs, which are administered by the California Employment Development Department (EDD). These benefit programs are financed through employees' SDI payroll deductions. The EDD is solely responsible for determining if an employee is eligible for such benefits.

Employees should note that the SDI and PFL programs do not provide a separate leave right, job protection, or job reinstatement; they provide salary replacement benefits when an employee is on an approved leave of absence pursuant to Company policy. If employees need to take time off work for their own serious health condition, to care for the serious health condition of a family member, or to bond with a new child, the employee must advise the Company. Employees will be given information about the EDD's SDI and PFL programs and how to apply for these benefits. Employees also may contact their local EDD office for further information or visit <https://www.edd.ca.gov>.



Employees are solely responsible for filing claims and any required documents promptly and accurately with the EDD.

#### **4. Substitute Paid Leave for Unpaid CFRA Leave**

If employees request CFRA leave because of their own serious health condition (excluding absences for which the employee is receiving workers' compensation or short-term disability benefits), they must substitute any accrued vacation, paid time off (PTO) and/or sick pay during unpaid family/medical leave.

If employees request CFRA leave to care for a covered family member with a serious health condition or to bond with a new child (excluding absences for which the employee is receiving state sponsored Paid Family Leave benefits), they must substitute any accrued vacation for unpaid family/medical leave, and they may substitute accrued PTO or sick pay (as applicable). The substitution of accrued leave does not extend the length of CFRA leave and the paid time off runs concurrently with the employee's FMLA and/or CFRA entitlement.

A leave of absence in connection with a workers' compensation injury/illness or for which an employee receives SDI or PFL benefits shall run concurrently with CFRA leave. Upon written request, the Company will allow the employee to use accrued paid time off to supplement any paid workers' compensation, SDI or PFL benefits.

#### **5. Protection of Employment and Benefits**

For the duration of the CFRA leave, employees will continue to receive health plan coverage on the same terms and conditions as if they had continued to work. If paid leave is substituted for unpaid family/medical leave, Company will deduct the employee's share of the health plan premium as a regular payroll deduction. If CFRA leave is unpaid, employees must pay their portion of the premium, timely, through a method determined by Company upon the start of the leave.

Company's obligation to maintain health care coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, Company will send a letter notifying the employee that coverage will be dropped on a specified date unless the co-payment is received before that date. If the employee does not return to work within 30 calendar days at the end of the leave period (unless the employee cannot return to work because of a serious health condition or other circumstances beyond the employee's control), the employee will be required to reimburse Company for the cost of the premiums Company paid for maintaining coverage during the unpaid CFRA leave.

At the end of the leave, employees have a right to return to the same or equivalent positions they held before leave. Use of CFRA leave will not result in the loss of any employment benefit that accrued prior to the start of an eligible employee's leave. Employees, however, have no greater right to reinstatement or to other benefits and conditions of employment than had the employee been continuously employed during the CFRA leave. The taking of another job while on CFRA leave or any other authorized leave of absence is grounds for immediate termination of employment, to the extent permitted by applicable law.

#### **6. Coordination of CFRA Leave with Other Leave Policies**

The CFRA does not affect any federal, state or local laws prohibiting discrimination, or supersede any state or local laws that provide greater family or medical leave rights. However, whenever permissible by law, Company will run CFRA leave concurrently with any other leave provided under federal (e.g., the FMLA, if applicable), state or local law.

#### **7. Questions and/or Complaints about CFRA Leave**

If you have questions regarding this policy, please contact your manager. The Company is committed to complying with the CFRA and, whenever necessary, shall interpret and apply this policy in a manner consistent with the CFRA.

The CFRA makes it unlawful for employers to: 1) interfere with, restrain or deny the exercise of any right provided under CFRA; or 2) discharge or discriminate against any person for opposing any practice made unlawful by CFRA

or involvement in any proceeding under or relating to CFRA. If employees believe their rights have been violated, they should contact their manager. Company will investigate any CFRA complaints and take prompt and appropriate remedial action to address and/or remedy any violation.

SAMPLE

**CERTIFICATE OF ACKNOWLEDGMENT OF  
RECEIPT AND UNDERSTANDING OF  
THE EMPLOYEE HANDBOOK**

**CERTIFICATE OF ACKNOWLEDGMENT OF RECEIPT AND  
UNDERSTANDING OF THE EMPLOYEE HANDBOOK  
For California Employees**

This certificate acknowledges that I have received a copy of the XYZ Company Employee Handbook, read it and understand its contents.

I understand that the Employee Handbook supersedes all prior personnel policies and XYZ Company Employee Handbooks. I understand that it contains important information about XYZ Company's general personnel policies, benefits and provisions that control my employment relationship with XYZ Company.

I understand that this Employee Handbook is not an express or implied contract for a specific period of employment or for continuing or long-term employment between XYZ Company and me. It is, however, the final and complete understanding regarding my "at-will" employment status. This means that both XYZ Company and I have the right to terminate my employment at any time, with or without notice, and with or without cause. I also may be demoted or disciplined and the terms of my employment may be altered at any time, with or without cause and with or without notice, at the discretion of the Company. Any such demotion, discipline or other change in employment status shall not change the at-will nature of my employment. No one other than the President of XYZ Company has the authority to alter this arrangement, to enter into an agreement for employment for a specified period of time, or to make any agreement contrary to this policy, and any such agreement must be in writing and must be signed by the President of XYZ Company specify that it supersedes the at-will employment relationship.

I acknowledge that XYZ Company reserves the right to change, in writing, any provision in this Employee Handbook, except the at-will employment provision, at any time, for any reason without advance notice. Though XYZ Company can make changes, I understand that nothing in this Employee Handbook can be modified or deleted, nor anything added, in any way by oral statements or practice.

I understand that I may not disclose to anyone outside of present XYZ Company employees any confidential, sensitive or proprietary information about XYZ Company, its clients or its methods, as described in the Employee Handbook.

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Please Print Your Name

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date you signed certificate

**Please return this signed Certificate of Acknowledgment to Human Resources**

## ABOUT THE FIRM

Established in 1970, Cozen O'Connor delivers legal services on an integrated and global basis, with more than 800 attorneys in 31 cities on two continents. Our lawyers counsel clients on sophisticated legal matters in all areas of litigation, corporate and regulatory law — and provide government relations support at the state and federal levels. We represent a broad array of leading global corporations and ambitious middle market companies in all major industries.

**Business Law.** Clients turn to Cozen O'Connor to succeed in high-stakes business matters and significant transactions. We have an impressive roster of business clients who rely upon our guidance in complex areas of business law, including mergers and acquisitions, private equity, venture capital, IPOs, corporate governance and compliance, real estate, insurance regulatory matters, securities, tax, bankruptcy, intellectual property, health law, public finance, employee benefits, private client services, immigration, utilities, environmental, and energy.

**Litigation.** Cozen O'Connor is a recognized leader in the courtroom and all forms of dispute resolution. We have more attorneys in the American College of Trial Lawyers than any other similarly sized firm. Our lawyers are distinguished among their peers for their trial advocacy skills and their aggressive, innovative representation of clients in numerous areas. These include complex commercial litigation as well as litigation in matters of aviation, insurance, antitrust, class actions, construction law, labor and employment, products liability, patents, securities and financial services, trade secrets, and criminal defense and internal investigations.

**Government Relations.** The firm's government relations practice is committed to providing effective government advocacy for our clients on the federal, state and local government levels. Additionally, members of our government relations group are widely recognized for establishing the premier state attorneys general practice and have worked closely with AG offices and clients for more than 30 years. Our firm is exceptionally well positioned to support our clients across the spectrum of public policy and government relations needs.

**Diversity and Inclusion.** Cozen O'Connor is proud of its efforts to foster diversity and inclusion and takes its responsibility to do so seriously. Recognizing the organizational effectiveness that can come from valuing and promoting differences, Cozen O'Connor prides itself on its commitment to diversity and inclusion and its tradition of employing people with diverse backgrounds and experiences. The firm values the breadth of perspectives and the richness of experience made possible by having a diverse complement of lawyers and staff, and we believe that this diversity of experience is a strength to our firm and the clients we serve.

**Pro Bono.** Cozen O'Connor has historically provided a level of pro bono legal service worthy of its national reputation. We emphasize one-to-one attorney-client pro bono relationships in which attorneys provide legal assistance to people and institutions of limited means. In Philadelphia, we serve as pro bono child advocates, as counsel for the elderly, indigent or homeless, and as legal advisers to numerous charitable organizations devoted to the care and service of needy citizens. Our Chicago attorneys assist disadvantaged citizens in personal bankruptcy proceedings. In California, our San Diego attorneys represent civilians employed by the U.S. Navy who have refused to submit to anthrax vaccination. In Seattle, our attorneys represent indigent Native Americans in an environmental/land dispute with Washington state officials, and in Dallas, our attorneys and staff support a legal aid clinic.

**Women's Initiative.** The Cozen O'Connor Women's Initiative is dedicated to the development and enhancement of professional and personal relationships among our female attorneys and clients. Our long-standing commitment to the importance of a supportive, collaborative culture for female attorneys formally began in the late 1990s and continues to prosper today, creating a positive environment for the hiring, retention and promotion of female attorneys within Cozen O'Connor.

## LABOR & EMPLOYMENT

Cozen O'Connor's full-service labor and employment department represents a broad range of entities: exchange-listed companies, private enterprises, nonprofits, governments and trade associations. We handle high-stakes employment litigation, including individual and class claims of discrimination, harassment, wage and hour violations, defamation, non-compete violations, and wrongful discharge. We appear regularly before federal and state courts, agencies and departments (such as the EEOC, NLRB, DOL, IRS, OSHA, and ICE), and arbitrators. We also handle traditional labor law matters, helping employers foster positive workplace relations, negotiate collective bargaining agreements, and handle labor arbitrations and unfair labor practice proceedings.

When a specific labor or employment issue arises, clients immediately face the competing goals of vigorously refuting accusations or adverse precedents, and restoring a sense of calm and unity of purpose to the workplace. Cozen O'Connor attorneys guide clients through these complex situations and enable them to take decisive action without compromising operational effectiveness. We are keenly aware that the legal response must operate in harmony with the business goals.

One of our greatest assets in this endeavor is the depth of our trial and courtroom experience. We have dozens of lead attorneys who routinely appear in court, agency and arbitration proceedings, giving us tremendous insight into how a case is likely to play out in a litigation setting. That hard-earned knowledge serves our clients well as we partner with them to decide upon a strategic approach.

### SERVICES

#### Employment Litigation

- Investigate employee claims or government inquiries
- Defend clients against individual or class (collective) action lawsuits
- Represent employers in suits alleging discrimination and harassment on the basis of age, race, religion, national origin, gender, sexual orientation, disability, and other areas protected under federal, state and local law
- Represent employers in cases involving defamation, invasion of privacy, trade secrets and noncompetition agreements, duty-of-loyalty claims, equal-pay disputes, employment benefits disputes, pension and benefit plan fiduciary liability, wage-and-hour claims, whistle-blowers, and wrongful-discharge claims
- Advocate for clients in trade secrets and restrictive covenant cases

#### Employer Advising, Training and Investigations

- Assist in the resolution of individual workplace problems
- Create effective employee benefits and executive compensation programs
- Advise in-house counsel, human resources professionals, and executives in the development of sound personnel policies that limit liability and enhance productivity
- Train staff to ensure fair and consistent enforcement of personnel policies
- Perform workplace audits and internal investigations
- Review and draft employment policies and manuals, as well as employment and termination/severance agreements

**Labor Relations & Disputes**

- Help managers build cooperative relationships with their workforce, unionized or not
- Advise clients on NLRB regulations and represent employers in inquiries and hearings
- Evaluate and implement alternative labor-management relationships
- Negotiate collective bargaining agreements and handle arbitration proceedings
- Respond to strike threats, work stoppages and mass picketing
- Defend employers against charges of unfair labor practices, including those alleging unlawful termination, failure to bargain in good faith, and interference with employee rights

**Employee Benefits**

- Advise clients regarding qualified retirement plans, including defined benefit pension plans, defined contribution plans, 403(b) plans, 401(k) plans, cash balance plans, and ESOPs
- Counsel clients regarding nonqualified retirement plans, related funding arrangements, non-qualified deferred compensation, and tax considerations
- Provide advice regarding health and welfare benefit plans' statutory requirements in order to protect clients from liability and counsel clients in their fiduciary duties under ERISA
- Assist with plan terminations and de-risking, including the implications of plan underfunding or overfunding
- Counsel clients regarding multiemployer pension plans and withdrawal liability
- Represent clients in all aspects of ERISA litigation and in matters before the Internal Revenue Service, Department of Labor, Department of Health and Human Services, and the Pension Benefit Guaranty Corporation

**Executive Compensation**

- Counsel clients about non-qualified deferred compensation strategies, including Section 409A requirements and other deferred compensation models
- Design and provide guidance on equity-based incentive compensation programs
- Prepare employment contracts, retention agreements, and change-in-control agreements
- Negotiate executive compensation packages in connection with mergers, acquisitions, and divestitures

**Immigration Policy & Strategy**

- Counsel clients on the complete range of corporate immigration transactions
- Represent family or individuals in citizenship & naturalization, including derivative citizenship and expatriation, and in family sponsored permanent residence
- Guide clients through the business traveler visa and passport application processes and, covering more than 160 countries, through global (non-U.S.) visa processes
- Guide and support during all phases of I-9 process including completion, signature, storage, maintenance and administration
- Perform I-9 audits following notification of a government audit



## TEAM

Our labor and employment department is made up of outstanding practitioners with years of experience. Our attorneys have been commended by independent legal observers for their “outstanding client service” and identified as some of the “most prominent employment defense attorneys” in the country. The team includes fellows of the College of Labor and Employment Lawyers and fellows of the American College of Trial Lawyers. Members of our team are regularly recognized by leading publications such as *Chambers USA*, *Best Lawyers*, *Super Lawyers*, and others. Most recently, two senior members of the department were recognized among “The Nation’s Top 100 Most Powerful Employment Attorneys” by *Human Resource Executive* magazine.

As many large law firms trim their labor and employment practices and once-small boutiques expand into national litigation factories, Cozen O’Connor is steadfast in its conviction that the most sophisticated labor and employment matters are best served by practitioners operating within a full-service firm. Our labor and employment attorneys work closely with their colleagues in corporate, tax, M&A, real estate, and antitrust law to see all sides of an issue and provide comprehensive analyses. In addition, Cozen O’Connor attorneys do not churn out canned solutions to generic problems. Our clients demand tailored, timely advice that is informed by a genuine understanding of their business – and that’s what we provide.