



106 Welcome to the Wonderful World of California!

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Faculty Biographies

C. Kelley Evans

C. Kelley Evans is a system services counsel with the office of the general counsel for Sutter Health, a nonprofit public benefit corporation that operates an integrated healthcare delivery system in Sacramento, California (including 30 acute care hospitals).

Prior to joining Sutter Health, Mr. Evans was an attorney in private practice with Diepenbrock, Wulff, Plant & Hannegan in Sacramento and Damrell, Nelson, Schrimp, Pallios & Ladine in Modesto, California.

Mr. Evans was previously the president of the ACC Sacramento Chapter.

Mr. Evans earned a bachelor's and a master's with honors from Oxford University. He obtained his law degree from U.C. Davis, where he also received the BNA law student award and the U.C. Davis distinguished scholar award.

William B. Sailer

William B. Sailer is senior vice president & legal counsel for QUALCOMM Incorporated, where he represents the company in legal matters relating to labor and employment law, business and intellectual property litigation and other general compliance matters.

Prior to joining QUALCOMM, Mr. Sailer was a partner in Gray Cary Ware & Freidenrich, where he represented employers in all areas of employment and labor law, with emphasis on employment law counseling and wrongful termination litigation.

Mr. Sailer has served as president of the Board of Directors of ACC's San Diego, executive committee member of the board of directors of the California Employment Law Council, executive committee member of the State Bar of California labor & employment law section, president of the San Diego chapter of the Industrial Relations Research Association, chair of the San Diego County Bar Association Labor & Employment Law Section and general counsel to the San Diego Convention & Visitor's Bureau.

He has authored many publications including the book California Employment Litigation: Strategies and Tactics for LEXIS Law Publishing. He serves on the editorial review board for the Matthew Bender Periodical California Employment Law Bulletin. In addition, Mr. Sailer has served as a guest lecturer for the University of San Diego Law School, UCSD Extension and San Diego State University College of Extended Studies.

Mr. Sailer graduated from Swarthmore College with honors in Economics. He received his J.D., cum laude from the University of Michigan Law School.

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WELCOME TO THE WONDERFUL WORLD OF CALIFORNIA

Top 10 Things an Employer Should Know When Doing Business in the State of California

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UNDERSTAND THE "AT-WILL" EMPLOYMENT STATUS

NUMBER 1

"AT-WILL" EMPLOYMENT

- ✓ Under Labor Code section 2922, California employees are presumed to be "at-will," meaning either the employer or the employee may terminate the employment relationship at any time, for any reason, with or without cause or notice
- ✓ Include at-will language in applications, offer letters, personnel handbooks and more
- ✓ Remember – "any reason, but the wrong reason!"



LABOR CODE SECTION 970

An employer may not induce an employee or applicant to relocate for a job within California or from outside California into California by fraud.

The fraud pertains to:

- ✓ kind, character or existence of work
- ✓ length of work or compensation
- ✓ existence or non-existence of strike, lockout or other labor dispute
- ✓ sanitary or housing conditions relating to work



FAIR EMPLOYMENT AND HOUSING ACT (FEHA) – Protected Categories

NUMBER 2



PROTECTED CATEGORIES UNDER THE FEHA

- ✓ Race
- ✓ Religious Creed
- ✓ Color
- ✓ National Origin
- ✓ Ancestry
- ✓ Physical & Mental Disability
- ✓ Medical Condition
- ✓ Marital Status
- ✓ Sex
- ✓ Age
- ✓ Sexual Orientation



EMPLOYER – UNDER THE FEHA

- ✓ For purposes of discrimination claims, FEHA defines an employer as any person regularly employing five or more persons
- ✓ For purposes of harassment claims, FEHA defines an employer as any person regularly employing one or more persons
- ✓ Certain exceptions for religious associations and non-profit corporations



DISABILITY UNDER FEHA

- ✓ Employers are required to engage in an "interactive process" with individuals (both applicants and employees) to determine the need for effective accommodations of disabilities
- ✓ The law does not require an employee to use "magic words" to trigger the accommodation obligation
- ✓ A reasonable accommodation could include an unpaid or paid leave of absence



FEHA vs. ADA

- ✓ Under the ADA a disability is a physical or mental condition that "substantially" limits a major life activity
- ✓ FEHA merely requires that the condition "limit" a major life activity
- ✓ FEHA also does not take into account "mitigating measures"
- ✓ Recent cases suggest the need to enter into the interactive process with those "perceived as" having a disability



UNDERSTAND THE COMPLEXITY OF CALIFORNIA PROTECTED LEAVES

NUMBER 3

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California Domestic Partner Rights Act of 2003 - AB 205

- On September 19, 2003, Governor Gray Davis signed into law
- This law granted registered Domestic Partners virtually all of the same rights and responsibilities afforded to married spouses
- Any law or employer policy providing a right or benefit to employees with spouses must be afforded to a registered domestic partner
- Health care coverage
- CFRA leave – FMLA does not extend to Domestic Partners

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EMPLOYER COVERAGE

- ✓ **FMLA/CFRA**
50 or more employees at a worksite
- ✓ **PDL**
5 or more employees



EMPLOYEE ELIGIBILITY

- ✓ **FMLA/CFRA**
 - ✓ Under the FMLA, an eligible employee must have been **employed** by employer for **at least** 12 months
 - ✓ Under the CFRA, an eligible employee must have **worked more than** 12 months
- ✓ **PDL**
Immediate for a period of actual disability



REASONS FOR LEAVE

- ✓ **FMLA**
Employee's own serious health condition; care of a parent, spouse or child with a serious health condition; birth or placement for adoption or foster care of a child
- ✓ **PDL**
Disability due to pregnancy or pregnancy-related condition
- ✓ **CFRA**
Employee's own serious health condition; care of a parent, spouse, child or **registered domestic partner, or child of registered domestic partner**, with a serious health condition; birth or placement for adoption or foster care of a child, or registered domestic partner's child. Excludes pregnancy-related disabilities and related medical conditions



LEAVE DURATION

- ✓ **FMLA/CFRA**
12 weeks in a 12- month period
- ✓ **PDL**
Up to 4 months total (for periods of actual disability)



PAYMENT DURING LEAVE

- ✓ **FMLA**
No obligation to pay employee unless employer's own leave of absence policy provides otherwise.
Employee may apply for state disability insurance benefits if employee qualifies
- ✓ **PDL**
Same as FMLA
- ✓ **CFRA**
Same as FMLA



EMPLOYEE NOTICE OF LEAVE

- ✓ **FMLA**
No need to use term "FMLA."
Employer can require 30 days written notice before leave if (1) need for leave is foreseeable; and (2) employee had notice of the requirement
- ✓ **PDL**
Same as CFRA for request
- ✓ **CFRA**
No need to use the term "CFRA." Employer can require 30 days written notice before leave if (1) need for leave is foreseeable; and (2) employee had notice of the requirement. Otherwise, employee must give notice as soon as practicable.



EMPLOYER RESPONSE TO LEAVE REQUEST

- ✓ **FMLA**
Employer must respond to leave request within 2 business days [time limit may be invalid]. Employer may respond orally, but must subsequently notify employee in writing that the leave is designated as FMLA.
- ✓ **PDL**
We recommend employer notify employee in writing that leave will be counted against PDL leave.
- ✓ **CFRA**
Employer must respond to request no later than 10 calendar days after leave is requested. Approval is deemed retroactive to first day of leave. Employer must guarantee right to reinstatement at the time of granting leave request.



MEDICAL CERTIFICATION REQUIREMENTS

- ✓ **FMLA**
May be required if employee has notice of the requirements; must give employee 15 days to obtain the certificate. Employer may require certification that describes the medical facts which support the physician's opinion that the employee has a serious health condition. Cannot require certificate for bonding leave.
- ✓ **CFRA**
Same as FMLA, except cannot ask for nature of health condition. Cannot require certification for bonding leave.
- ✓ **PDL**
May be required if required for other medical leaves of absence.



SECOND OPINIONS

- ✓ **FMLA**
Second and third opinions may be required for an employee or employee's covered family member (at employer's cost)

- ✓ **CFRA**
Second and third opinions may be required only for an employee, not a covered family member (at employer's cost), if there is a reason to question the validity of the initial certification

- ✓ **PDL**
No provision



REINSTATEMENT RIGHTS

- ✓ **FMLA**
Employee must be reinstated to same or equivalent position at the end of leave. Equivalent position must have the same pay, benefits, schedule, shift and job duties and a geographically proximate location.

- ✓ **CFRA**
Employee must be reinstated to same or comparable position at end of leave. "Comparable" position has similar definitions as FMLA "equivalent" position.

- ✓ **PDL**
Employee must be reinstated to the same position (very narrow exceptions exist).



SERIOUS HEALTH CONDITION - PREGNANCY

- ✓ **FMLA** – Under the FMLA, a pregnancy-related disability may constitute a serious health condition entitling an employee to FMLA leave
- ✓ **CFRA** - Under the CFRA, disabilities due to pregnancy, childbirth or related medical conditions are expressly excluded from the definition of a serious health condition



BONDING CARE INTERMITTENT LEAVE

- ✓ **FMLA** - Under the FMLA, an employee has **no** right to take bonding care intermittently unless the employer agrees to an intermittent leave
- ✓ **CFRA** - Under the CFRA, an employee **may** take an **intermittent** bonding care leave in increments of two weeks, except that an employer must also grant a request for a CFRA leave of less than two weeks' duration on any two occasions



SUBSTITUTION OF PAID LEAVE

- ✓ **FMLA** - Under the FMLA, the employer may require, or the employee may elect to use, accrued vacation, personal or other paid family leave to care for others
- ✓ **CFRA** - Under California law, the same is true except:
 - ✓ **Pregnancy Leave** – the employer cannot require the employee to use her vacation time
 - ✓ **Sick Leave** – an employee may not use sick leave for bonding leave or family care leave unless mutually agreed between the employer and employee



POSTING REQUIREMENTS FOREIGN LANGUAGE

- ✓ **FMLA** - Under the FMLA, an employer must post notices in a language other than English if a “significant portion” of the employee population speak that other language
- ✓ **CFRA** - Under the CFRA, employers must post notices in a non-English language if at least 10% of the employee population speak that language



ADDITIONAL PROTECTED LEAVES

- ✓ Time off for school activities
- ✓ Kin care leave
- ✓ Military leave
- ✓ Jury duty or other court appearance
- ✓ Time off for crime victims
- ✓ Time off to vote
- ✓ Public service leave
- ✓ Accommodation for lactating mothers
- ✓ Drug and alcohol rehabilitation accommodations
- ✓ Literacy assistance



WHAT ABOUT SICK LEAVE?

- ✓ "Kin care" rule/employees may use up to half of their annual accrual to care for an ill spouse, parent, child, domestic partner or child of domestic partner
- ✓ Not required to be paid out on separation unless part of PTO plan



WORKERS' COMPENSATION 132a CLAIMS

- ✓ Labor Code section 132a makes it unlawful to discriminate against a California worker injured in the course and scope of employment
- ✓ Remedies for a violation of section 132a include reinstatement, back pay and an increase by one-half in the employee's workers' compensation benefits, or \$10,000, whichever is less, plus costs and expenses not to exceed \$25.



KNOW THE WAGE AND HOUR LAWS

NUMBER 4



STATE MINIMUM WAGE

- ✓ California's minimum wage will increase from \$6.75 per hour to \$7.50 per hour in January 2007
- ✓ California's minimum wage will increase again from \$7.50 to \$8.00 in January 2008
- ✓ Various cities have living wage minimum wage requirements. Check local ordinances (e.g., San Francisco, Berkeley)



CALIFORNIA WAGE ORDERS

- ✓ Wage orders establish minimum wages and conditions of employment for all employees in the covered industries and occupations (unless an exemption applies)
- ✓ There are 17 wage orders
- ✓ Different wage orders apply to different industries and employees
- ✓ California Labor Code



CLASSIFICATION OF EMPLOYEES AS EXEMPT

- ✓ All employees in California are presumed to be non-exempt -- employers have the burden of proof when seeking to establish an exemption
- ✓ Salary and duty requirements
- ✓ Executive, Administrative, Professional, Outside Sales, Computer Professional exemptions may apply
- ✓ 50% rule – quantitative vs. qualitative



OVERTIME FOR NON-EXEMPT EMPLOYEES

- ✓ "Daily" overtime rule
- ✓ Time and one-half for all hours beyond 8 in a day and the first 8 hours on the seventh consecutive day of work in a workweek
- ✓ Double time for all hours worked beyond 12 in a day and any hours worked beyond 8 on the seventh consecutive day of work in a workweek
- ✓ May differ depending on the wage order



ALTERNATIVE WORKWEEK SCHEDULES

- ✓ Certain wage orders permit non-exempt employees to elect alternative workweek schedules (AWS), under which they may work more than 8 hours and up to a maximum of 10 hours per day without the payment of overtime
 - ✓ Healthcare workers can work up to 12 hours
- ✓ Various requirements must be satisfied before an AWS may be implemented, including specified secret-ballot election procedures



"MAKE-UP" TIME

- ✓ An employee may "make up" time taken off without receiving overtime pay
- ✓ Employers cannot solicit or encourage an employee to request make-up time
- ✓ An employee may not work more than 11 hours in a workday or 40 hours in a workweek without receiving overtime pay
- ✓ Must be made up in the same workweek
- ✓ The employee must provide a signed, written request for each occasion of make-up time



"COMP" TIME

- ✓ Forget about it!
- ✓ Is not allowed for employers subject to the FLSA



MEAL PERIOD RULES

- ✓ Non-exempt employees may not work more than 5 hours without receiving at least 30 minutes uninterrupted meal period (may be unpaid)
- ✓ If the employee works more than 10 hours, a second meal period is required
- ✓ The employee must be relieved of all duties and free to leave the premises
- ✓ Employer has the affirmative obligation to make sure employees take their meal period
- ✓ Penalty of one additional hour of pay at the employee's regular rate. Employer bears the burden of proof if a claim is filed.



REST BREAK RULES

- ✓ Must provide at least one 10-minute break (paid) for every 4 hours worked (or "major fraction" thereof)
- ✓ Must be provided in the middle of the 4-hour "work period"
- ✓ May not be combined with meal periods
- ✓ Applies to any employee who works at least 3½ hours in a workday
- ✓ Extended rest breaks to lactating mothers
- ✓ Penalty of one additional hour of pay at the employee's regular rate

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CALIFORNIA RULES REGARDING VACATION TIME

- ✓ Vacation vests on a daily basis and becomes vested wages
- ✓ No use-it-or-lose-it policy allowed (reasonable cap or cash-out is acceptable)
- ✓ Cannot deduct from final paycheck for "borrowed" vacation
- ✓ Accrued but unused vacation must be paid on separation at the employee's then regular rate of pay
- ✓ Personal holidays and "PTO" treated like vacation

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FREQUENCY OF WAGE PAYMENT

- ✓ In general, an employer must pay non-exempt employees at least twice during each calendar month, on days designated in advance as the regular paydays
- ✓ Work performed between the 1st and 15th must be paid prior to the 26th and work performed between the 16th and last day of the month must be paid for by the 10th day of the following month
- ✓ Exempt employees covered by the FLSA may be paid once a month on or before the 26th



DEDUCTIONS FROM WAGES

- ✓ Generally, no deductions for an employee's debt, including wage overpayments, unless a written authorization is first signed by the employee (no "balloon" payments)
- ✓ No deductions for unreturned tools or uniforms even if employee has signed an agreement authorizing the deduction



DEDUCTIONS FROM THE SALARY OF AN EXEMPT EMPLOYEE

- ✓ No deductions based on:
 - ✓ Quality or quantity of work
 - ✓ Unavailability of work due to the operational requirements of the business
 - ✓ Employee's wrongdoing (as disciplinary action)
 - ✓ Absences for jury, witness and military duty



DEDUCTIONS FROM THE SALARY OF AN EXEMPT EMPLOYEE

- ✓ Limited deductions based on:
 - ✓ Vacations, personal leave (4-hour increments)
 - ✓ Sickness or disability if the employer has a sick leave plan and the employee is not qualified for the plan or has exhausted benefits under the plan (only full day)
 - ✓ Initial/final weeks of work
 - ✓ FMLA (partial day OK)
 - ✓ Pregnancy leave (full day only unless FMLA)



FINAL PAYCHECK RULES

- ✓ If the employer terminates = immediately upon termination
- ✓ If the employee quits with at least 72 hours notice = last day of employment
- ✓ If the employee quits with less than 72 hours notice = within 72 hours after notice is given
- ✓ Final pay includes accrued but unused vacation, "personal time off" or similar leave time



PAY STUBS

- ✓ Employers are required to provide employees with an itemized statement listing the gross wages paid, total hours worked, deductions, rate of pay, net wages, the inclusive dates for which the wages are being paid, and the employee's name and social security number**
- ✓ In addition, pay stubs for non-exempt employees must indicate all rates of pay during the applicable period and the corresponding number of hours worked at each rate

**Effective January 1, 2008, California employers may not print more than the last four digits of an employee's social security number on check stubs or similar documents.



EMPLOYEE TIMEKEEPING

- ✓ Employers must maintain time records showing when the employee begins and ends each work period
- ✓ Meal periods, shift-split intervals and total daily hours worked also must be recorded
- ✓ However, meal periods during which all operations cease and authorized rest periods need not be recorded
- ✓ Electronic timecard systems under certain circumstances will meet the requirements of California law

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UNDERSTANDING EMPLOYEE PRIVACY RIGHTS

NUMBER 5

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BACKGROUND CHECKS

- ✓ Federal (FCRA) and California (ICRA) law may apply
- ✓ Generally comes into play with investigative consumer reports prepared by third parties
- ✓ Certain disclosures are required
- ✓ California law requires applicant or employee have the opportunity to check a box: (1) to receive a consumer credit report from the agency at the same time it is sent to the employer, and (2) obligates the recipient of the report to send it to the applicant or employee within 3 business days of the report being provided to the recipient of the report
- ✓ Pre-adverse action notices are required
- ✓ Under ICRA, failure to comply can result in liability for actual damages or \$10,000, whichever is greater



CRIMINAL HISTORY INQUIRIES: ARRESTS

- ✓ Employer cannot ask an applicant to disclose information regarding:
 - ✓ An arrest or detention that did not result in conviction (Cal. Lab. Code §432.7(a))
 - ✓ Referral to/participation in a pre-trial or post-trial diversion program (Cal. Lab. Code §432.7(d))



CRIMINAL HISTORY INQUIRIES: ARRESTS

- ✓ Health facilities (as defined under Health and Safety Code §1250) may inquire as to arrests under Penal Code §290 (relating to sex offenses) if the applicant will have regular access to patients (Cal. Lab. Code §432.7(f)(1))
- ✓ When the position involves access to drugs or medication, the employer can inquire about arrests under Health and Safety Code §11590 (requiring registration of controlled substance offenders) (Cal. Lab. Code §432.7(f)(2))



CRIMINAL HISTORY INQUIRIES: ARRESTS

- ✓ A public utility or cable corporation can inquire about an applicant's criminal history when the applicant will have access to private residences (Cal. Pen. Code §11105(c)(9))
- ✓ An employer may inquire about pending criminal charges and arrests for which the applicant is out on bail or on his/her own recognizance pending trial (Cal. Lab. Code §432.7(a))



CRIMINAL HISTORY INQUIRIES: CONVICTIONS

- ✓ A criminal conviction per se should not be an absolute bar to employment
- ✓ The employer should consider the number of convictions, the nature and gravity of the convictions, the recentness of the convictions, evidence of rehabilitation, and the relationship between specific elements of the job to be performed
- ✓ Employers cannot inquire about convictions of specified misdemeanor marijuana convictions that are more than two years old

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TAPE RECORDING AND VIDEOTAPING

- ✓ Generally, neither the employer nor the employee may surreptitiously tape record or videotape a conversation under federal or state law
- ✓ Employers should notify employees when cameras have been installed and obtain their written consent to be monitored
- ✓ Employers may not video or audio tape employees in a restroom, locker room, or room designated by the employer for changing clothes
- ✓ This is a misdemeanor with mandatory penalties per violation

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WHAT ABOUT PROPERTY SEARCHES?

- ✓ California courts have not clearly defined the extent of an employee's privacy right with respect to company-owned property
- ✓ Existing case law suggests employers can search company owned property (e.g., lockers, desks, vehicles, etc.) if the employee's reasonable expectation of privacy has been diminished
- ✓ Employers have less access to an employee's personal property



MEDICAL AND PHYSICAL EXAMINATIONS

- ✓ Generally only permitted post-offer/pre-employment
- ✓ Must be job-related and consistent with business necessity
- ✓ All entering employees in the same job classification must be subject to the examination
- ✓ No HIV testing or genetic testing



CONFIDENTIALITY OF MEDICAL RECORDS

- ✓ Employers must establish procedures to keep employee medical records confidential
- ✓ Employers may not use or disclose medical records unless the employee has signed a release except:
 - ✓ Pursuant to a court order
 - ✓ When administering employee benefits
 - ✓ When litigating medical issues the employee has put in controversy
 - ✓ When determining eligibility for leaves



CONFIDENTIALITY OF MEDICAL RECORDS

- ✓ Employers may not discriminate against an employee who refuses to sign a release, but may take necessary action in the absence of medical information
- ✓ There are specific requirements for medical releases (Cal. Civil Code §56.21)



WHAT ABOUT DRUG TESTING? PRE-EMPLOYMENT

- ✓ Pre-employment drug testing generally is lawful if applicants have notice of the testing policy and no medical information revealed during the test is reported to the employer



WHAT ABOUT DRUG TESTING? RANDOM

- ✓ Generally, random drug testing is unlawful because of the substantial privacy interests involved
- ✓ Random testing may be upheld if there is a significant public interest at stake (e.g., testing employees on "safety sensitive" positions, etc.)



WHAT ABOUT DRUG TESTING? AUTOMATIC POST-ACCIDENT

- ✓ The program must be announced substantially before implementation
- ✓ Employees may receive counseling or treatment without fear of reprisal before implementation
- ✓ The tests are only applied to "safety sensitive" positions
- ✓ The tests are only given after a serious or fatal accident
- ✓ The employees are tested in the least intrusive manner available

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WHAT ABOUT DRUG TESTING? REASONABLE SUSPICION

- ✓ Reasonable suspicion testing is likely to be upheld if proper safeguards are built into the policy
- ✓ A "reasonable suspicion" may derive from observable phenomena, pattern of abnormal conduct or erratic behavior, arrest or conviction for a drug-related offense
- ✓ "Hunches" are insufficient!
- ✓ Off-duty testing is much more risky!
- ✓ Don't forget about local rules!

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WHAT ABOUT DRUG TESTING? THE BOTTOM LINE

- ✓ Implement an appropriate testing policy
- ✓ Use consent forms
- ✓ Adhere strictly to the policy
- ✓ Limit the intrusiveness of the testing
- ✓ Work with qualified independent agencies to conduct the testing
- ✓ Keep all results confidential and separate from personnel files
- ✓ Be careful when terminating an employee for refusing to submit to drug testing

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USE OF EMPLOYEE SOCIAL SECURITY NUMBERS

- ✓ Employers cannot:
 - ✓ Require an individual to use his/her SSN to access a website
 - ✓ Print an individual's SSN on documents mailed to the individual unless required by state/federal law
 - ✓ Print a SSN on a postcard or other mailer not requiring an envelope or in a place that is visible on the envelope

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USE OF EMPLOYEE SOCIAL SECURITY NUMBERS

- ✓ Employers cannot:
 - ✓ Post or publicly display an individual's SSN
 - ✓ Print an individual's SSN on any card required for the individual to access products or services (includes I.D. cards and badges)
 - ✓ Require an individual to transmit his/her SSN over the Internet



THE REGULATION OF LAWFUL OFF-DUTY CONDUCT

- ✓ Employees' private activities, inside and outside the workplace, are open to scrutiny only if they directly affect the employer's business affairs (Cal. Lab. Code §96(k))



**UNDERSTAND ARBITRATION
AGREEMENTS, COVENANTS
NOT TO COMPETE, UNFAIR COMPETITION
LAWS, AND THE PRIVATE
ATTORNEYS GENERAL ACT**

NUMBER 6

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ARBITRATION CLAUSES

- ✓ Arbitration agreements are enforceable if they are not "unconscionable"
- ✓ Armendariz v. Foundation Health (2000) 24 Cal. 4th 83 sets forth the standard arbitration agreements must meet to be enforceable in California

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REQUIREMENTS OF AN ENFORCEABLE ARBITRATION AGREEMENT

- ✓ Provide for a neutral arbitrator;
- ✓ Allow for the same type and extent of damages and other relief that could be obtained in court
- ✓ Permit "adequate" discovery
- ✓ Provide for the issuance of a written arbitration award sufficient to permit "a limited form of judicial review"
- ✓ Require the employer to pay the costs
- ✓ Require that claims brought by the employer also be subject to arbitration

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NON-COMPETE AGREEMENTS

- ✓ Generally unenforceable in California (B&P section 16600)
- ✓ An employer can protect against misuse of "trade secrets"
- ✓ "Trade secrets" can include customer lists (if the compilation required significant investment), product formulas, marketing strategies, etc.
- ✓ Strictly construed against the employer
- ✓ No unlawful restraint of trade
- ✓ No recognized inevitable disclosure doctrine in California

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UNFAIR COMPETITION

- ✓ Broad application to any underlying violation of state law (B&P Code section 17200 et seq.)
- ✓ Most anti-discrimination and labor laws form basis for claim
- ✓ Remedies include restitution of all overtime wages that should have been paid, civil penalties of \$2500 for each violation, attorneys' fees and injunctive relief
- ✓ 4-year statute of limitations



THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

- ✓ Allows employees (either individually or as a class) to bring civil actions to recover penalties under the Labor Code unless the Labor and Workforce Development Agency cites the employer for a violation of the named section
- ✓ There are significant penalties which may be assessed



KNOW THE POSTING AND NOTICE REQUIREMENTS

NUMBER 7



WORKPLACE POSTERS

- ✓ Obtain from California Chamber of Commerce or the DLSE (www.calchamber.com or www.dir.ca.gov)
- ✓ Federal and state requirements for certain posters (at least 22!)
- ✓ Must post the applicable IWC Wage Order and Summary and the California Minimum Wage Order



KNOW THE RECORD RETENTION REQUIREMENTS

NUMBER 8



RECORD RETENTION

- ✓ Recruitment, hiring and job placement records – 2 years or longer if a claim has been brought involving hiring practices
- ✓ Wage records – 3 years after termination of employment or longer if a claim has been brought involving employee wage records
- ✓ Payroll records – 4 years or longer if a claim has been brought involving payroll records
- ✓ Employment eligibility forms verification – 3 years from the date of hire or 1 year after termination, whichever is later



UNDERSTANDING AN EMPLOYEE'S RIGHT TO ACCESS OF INFORMATION

NUMBER 9



PERSONNEL FILES (BROADLY DEFINED!)

- ✓ Available upon request at reasonable intervals and reasonable times
- ✓ Can generally be reviewed on unpaid time for non-exempt employees
- ✓ Can make available on site or store off site
- ✓ Can have employee review at off site location if the employee is paid
- ✓ Employee only has a right to copy any document signed by the employee (not the entire file)



PAYROLL FILES

- ✓ Must make copies available within 21 days of request
- ✓ Includes all "payroll" information, such as timecards



UNDERSTAND CALIFORNIA EMPLOYMENT BENEFITS

NUMBER 10



CALIFORNIA BENEFITS

- ✓ Domestic partners
- ✓ Cal-COBRA/Conversion of Group Health Plans
- ✓ Paid Family Leave
- ✓ Workers' Compensation
- ✓ Unemployment Compensation
- ✓ State Disability Insurance



UNEMPLOYMENT COMPENSATION

- ✓ Both full-time and part-time employees can be eligible for unemployment compensation
- ✓ Require an individual to be unemployed through no fault of the employee, to register for work, and to report to a public employment office regarding his or her ability to work
- ✓ Employees are not eligible for unemployment if they voluntarily quit without good cause, are terminated for misconduct or refuse to perform suitable work
- ✓ Different standard than termination of employee