Immersion Session

FINDING YOUR WAY
IN THE WILD WEST

A PRIMER ON CALIFORNIA EMPLOYMENT LAW

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On July 1, 2018, new regulations from California’s Fair Employment and Housing Council (FEHC) that clarify protections from national origin discrimination will go into effect. The new regulations are extensive and include clarifications on the definitions of “national origin” and “national origin groups,” the permissible and prohibited types of employer policies governing language restrictions in the workplace, the permissible and prohibited inquiries regarding immigration status, and the permissible and prohibited types of height and weight requirements for work.

**The Meaning of “National Origin” and “National Origin Groups”**

The new regulations clarify that the definition of “national origin” includes an individual’s “actual or perceived:”

1. physical, cultural, or linguistic characteristics associated with a national origin group;
2. marriage to or association with persons of a national origin group;
3. tribal affiliation;
4. membership in or association with an organization identified with or seeking to promote the interests of a national origin group;
5. attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of national origin group; and
6. name that is associated with a national origin group.

The Equal Employment Opportunity Commission (EEOC) and various courts have provided the following examples of the types of associational and perception-based harassment and discrimination based on national origin that are prohibited:

- Harassment of an employee whose husband is from Afghanistan
- Refusal to promote an employee because he attends a mosque
- Harassment of a Hispanic person by a harasser who perceived that the individual was Pakistani
- Coworkers repeatedly referring to an employee of Indian descent as “Taliban” or “Arab”
- Harassment of a Sikh man wearing a turban because the harasser perceived him to be Muslim
The regulations also provide that "national origin groups" include "ethnic groups, geographic places of origin, and countries that are not presently in existence." In other guidance from the EEOC, the commission has explained that a geographic region may include "a region that never was a country but nevertheless is closely associated with a particular national origin group, for example, Kurdistan or Acadia."

**Prohibitions Against Language Restrictions**

Since 2001, California has prohibited employers from adopting or enforcing a policy that limits or prohibits the use of any language in the workplace, unless a business necessity justified the restriction and the employer met certain notice requirements. According to the new regulations, if an employer has a policy limiting or prohibiting the use of a language, the employer now has to meet a third requirement and also show that the restriction is "narrowly tailored." Also, a language restriction that "merely promotes business convenience or is due to customer or co-worker preference" will not pass the test.

The new regulations also specifically target "English-only rules," stating that they are presumptively illegal unless the employer can meet the three-part test by proving that the rule is justified by business necessity, is narrowly tailored, and was effectively explained to employees. "Business necessity" is defined as an overriding legitimate business purpose, such that (A) the language restriction is necessary to the safe and efficient operation of the business; (B) the language restriction effectively fulfills the business purpose it is supposed to serve; and (C) there is no alternative practice to the language restriction that would accomplish the business purpose equally well with a lesser discriminatory impact.

The new regulations also state that "English-only rules are never lawful during an employee's non-work time," such as breaks, lunch, and unpaid employer-sponsored events. The FEHC further commented in the regulation making process that an employer’s attempt to restrict language use during non-working hours may involve sufficient employer “control” over that time to make it compensable.

**Restrictions on Immigration-Related Practices**

The new regulations also place several restrictions on immigration-related practices. For example, an employer cannot make inquiries into an employee's immigration status "unless the person seeking discovery or making the inquiry has shown by clear and convincing evidence that such inquiry is necessary to comply with federal immigration law." It is also unlawful for an employer to discriminate or retaliate against an employee because of the employee’s immigration status, "unless the employer has shown by clear and convincing evidence that it is required to do so in order to comply with federal immigration law."

**Connecting Height and Weight Requirements to National Origin Discrimination**

The new regulations expressly state that height and weight requirements may be unlawful because they may have the effect of discriminating based on national origin. Where an employer shows that a height or weight requirement has an adverse impact, the requirement is unlawful unless it is job related and justified by business necessity, and its purpose cannot be achieved as effectively through other means.

According to the FEHC, there is a nexus between various national origins and certain physical characteristics. The regulations aim to prohibit height and weight restrictions that have the effect of disparately impacting certain national origin groups.

**What Can Employers Do?**
Review the Company’s EEO Policies

Employers may want to ensure that their equal employment opportunity (EEO) policies expressly prohibit associational and perception-based harassment and discrimination based on national origin.

Review Language Restrictions

If a company has language restrictions in place, it may want to consider whether those restrictions meet the requirements in the new regulations. Also, it may want to delete any language restrictions on employees during their duty-free time, including during meal and rest breaks.

Review Height and Weight Requirements

If a company has any height or weight requirements, it may want to review the reasons for them, determine whether they are job related and justified by business necessity, and consider whether their purpose can be achieved as effectively through less discriminatory means.

Conduct Training

A business can review its harassment prevention training materials to ensure that they cover associational and perception-based harassment and discrimination based on national origin. An employer can include in its training examples of harassment based on one’s perception of a person’s national origin, one’s association with an organization that promotes the interests of a national origin, and a person’s perception of another person’s association with a national origin. Also, it may want to consider using examples of proper and improper inquiries from management about an employee’s immigration status.
California State and Local Minimum Wage Rates to Increase in 2019

January 2, 2019

California’s minimum wage rate increased on January 1, 2019, to $12.00 per hour for businesses employing 26 or more employees and $11.00 per hour for those with 25 or fewer employees. The increase is a result of California Senate Bill 3, which was signed into law in 2016. The law will increase California’s minimum wage to $15 per hour by 2023. Thereafter, the minimum wage will change based on cost-of-living increases.

California’s minimum annual salary for exempt employees of large businesses increased to $49,820 from $45,760. The minimum salary for exempt small business employees increased to $45,760 from $43,680. This is because the state’s minimum salary for exempt employees is tied to the state minimum wage. These minimum salary increases went into effect on January 1, 2019.

Additionally, California employers must comply with 25 city and county minimum wage ordinances. In nearly all of these jurisdictions, the minimum wage will increase for 2019. In 13 cities, the minimum wage increased on January 1, 2019, and in the remaining jurisdictions, the minimum wage rate will increase in July of 2019.

All of the 2019 local minimum wages are higher than the California state minimum wage. Nine cities reach the $15 rate this year, ahead of the California’s statewide increase: Cupertino, El Cerrito, Los Altos, Milpitas, Palo Alto, Richmond, San José, San Mateo, and Santa Clara. Five cities will exceed the $15 mark in 2019: Berkeley, Emeryville, Mountain View, San Francisco, and Sunnyvale.

Increases in the local minimum wage do not affect the statewide minimum exempt salary level referenced above.

The chart below summarizes the increases scheduled for 2019:

<table>
<thead>
<tr>
<th>California City or County</th>
<th>Effective Date of Increase</th>
<th>2018 Rate</th>
<th>2019 Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belmont</td>
<td>January 1, 2019</td>
<td>$12.50</td>
<td>$13.50</td>
</tr>
<tr>
<td>Berkeley</td>
<td>July 1, 2019</td>
<td>$15.00</td>
<td>TBA; est. $15.65</td>
</tr>
<tr>
<td>Cupertino</td>
<td>January 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
</tr>
<tr>
<td>Location</td>
<td>Date</td>
<td>Base Wage</td>
<td>Overtime Wage</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------</td>
<td>-----------</td>
<td>---------------</td>
</tr>
<tr>
<td>El Cerrito</td>
<td>January 1, 2019</td>
<td>$13.60</td>
<td>$15.00</td>
</tr>
<tr>
<td>Emeryville</td>
<td>July 1, 2019</td>
<td>$15.69</td>
<td>TBA; est. $16.00</td>
</tr>
<tr>
<td>Long Beach</td>
<td>July 1, 2019</td>
<td>$14.64 (hotels)</td>
<td>$14.37 (airport/convention center)</td>
</tr>
<tr>
<td>Los Altos</td>
<td>January 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
</tr>
<tr>
<td>Los Angeles (City)</td>
<td>July 1, 2019</td>
<td>$13.25</td>
<td>$14.25</td>
</tr>
<tr>
<td>Los Angeles County (unincorporated areas)</td>
<td>July 1, 2019</td>
<td>$13.25</td>
<td>$14.25</td>
</tr>
<tr>
<td>Malibu</td>
<td>July 1, 2019</td>
<td>$13.25</td>
<td>$14.25</td>
</tr>
<tr>
<td>Milpitas</td>
<td>July 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
</tr>
<tr>
<td>Mountain View</td>
<td>January 1, 2019</td>
<td>$15.00</td>
<td>$15.65</td>
</tr>
<tr>
<td>Oakland</td>
<td>January 1, 2019</td>
<td>$13.23</td>
<td>$13.80</td>
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<td>Palo Alto</td>
<td>January 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
</tr>
<tr>
<td>Pasadena</td>
<td>July 1, 2019</td>
<td>$13.25</td>
<td>$14.25 (pending council approval)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>12.00</td>
<td>$14.25 (pending council approval)</td>
</tr>
<tr>
<td>Location</td>
<td>Date</td>
<td>Base Rate</td>
<td>Over 25 Employees (If Applies)</td>
</tr>
<tr>
<td>----------</td>
<td>------------</td>
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<td>-------------------------------</td>
</tr>
<tr>
<td>Redwood City</td>
<td>January 1, 2019</td>
<td>N/A</td>
<td>$13.50</td>
</tr>
<tr>
<td>Richmond</td>
<td>January 1, 2019</td>
<td>$13.41 (without qualifying healthcare benefits)</td>
<td>$15.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$11.91 (with qualifying healthcare benefits)</td>
<td>$13.50</td>
</tr>
<tr>
<td>San Diego</td>
<td>January 1, 2019</td>
<td>$11.50</td>
<td>$12.00</td>
</tr>
<tr>
<td>San Francisco</td>
<td>July 1, 2019</td>
<td>$15.00</td>
<td>TBA; est. $15.65</td>
</tr>
<tr>
<td>San Jose</td>
<td>January 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
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<tr>
<td>San Leandro</td>
<td>July 1, 2019</td>
<td>$13.00</td>
<td>$14.00</td>
</tr>
<tr>
<td>San Mateo</td>
<td>January 1, 2019</td>
<td>$13.50</td>
<td>$15.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$12.00 (nonprofit employers)</td>
<td>$13.50</td>
</tr>
<tr>
<td>Santa Clara</td>
<td>January 1, 2019</td>
<td>$13.00</td>
<td>$15.00</td>
</tr>
<tr>
<td>Santa Monica</td>
<td>July 1, 2019</td>
<td>$13.25 (26 or more employees)</td>
<td>$14.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$12.00 (25 or fewer employees)</td>
<td>$13.25</td>
</tr>
<tr>
<td>Sunnyvale</td>
<td>January 1, 2019</td>
<td>$15.00</td>
<td>$15.65</td>
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</tbody>
</table>
OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION
ORDER NO. 4-2001
REGULATING
WAGES, HOURS AND WORKING CONDITIONS IN THE

PROFESSIONAL, TECHNICAL, CLERICAL, MECHANICAL AND SIMILAR OCCUPATIONS

Effective January 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations, effective January 1, 2019, pursuant to SB 13, Chapter 4, Statutes of 2016 and section 1182.13 of the Labor Code

This Order Must Be Posted Where Employees Can Read It Easily
1. APPLICABILITY OF ORDER

This order shall apply to all persons employed in professional, technical, clerical, mechanical, and similar occupations whether paid on a time, piece rate, commission, or other basis, except that:

(A) Provisions of Sections 3 through 12 shall not apply to persons employed in administrative, executive, or professional capacities. The following requirements shall apply in determining whether an employee’s duties meet the test to qualify for an exemption from those sections:

(1) Executive Exemption. A person employed in an executive capacity means any employee:
   (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; and
   (b) Who customarily and regularly directs the work of two or more other employees therein; and
   (c) Who has the authority to hire or fire other employees or whose 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; and
   (d) Who customarily and regularly exercises discretion and independent judgment; and
   (e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.
   (f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(2) Administrative Exemption. A person employed in an administrative capacity means any employee:
   (a) Whose duties and responsibilities involve either:
      (i) The performance of office or non-manual work directly related to management policies or general business operations of his/her employer or his/her employer's customers; or
      (ii) 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; and
   (b) Who customarily and regularly exercises discretion and independent judgment; and
   (c) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section); or
   (d) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or
   (e) Who executes under only general supervision special assignments and tasks; and
   (f) Who is primarily engaged in duties that meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.
   (g) Such employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.

(3) Professional Exemption. A person employed in a professional capacity means any employee who meets all of the following requirements:
(a) Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting; or

(b) Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

(ii) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

(iii) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(c) Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth in subparagraphs (a) and (b).

(d) Who earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515 (c) as 40 hours per week.

(e) Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this wage order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.

(f) Notwithstanding the provisions of this subparagraph, pharmacists employed to engage in the practice of pharmacy, and registered nurses employed to engage in the practice of nursing, shall not be considered exempt professional employees, nor shall they be considered exempt from coverage for the purposes of this subparagraph unless they individually meet the criteria established for exemption as executive or administrative employees.

(g) Subparagraph (f) above shall not apply to the following advanced practice nurses:

(i) Certified nurse midwives who are primarily engaged in performing duties for which certification is required pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(ii) Certified nurse anesthetists who are primarily engaged in performing duties for which certification is required pursuant to Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(h) Except, as provided in subparagraph (i), an employee in the computer software field who is paid on an hourly basis shall be exempt, if all of the following apply:

(i) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(ii) The employee is primarily engaged in duties that consist of one or more of the following:

— The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

— The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

— The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(iii) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of this exemption.

(iv) The employee’s hourly rate of pay is not less than forty-one dollars ($41.00). The Office of Policy, Research and Legislation shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.*

(i) The exemption provided in subparagraph (h) does not apply to an employee if any of the following apply:

(i) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(ii) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(iii) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(iv) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation.

* Pursuant to Labor Code section 515.5, subdivision (a)(4), the Office of Policy, Research and Legislation, Department of Industrial Relations, has adjusted the minimum hourly rate of pay specified in this subdivision to be $49.77, effective January 1, 2007. This hourly rate of pay is adjusted on October 1 of each year to be effective on January 1, of the following year, and may be obtained at www.dir.ca.gov/IWC or by mail from the Department of Industrial Relations.
(v) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for on screen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(vi) The employee is engaged in any of the activities set forth in subparagraph (h) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

(B) Except as provided in Sections 1, 2, 4, 10, and 20, the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district.

(C) The provisions of this order shall not apply to outside salespersons.

(D) The provisions of this order shall not apply to any individual who is the parent, spouse, child, or legally adopted child of the employer.

(E) The provisions of this order shall not apply to any individual participating in a national service program, such as AmeriCorps, carried out using assistance provided under Section 12571 of Title 42 of the United States Code. (See Stats. 2000, ch. 365, amending Labor Code Section 1171.)

2. DEFINITIONS

(A) An “alternative workweek schedule” means any regularly scheduled workweek requiring an employee to work more than eight (8) hours in a 24-hour period.

(B) “Commission” means the Industrial Welfare Commission of the State of California.

(C) “Division” means the Division of Labor Standards Enforcement of the State of California.

(D) “Emergency” means an unpredictable or unavoidable occurrence at unscheduled intervals requiring immediate action.

(E) “Employ” means to engage, suffer, or permit to work.

(F) “Employee” means any person employed by an employer.

(G) “Employees in the health care industry” means any of the following:

1. Employees in the health care industry providing patient care; or

2. Employees in the health care industry working in a clinical or medical department, including pharmacists dispensing prescriptions in any practice setting; or

3. Employees in the health care industry working primarily or regularly as a member of a patient care delivery team; or

4. Licensed veterinarians, registered veterinary technicians and unregistered animal health technicians providing patient care.

(H) “Employer” means any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.

(I) “Health care emergency” consists of an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery, requiring immediate action.

(J) “Health care industry” is defined as hospitals, skilled nursing facilities, intermediate care and residential care facilities, convalescent care institutions, home health agencies, clinics operating 24 hours per day, and clinics performing surgery, urgent care, radiology, anesthesiology, pathology, neurology or dialysis.

(K) “Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. Within the health care industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, as interpreted in accordance with the provisions of the Fair Labor Standards Act.

(L) “Minor” means, for the purpose of this order, any person under the age of 18 years.

(M) “Outside salesperson” means any person, 18 years of age or over, who customarily and regularly works more than half the working time away from the employer’s place of business selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities.

(N) “Primarily” as used in Section 1, Applicability, means more than one-half the employee’s work time.

(O) “Professional, Technical, Clerical, Mechanical, and Similar Occupations” includes professional, semiprofessional, managerial, supervisory, laboratory, research, technical, clerical, office work, and mechanical occupations. Said occupations shall include, but not be limited to, the following: accountants; agents; appraisers; artists; attendants; audio-visual technicians; bookkeepers; bundlers; billposters; canvassers; carriers; cashiers; checkers; clerks; collectors; communications and sound technicians; compilers; copy holders; copy readers; copy writers; computer programmers and operators; demonstrators and display representatives; dispatchers; distributors; doorkeepers; drafters; elevator operators; estimators; editors; graphic arts technicians; guards; guides; hosts; inspectors; installers; instructors; interviewers; investigators; librarians; laboratory workers; machine operators; mechanics; mailers; messengers; medical and dental technicians and technologists; models; nurses; packagers; photographers; porters and cleaners; process servers; printers; proof readers; salespersons and sales agents; secretaries; sign erectors; sign painters; social workers; solicitors; statisticians; stenographers; teachers; telephone, radio, telephone, telegraph and call-out operators; tellers; ticket agents; tracers; typists; vehicle operators; x-ray technicians; their assistants and other related occupations listed as professional, semiprofessional, technical, clerical, mechanical, and kindred occupations.

(P) “Shift” means designated hours of work by an employee, with a designated beginning time and quitting time.

(Q) “Split shift” means a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.

(R) “Teaching” means, for the purpose of Section 1 of this order, the profession of teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university.

(S) “Wages” includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

(T) “Workday” and “day” mean any consecutive 24-hour period beginning at the same time each calendar day.

(U) “Workweek” and “week” mean any seven (7) consecutive days, starting with the same calendar day each week. “Workweek” is a fixed and regularly recurring period of 168 hours, seven (7) consecutive 24-hour periods.
3. HOURS AND DAYS OF WORK

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1\(\frac{1}{2}\)) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1\(\frac{1}{2}\)) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek, and

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one-fortieth (1/40) of the employee’s weekly salary.

(B) Alternative Workweek Schedules

(1) No employer shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order, a regularly scheduled alternative workweek schedule of not more than ten (10) hours per day within a 40 hour workweek without the payment of an overtime rate of compensation. All work performed in any workday beyond the schedule established by the agreement up to 12 hours a day or beyond 40 hours per week shall be paid at one and one-half (1\(\frac{1}{2}\)) times the employee’s regular rate of pay. All work performed in excess of 12 hours per day and any work in excess of eight (8) hours on those days worked beyond the regularly scheduled number of workdays established by the alternative workweek agreement shall be paid at double the employee’s regular rate of pay. Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift. Nothing in this section shall prohibit an employer, at the request of the employee, to substitute one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime. No hours paid at either one and one-half (1\(\frac{1}{2}\)) or double the regular rate of pay shall be included in determining when 40 hours have been worked for the purpose of computing overtime compensation.

(2) If an employer whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (1\(\frac{1}{2}\)) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours, and double the employee’s regular rate of pay for all hours worked in excess of 12 hours for the day the employee is required to work the reduced hours.

(3) An employer shall not reduce an employee’s regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule.

(4) An employer shall explore any available reasonable alternative means of accommodating the religious belief or observance of an affected employee that conflicts with an adopted alternative workweek schedule, in the manner provided by subdivision (j) of Section 12940 of the Government Code.

(5) An employer shall make a reasonable effort to find a work schedule not to exceed eight (8) hours in a workday, in order to accommodate any affected employee who was eligible to vote in an election authorized by this section and who is unable to work the alternative workweek schedule established as the result of that election.

(6) An employer shall be permitted, but not required, to provide a work schedule not to exceed eight (8) hours in a workday to accommodate any employee who is hired after the date of the election and who is unable to work the alternative workweek schedule established by the election.

(7) Arrangements adopted in a secret ballot election held pursuant to this order prior to 1998, or under the rules in effect prior to 1998, and before the performance of the work, shall remain valid after July 1, 2000 provided that the results of the election are reported by the employer to the Office of Policy, Research and Legislation by January 1, 2001, in accordance with the requirements of subsection (C) below (Election Procedures). If an employee was voluntarily working an alternative workweek schedule of not more than ten (10) hours a day as of July 1, 1999, that alternative workweek schedule was based on an individual agreement made after January 1, 1998 between the employee and employer, and the employee submitted, and the employer approved, a written request on or before May 30, 2000 to continue the agreement, the employee may continue to work that alternative workweek schedule without payment of an overtime rate of compensation for the hours provided in the agreement. The employee may revoke his/her voluntary authorization to continue such a schedule with 30 days written notice to the employer. New arrangements can only be entered into pursuant to the provisions of this section. Notwithstanding the foregoing, if a health care industry employer implemented a reduced rate for 12-hour shift employees in the last quarter of 1999 and desires to reimplement a flexible work arrangement that includes 12-hour shifts at straight time for the same work unit, the employer must pay a base rate to each affected employee in the work unit that is no less than that employee’s base rate in 1999 immediately prior to the date of the rate reduction.

(8) Notwithstanding the above provisions regarding alternative workweek schedules, no employer of employees in the health care industry shall be deemed to have violated the daily overtime provisions by instituting, pursuant to the election procedures set forth in this wage order a regularly scheduled alternative workweek schedule that includes workdays exceeding ten (10) hours but not more than 12 hours within a 40 hour workweek without the payment of overtime compensation, provided that:

(a) An employee who works beyond 12 hours in a workday shall be compensated at double the employee’s regular rate of pay for all hours in excess of 12;

(b) An employee who works in excess of 40 hours in a workweek shall be compensated at one and one-half (1\(\frac{1}{2}\)) times the employee’s regular rate of pay for all hours over 40 hours in the workweek;

(c) Any alternative workweek agreement adopted pursuant to this section shall provide for not less than four (4) hours of work in any shift;

(d) The same overtime standards shall apply to employees who are temporarily assigned to a work unit covered by this subsection;

(e) Any employer who instituted an alternative workweek schedule pursuant to this subsection shall make a reasonable effort to find another work assignment for any employee who participated in a valid election prior to 1998 pursuant to the provisions of Wage
Orders 4 and 5 and who is unable to work the alternative workweek schedule established;

(f) An employer engaged in the operation of a licensed hospital or in providing personnel for the operation of a licensed hospital who institutes, pursuant to a valid order of the Commission, a regularly scheduled alternative workweek that includes no more than three (3) 12-hour workdays, shall make a reasonable effort to find another work assignment for any employee who participated in the vote which authorized the schedule and is unable to work the 12-hour shifts. An employer shall not be required to offer a different work assignment to an employee if such a work assignment is not available or if the employee was hired after the adoption of the 12-hour, three (3) day alternative workweek schedule.

(9) No employee assigned to work a 12-hour shift established pursuant to this order shall be required to work more than 12 hours in any 24-hour period unless the chief nursing officer or authorized executive declares that:
   (a) A “health care emergency”, as defined above, exists in this order; and
   (b) All reasonable steps have been taken to provide required staffing; and
   (c) Considering overall operational status needs, continued overtime is necessary to provide required staffing.

(10) Provided further that no employee shall be required to work more than 16 hours in a 24-hour period unless by voluntary mutual agreement of the employee and the employer, and no employee shall work more than 24 consecutive hours until said employee receives not less than eight (8) consecutive hours off duty immediately following the 24 consecutive hours of work.

(11) Notwithstanding subsection (B)(9) above, an employee may be required to work up to 13 hours in any 24-hour period if the employee scheduled to relieve the subject employee does not report for duty as scheduled and does not inform the employer more than two (2) hours in advance of that scheduled shift that he/she will not be appearing for duty as scheduled.

(C) Election Procedures

Election procedures for the adoption and repeal of alternative workweek schedules require the following:

(1) Each proposal for an alternative workweek schedule shall be in the form of a written agreement proposed by the employer. The proposed agreement must designate a regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring. The actual days worked within that alternative workweek schedule need not be specified. The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another.

(2) In order to be valid, the proposed alternative workweek schedule must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. The election shall be held during regular working hours at the employees’ work site. For purposes of this subsection, “affected employees in the work unit” may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit in this subsection are met.

(3) Prior to the secret ballot vote, any employer who proposed to institute an alternative workweek schedule shall have made a disclosure in writing to the affected employees, including the effects of the proposed arrangement on the employees’ wages, hours, and benefits. Such a disclosure shall include meeting(s), duly noticed, held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. An employer shall provide that disclosure in a non-English language, as well as in English, if at least five (5) percent of the affected employees primarily speak that non-English language. The employer shall mail the written disclosure to employees who do not attend the meeting. Failure to comply with this paragraph shall make the election null and void.

(4) Any election to establish or repeal an alternative workweek schedule shall be held at the work site of the affected employees. The employer shall bear the costs of conducting any election held pursuant to this section. Upon a complaint by an affected employee, and after an investigation by the labor commissioner, the labor commissioner may require the employer to select a neutral third party to conduct the election.

(5) Any type of alternative workweek schedule that is authorized by the Labor Code may be repealed by the affected employees. Upon a petition of one-third (1/3) of the affected employees, a new secret ballot election shall be held and a two-thirds (2/3) vote of the affected employees shall be required to reverse the alternative workweek schedule. The election to repeal the alternative workweek schedule shall be held not more than 30 days after the petition is submitted to the employer, except that the election shall be held not less than 12 months after the date that the same group of employees voted in an election held to adopt or repeal an alternative workweek schedule. However, where an alternative workweek schedule was adopted between October 1, 1999 and October 1, 2000, a new secret ballot election to repeal the alternative workweek schedule shall not be subject to the 12-month interval between elections. The election shall take place during regular working hours at the employees’ work site. If the alternative workweek schedule is revoked, the employer shall comply within 60 days. Upon proper showing of undue hardship, the Division of Labor Standards Enforcement may grant an extension of time for compliance.

(6) Only secret ballots may be cast by affected employees in the work unit at any election held pursuant to this section. The results of any election conducted pursuant to this section shall be reported by the employer to the Office of Policy, Research and Legislation within 30 days after the results are final, and the report of election results shall be a public document. The report shall include the final tally of the vote, the size of the unit, and the nature of the business of the employer.

(7) Employees affected by a change in the work hours resulting from the adoption of an alternative workweek schedule may not be required to work those new work hours for at least 30 days after the announcement of the final results of the election.

(8) Employers shall not intimidate or coerce employees to vote either in support of or in opposition to a proposed alternative workweek schedule. No employees shall be discharged or discriminated against for expressing opinions concerning the alternative workweek election or for opposing or supporting its adoption or repeal. However, nothing in this section shall prohibit an employer from expressing his/her position concerning that alternative workweek to the affected employees. A violation of this paragraph shall be subject to Labor Code Section 98 et seq.

(D) The provisions of subsections (A), (B) and (C) above shall not apply to any employee whose earnings exceed one and one-half (1 1/2) times the minimum wage if more than half of that employee’s compensation represents commissions.

(E) One and one-half (1 1/2) times a minor’s regular rate of pay shall be paid for all work over 40 hours in any workweek except minors 16 or 17 years old who are not required by law to attend school and may therefore be employed for the same hours as an adult are subject to subsection (A) or (B) and (C) above.

(VIOLATIONS OF CHILD LABOR LAWS) are subject to civil penalties of from $500 to $10,000 as well as to criminal penalties. Refer to California Labor Code Sections 1285 to 1312 and 1390 to 1399 for additional restrictions on the employment of minors and for descriptions of criminal and civil penalties for violation of the child labor laws. Employers should ask school districts about any required work permits.)
(F) An employee may be employed on seven (7) workdays in one workweek when the total hours of employment during such workweek do not exceed 30 and the total hours of employment in any one workday thereof do not exceed six (6).

(G) If a meal period occurs on a shift beginning or ending at or between the hours of 10 p.m. and 6 a.m., facilities shall be available for securing hot food and drink or for heating food or drink, and a suitable sheltered place shall be provided in which to consume such food or drink.

(H) The provisions of Labor Code Sections 551 and 552 regarding one (1) day's rest in seven (7) shall not be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires the employee to work seven (7) or more consecutive days; provided, however, that in each calendar month, the employee shall receive the equivalent of one (1) day's rest in seven (7).

(I) Except as provided in subsections (E), (H) and (L), this section shall not apply to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

(J) Notwithstanding subsection (I) above, where the employer and a labor organization representing employees of the employer have entered into a valid collective bargaining agreement pertaining to the hours of work of the employees, the requirement regarding the equivalent of one (1) day's rest in seven (7) (see subsection (H) above) shall apply, unless the agreement expressly provides otherwise.

(K) The provisions of this section are not applicable to employees whose hours of service are regulated by:

1. The United States Department of Transportation Code of Federal Regulations, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers; or
2. Title 13 of the California Code of Regulations, subchapter 6.5, Section 1200 and following sections, regulating hours of drivers.

(L) No employee shall be terminated or otherwise disciplined for refusing to work more than 72 hours in any workweek, except in an emergency as defined in Section 2(D).

(M) If an employer approves a written request of an employee to make up work time that is or would be lost as a result of a personal obligation of the employee, the hours of that makeup work time, if performed in the same workweek in which the work time was lost, may not be counted toward computing the total number of hours worked in a day for purposes of the overtime requirements, except for hours in excess of 11 hours of work in one (1) day or 40 hours of work in one (1) workweek. If an employee knows in advance that he/she will be requesting makeup time for a personal obligation that will recur at a fixed time over a succession of weeks, the employee may request to make up work time for up to four (4) weeks in advance; provided, however, that the makeup work must be performed in the same week that the work time was lost. An employee shall provide a signed written request for each occasion that the employee makes a request to make up work time pursuant to this subsection. While an employer may inform an employee of this makeup time option, the employer is prohibited from encouraging or otherwise soliciting an employee to request the employer

4. MINIMUM WAGES

(A) Every employer shall pay to each employee wages not less than the following:

1. Ten dollars and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2017;
2. Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2018;
3. Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2019; and
4. Thirteen dollars ($13.00) per hour for all hours worked, effective January 1, 2020.

(B) Any employer who employs 26 or more employees shall pay to each employee wages not less than the following:

1. Ten dollars ($10.00) per hour for all hours worked, effective January 1, 2016 through December 31, 2017;
2. Ten dollars and fifty cents ($10.50) per hour for all hours worked, effective January 1, 2018;
3. Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2019; and
4. Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2020.

Employees treated as employed by a single qualified taxpayer pursuant to Revenue and Taxation Code section 23626 are treated as employees of that single taxpayer. LEARNERS. Employees during their first 160 hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than 85 percent of the minimum wage rounded to the nearest nickel.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

(C) When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.

(D) The provisions of this section shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

1. Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or
2. Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or
3. The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

6. LICENSES FOR DISABLED WORKERS

(A) A license may be issued by the Division authorizing employment of a person whose earning capacity is impaired by physical disability or mental deficiency at less than the minimum wage. Such licenses shall be granted only upon joint application of employer and employee and employee's representative if any.
(B) A special license may be issued to a nonprofit organization such as a sheltered workshop or rehabilitation facility fixing special minimum rates to enable the employment of such persons without requiring individual licenses of such employees.

(C) All such licenses and special licenses shall be renewed on a yearly basis or more frequently at the discretion of the Division. (See California Labor Code, Sections 1191 and 1191.5)

7. RECORDS
(A) Every employer shall keep accurate information with respect to each employee including the following:
(1) Full name, home address, occupation and social security number.
(2) Birth date, if under 18 years, and designation as a minor.
(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
(B) Every employer shall severally or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.
(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.

8. CASH SHORTAGE AND BREAKAGE
No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

9. UNIFORMS AND EQUIPMENT
(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer. The term “uniform” includes wearing apparel and accessories of distinctive design or color.

NOTE: This section shall not apply to protective apparel regulated by the Occupational Safety and Health Standards Board.

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. This subsection (B) shall not apply to apprentices regularly indentured under the State Division of Apprenticeship Standards.

NOTE: This section shall not apply to protective equipment and safety devices on tools regulated by the Occupational Safety and Health Standards Board.

(C) A reasonable deposit may be required as security for the return of the items furnished by the employer under provisions of subsections (A) and (B) of this section upon issuance of a receipt to the employee for such deposit. Such deposits shall be made pursuant to Section 400 and following of the Labor Code or an employer with the prior written authorization of the employee may deduct from the employee’s last check the cost of an item furnished pursuant to (A) and (B) above in the event said item is not returned. No deduction shall be made at any time for normal wear and tear. All items furnished by the employer shall be returned by the employee upon completion of the job.

10. MEALS AND LODGING
(A) “Meal” means an adequate, well-balanced serving of a variety of wholesome, nutritious foods.

(B) “Lodging” means living accommodations available to the employee for full-time occupancy which are adequate, decent, and sanitary according to usual and customary standards. Employees shall not be required to share a bed.

(C) Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between the employer and the employee. When credit for meals or lodging is used to meet part of the employer’s minimum wage obligation, the amounts so credited may not be more than the following:

<table>
<thead>
<tr>
<th>LODGING</th>
<th>EFFECTIVE:</th>
<th>JANUARY 1, 2017</th>
<th>JANUARY 1, 2018</th>
<th>JANUARY 1, 2019</th>
<th>JANUARY 1, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room occupied alone</td>
<td>$49.38/week</td>
<td>$51.73/week</td>
<td>$56.43/week</td>
<td>$61.13/week</td>
<td></td>
</tr>
<tr>
<td>Room shared</td>
<td>$40.76/week</td>
<td>$42.70/week</td>
<td>$46.58/week</td>
<td>$50.46/week</td>
<td></td>
</tr>
<tr>
<td>Apartment — two thirds (2/3) of the ordinary rental value, and in no event more than</td>
<td>$593.05/month</td>
<td>$621.29/month</td>
<td>$677.75/month</td>
<td>$734.21/month</td>
<td></td>
</tr>
<tr>
<td>Where a couple are both employed by the employer, two thirds (2/3) of the ordinary rental value, and in no event more than</td>
<td>$877.27/month</td>
<td>$919.04/month</td>
<td>$1002.56/month</td>
<td>$1086.07/month</td>
<td></td>
</tr>
<tr>
<td>MEALS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breakfast</td>
<td>$3.80</td>
<td>$3.98</td>
<td>$4.34</td>
<td>$4.70</td>
<td>$4.34</td>
</tr>
<tr>
<td>Lunch</td>
<td>$5.22</td>
<td>$5.47</td>
<td>$5.97</td>
<td>$6.47</td>
<td>$5.97</td>
</tr>
<tr>
<td>Dinner</td>
<td>$7.09</td>
<td>$7.35</td>
<td>$8.01</td>
<td>$8.68</td>
<td>$8.01</td>
</tr>
</tbody>
</table>
(D) Meals evaluated as part of the minimum wage must be bona fide meals consistent with the employee’s work shift. Deductions shall not be made for meals not received or lodging not used.

(E) If, as a condition of employment, the employee must live at the place of employment or occupy quarters owned or under the control of the employer, then the employer may not charge rent in excess of the values listed herein.

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one (1) day’s written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

13. CHANGE ROOMS AND RESTING FACILITIES

(A) Employers shall provide suitable lockers, closets, or equivalent for the safekeeping of employees’ outer clothing during working hours, and when required, for their work clothing during non-working hours. When the occupation requires a change of clothing, change rooms or equivalent space shall be provided in order that employees may change their clothing in reasonable privacy and comfort. These rooms or spaces may be adjacent to but shall be separate from toilet rooms and shall be kept clean.

NOTE: This section shall not apply to change rooms and storage facilities regulated by the Occupational Safety and Health Standards Board.

(B) Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.

14. SEATS

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

15. TEMPERATURE

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.

(C) A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

(D) Federal and State energy guidelines shall prevail over any conflicting provision of this section.

16. ELEVATORS

Adequate elevator, escalator or similar service consistent with industry-wide standards for the nature of the process and the work performed shall be provided when employees are employed four floors or more above or below ground level.

17. EXEMPTIONS

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable
notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee’s representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the Division.

18. FILING REPORTS
   (See California Labor Code, Section 1174(a))

19. INSPECTION
   (See California Labor Code, Section 1174)

20. PENALTIES
   (See California Labor Code, Section 1199)
   (A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:
      (1) Initial Violation — $50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.
      (2) Subsequent Violations — $100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.
      (3) The affected employee shall receive payment of all wages recovered.
   (B) The labor commissioner may also issue citations pursuant to California Labor Code Section 1197.1 for non-payment of wages for overtime work in violation of this order.

21. SEPARABILITY
   If the application of any provision of this order, or any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this order should be held invalid or unconstitutional or unauthorized or prohibited by statute, the remaining provisions thereof shall not be affected thereby, but shall continue to be given full force and effect as if the part so held invalid or unconstitutional had not been included herein.

22. POSTING OF ORDER
   Every employer shall keep a copy of this order posted in an area frequented by employees where it may be easily read during the workday. Where the location of work or other conditions make this impractical, every employer shall keep a copy of this order and make it available to every employee upon request.

QUESTIONS ABOUT ENFORCEMENT of the Industrial Welfare Commission orders and reports of violations should be directed to the Labor Commissioner’s Office. A listing of offices is on the back of this wage order. For the address and telephone number of the office nearest you, information can be found on the internet at http://www.dir.ca.gov/DLSE/dlse.html or under a search for “California Labor Commissioner’s Office” on the internet or any other directory. The Labor Commissioner has offices in the following cities: Bakersfield, El Centro, Fresno, Long Beach, Los Angeles, Oakland, Redding, Sacramento, Salinas, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Santa Barbara, Santa Rosa, Stockton, Van Nuys.

SUMMARIES IN OTHER LANGUAGES
The Department of Industrial Relations will make summaries of wage and hour requirements in this Order available in Spanish, Chinese and certain other languages when it is feasible to do so. Mail your request for such summaries to the Department at:
P.O. Box 420603, San Francisco, CA 94142-0603.

RESUMEN EN OTROS IDIOMAS
El Departamento de Relaciones Industriales confeccionará un resumen sobre los requisitos de salario y horario de esta Disposición en español, chino y algunos otros idiomas cuando sea posible hacerlo. Envíe por correo su pedido por dichos resúmenes al Departamento a: P.O. Box 420603, San Francisco, CA 94142-0603.
EMPLOYERS: Do not send copies of your alternative workweek election ballots or election procedures. Only the results of the alternative workweek election shall be mailed to:

Department of Industrial Relations
Office of Policy, Research and Legislation
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4780

Prevailing Wage Hotline (415) 703-4774

<table>
<thead>
<tr>
<th>Location</th>
<th>Address</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>BAKERSFIELD</td>
<td>Labor Commissioner's Office/DLSE 7718 Meany Ave. Bakersfield, CA 93308 661-587-3060</td>
<td></td>
</tr>
<tr>
<td>EL CENTRO</td>
<td>Labor Commissioner's Office/DLSE 1550 W. Main St. El Centro, CA 92643 760-353-0607</td>
<td></td>
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<tr>
<td>SACRAMENTO</td>
<td>Labor Commissioner's Office/DLSE 2031 Howe Ave. Suite 100 Sacramento, CA 95825 916-263-1811</td>
<td></td>
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<tr>
<td>SANTA BARBARA</td>
<td>Labor Commissioner's Office/DLSE 411 E. Canon Perdido, Room 3 Santa Barbara, CA 93101 805-568-1222</td>
<td></td>
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<tr>
<td>SANTA ANA</td>
<td>Labor Commissioner's Office/DLSE 605 West Santa Ana Blvd., Bldg. 28, Room 625 Santa Ana, CA 92701 714-558-4910</td>
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<tr>
<td>SANTA ROSA</td>
<td>Labor Commissioner's Office/DLSE 50 “D” Street, Suite 360 Santa Rosa, CA 95404 707-576-2362</td>
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<tr>
<td>SANTA ANA</td>
<td>Labor Commissioner's Office/DLSE 100 Paseo De San Antonio, Room 120 San Jose, CA 95113 408-277-1266</td>
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<td>LONG BEACH</td>
<td>Labor Commissioner's Office/DLSE 360 Oceangate, 3rd Floor Long Beach, CA 90802 562-590-5048</td>
<td></td>
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<tr>
<td>LOS ANGELES</td>
<td>Labor Commissioner's Office/DLSE 320 W. Fourth St., Suite 450 Los Angeles, CA 90013 213-620-6330</td>
<td></td>
</tr>
<tr>
<td>OAKLAND</td>
<td>Labor Commissioner's Office/DLSE 1515 Clay Street, Room 801 Oakland, CA 94612 510-622-3273</td>
<td></td>
</tr>
<tr>
<td>OAKLAND – HEADQUARTERS</td>
<td>Labor Commissioner's Office/DLSE 1515 Clay Street, Room 401 Oakland, CA 94612 510-285-2118 <a href="mailto:Dlse2@dir.ca.gov">Dlse2@dir.ca.gov</a></td>
<td></td>
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<tr>
<td>SAN DIEGO</td>
<td>Labor Commissioner's Office/DLSE 7575 Metropolitan, Room 210 San Diego, CA 92108 619-220-5451</td>
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<tr>
<td>SAN FRANCISCO</td>
<td>Labor Commissioner's Office/DLSE 455 Golden Gate Ave. 10th Floor San Francisco, CA 94102 415-703-5300</td>
<td></td>
</tr>
<tr>
<td>VAN NUYS</td>
<td>Labor Commissioner's Office/DLSE 6150 Van Nuys Boulevard, Room 206 Van Nuys, CA 91401 818-901-5315</td>
<td></td>
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<tr>
<td>REDDING</td>
<td>Labor Commissioner's Office/DLSE 250 Hemsted Drive, 2nd Floor, Suite A Redding, CA 96002 530-225-2655</td>
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<td>SAN JOSE</td>
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<td></td>
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<tr>
<td>Stockton</td>
<td>Labor Commissioner's Office/DLSE 31 E. Channel Street, Room 317 Stockton, CA 95202 209-948-7771</td>
<td></td>
</tr>
</tbody>
</table>
California Labor Commissioner’s Office

Pay stub (hourly)

<table>
<thead>
<tr>
<th>SMITH AND COMPANY, INC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>123 West Street Smalltown, CA 98765</td>
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<table>
<thead>
<tr>
<th>EMPLOYEE</th>
<th>SOCIAL SECURITY NO.</th>
<th>PAY RATE</th>
<th>PAY PERIOD</th>
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<tbody>
<tr>
<td>Johnson, Bob</td>
<td>XXX-XX-6789</td>
<td>18.00 regular</td>
<td>1/7/XX to 1/13/XX</td>
</tr>
<tr>
<td></td>
<td></td>
<td>27.00 overtime</td>
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<table>
<thead>
<tr>
<th>EARNINGS</th>
<th>HOURS</th>
<th>AMOUNT</th>
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<tr>
<td>Regular</td>
<td>40.00</td>
<td>720.00</td>
</tr>
<tr>
<td>Overtime</td>
<td>2.00</td>
<td>54.00</td>
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GROSS EARNINGS: 774.00
TOTAL DEDUCTED: 213.29
NET EARNINGS: 560.71

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<thead>
<tr>
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<td>24.00 HOURS AVAILABLE</td>
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<tr>
<td>Federal W/H</td>
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<td>FICA</td>
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<td>Medicare</td>
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<td>CA State W/H</td>
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<td>CA State DI</td>
<td>6.19</td>
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<td>401k</td>
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Example itemized wage statement (pay stub) for a worker paid hourly.
As required by Labor Code section 226(a).

May 2018
SAMPLE EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY
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Policy: Discrimination, Harassment, and Retaliation Prevention Policy

POLICY

_Name of Organization_ is committed to providing a professional work environment free from discrimination and harassment, including discrimination and harassment based on a protected category, and an environment free from retaliation for participating in any protected activity covered by this policy. _Name of Organization_ is committed to providing equal employment opportunities to all employees and applicants for employment. Accordingly, we have adopted and maintain this anti-discrimination policy designed to encourage professional and respectful behavior and prevent discriminatory and harassing conduct in our workplace. We will implement appropriate corrective action(s), up to and including formal discipline, in response to misconduct—including violations of _Name of Organization’s_ anti-discrimination policy—even if the violation does not rise to the level of unlawful conduct.

_Name of Organization_ prohibits discrimination or harassment based on the following categories: race, color, religion, religious creed (including religious dress and grooming practices), national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law. In addition, _Name of Organization_ prohibits retaliation against a person who engages in activities protected under this policy. Reporting, or assisting in reporting, suspected violations of this policy and cooperating in investigations or proceedings arising out of a violation of this policy are protected activities under this policy.

All employees are expected to assume responsibility for maintaining a work environment that is free from discrimination, harassment and retaliation. Employees are encouraged to promptly report conduct that they believe violates this policy so that we have an opportunity to address and resolve any concerns. Managers and supervisors are required to promptly report conduct that they believe violates this policy. We are committed to responding to alleged violations

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1 _Name of Organization_ recognizes and supports the obligation to reasonably accommodate employees with disabilities or religious beliefs or practices in order to allow those employees to perform the essential functions of their jobs. If an employee believes they need a reasonable accommodation based on disability or a religious belief or practice, the employee should discuss the matter with their supervisor or the human resources unit.
of this policy in a timely and fair manner and to taking appropriate action aimed at ending the prohibited conduct.

Scope of Protection
This policy applies to Name of Organization applicants and employees (co-workers, supervisors and managers). As used in this policy, the term “employee” includes contractors and volunteers in our workplace. In addition, this policy extends to conduct with a connection to an employee’s work, even when the conduct takes place away from Name of Organization’s premises, such as a business trip or business-related social function.

Applicant/Employee Rights
- The right to a discrimination, harassment, and retaliation-free work environment.
- The right to file a complaint of discrimination, harassment, or retaliation. Employees are encouraged to report inappropriate conduct immediately and, whenever possible, to put the complaint or concern in writing.
- The right to a full, impartial and prompt investigation by a Name of Organization representative or designee into allegations of conduct that would violate this policy.
- The right to be timely informed of appropriate information related to the outcome of an investigation either as a complainant or a respondent in the investigation.
- The right to be represented by a person of the complainant’s choosing at each and all steps of the complaint process.
- The right to be free from retaliation or reprisal after filing a complaint or participating in the complaint process.
- The right to file a complaint directly with the California Department of Fair Employment and Housing, the federal Equal Employment Opportunity Commission or other appropriate state or federal agencies, or to file a civil action in the appropriate court.

CONDUCT PROHIBITED BY THIS POLICY / DEFINITIONS

Discrimination:
As used in this policy, discrimination is defined as the unequal treatment of an employee or applicant in any aspect of employment, including discrimination based solely or in part on the employee’s, or applicant’s, protected category. Protected categories include: race, color, religion, national origin, ancestry, citizenship, physical or mental disability, medical condition (including cancer and genetic characteristics), genetic information, marital status, sex (including pregnancy, childbirth,
breastfeeding, or related medical conditions), gender, gender identity, gender expression, age (40 years and over), sexual orientation, veteran and/or military status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence victim status, political affiliation, and any other status protected by state or federal law. Discrimination includes unequal treatment based upon the employee or applicant's association with a member of these protected classes.

Discrimination may include, but is not necessarily limited to: hostile or demeaning behavior towards applicants or employees because of their protected category; allowing the applicant's or employee’s protected category to be a factor in hiring, promotion, compensation or other employment related decisions unless otherwise permitted by applicable law2, and providing unwarranted assistance or withholding work-related assistance, cooperation, and/or information to applicants or employees because of their protected category.

**Harassment:**

As used in this policy, harassment is defined as disrespectful or unprofessional conduct, including disrespectful or unprofessional conduct based on any of the protected categories listed above. Harassment can be verbal (such as slurs, jokes, insults, epithets, gestures, or teasing), visual (such as the posting or distribution of offensive posters, symbols, cartoons, drawings, computer displays, or emails), or physical conduct (such as physically threatening another person, blocking someone’s way, making physical contact in an unwelcome manner, etc.).

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2 For example veterans preference as permitted under [Government Code 18973.1](#).
Sexual Harassment:

As used in this policy sexual harassment is defined as harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity or gender expression. It may include all of the actions described above as harassment, as well as other unwelcome sex-based conduct, such as unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities, or other verbal or physical conduct of a sexual nature. Sexually harassing conduct need not be motivated by sexual desire and may include situations that began as reciprocal relationships, but that later cease to be reciprocal.

Sexual harassment is generally categorized into two types:

1. Quid Pro Quo Sexual Harassment (“this for that”)
   - Submission to sexual conduct is made explicitly or implicitly a term or condition of an individual’s employment.
   - Submission to or rejection of the conduct by an employee is used as the basis for employment decisions affecting the employee.

2. Hostile Work Environment Sexual Harassment
   Conduct of a sexual nature or on the basis of sex by any person in the workplace that unreasonably interferes with an employee’s work performance and/or creates an intimidating, hostile or otherwise offensive working environment. Examples include:
   - Unwelcome sexual advances, flirtation, teasing, sexually suggestive or obscene letters, invitations, notes, emails, voicemails or gifts.
   - Sex, gender or sexual orientation-related comments, slurs, jokes, remarks or epithets.
   - Leering, obscene or vulgar gestures or making sexual gestures.
   - Displaying or distributing sexually suggestive or derogatory objects, pictures, cartoons, or posters or any such items.
   - Impeding or blocking movement, unwelcome touching or assaulting others.
   - Any sexual advances that are unwelcome as well as reprisals or threats after a negative response to sexual advances.
   - Conduct or comments consistently targeted at one gender, even if the content is not sexual.
**Retaliation:**

As used in this policy retaliation is defined as any adverse employment action taken against an employee because the employee engaged in activity protected under this policy. Protected activities may include, but are not limited to, reporting or assisting in reporting suspected violations of this policy and/or cooperating in investigations or proceedings arising out of a violation of this policy.

Adverse employment action is conduct or an action that materially affects the terms and conditions of the employee’s employment status or is reasonably likely to deter the employee from engaging in protected activity. Even actions that do not result in a direct loss of compensation may be regarded as an adverse employment action when considered in the totality of the circumstances.

Examples of retaliation under this policy include but are not limited to: demotion; suspension; reduction in pay; denial of a merit salary increase; failure to hire or consider for hire; refusing to promote or consider for promotion because of reporting a violation of this policy; harassing another employee for filing a complaint; denying employment opportunities because of making a complaint or for cooperating in an investigation; changing someone’s work assignments for identifying harassment or other forms of discrimination in the workplace; treating people differently such as denying an accommodation; or not talking to an employee when otherwise required by job duties, or otherwise excluding the employee from job-related activities because of engagement in activities protected under this policy.

**TRAINING REQUIREMENTS**

Every two years, all supervisory employees must attend Sexual Harassment Prevention and Workplace Civility training aimed at increasing their understanding of and preventing workplace sexual harassment (including harassment on the basis of sexual orientation, gender identity, and gender expression) and their role in creating an underlying culture of mutual respect in our workplace. Specific components of the training will include how to promptly and effectively respond to sexual harassment when it occurs, the effects of abusive conduct in the workplace, and ways to appropriately intervene if one witnesses behavior that is not in keeping with this policy. The training must be provided by trainers who, in addition to the other requirements set forth in 2 CCR 11024, have the ability through training or experience to train supervisors on how to identify, investigate, report, and respond to unlawful harassment, discrimination, and retaliation in the workplace.
ADDRESSING AND REPORTING VIOLATIONS OF THIS POLICY

Any employee or applicant who experiences or witnesses behavior that they believe violates this policy is encouraged to immediately tell the offending individual that the behavior is inappropriate and, if they feel comfortable doing so, to tell the offending individual to stop the behavior. The applicant or employee should also immediately report the alleged violation to his/her supervisor, manager or the EEO Officer. There is no chain of command when contacting the EEO Officer; an individual does not need supervisor or manager approval to do this. If the alleged offender is the employee’s supervisor or manager, the employee should report the conduct to any other supervisor, manager or the EEO Officer. A complaint may be brought forward verbally or in writing. Written complaints can be made using the EEO Complaint Form (attached to this policy).

Supervisors or managers who learn of any potential violation of this policy are required to immediately report the matter to the EEO Officer, and must follow that officer’s instructions as to how best to proceed.

**Name of Organization** will promptly look into the facts and circumstances of any alleged violation, as appropriate. Even in the absence of a formal complaint, **Name of Organization** may initiate an investigation where it has reason to believe that conduct that violates this policy has occurred. Moreover, even where a complainant conveys a request to withdraw their initial formal complaint, **Name of Organization** may continue the investigation to ensure that the workplace is free from discrimination, harassment and retaliation. Anonymous complaints will also be investigated. The method will depend on the details provided in the anonymous complaint. If the complaint is sufficiently detailed, the investigation may be able to proceed in the same manner as any other complaint. If the information is more general, **Name of Organization** may need to do an environmental assessment or survey to try to determine if misconduct has occurred. All investigations will be fair, impartial, timely, and completed by qualified personnel.

To the extent possible, **Name of Organization** will endeavor to keep the reporting of the applicant or employee’s concerns confidential; however, complete confidentiality cannot be guaranteed when it interferes with **Name of Organization’s** ability to fulfill its obligations under this policy. All employees are required to cooperate fully with any investigation. This includes, but is not limited to, maintaining an appropriate level of discretion regarding the investigation and disclosing any and all information that may be pertinent to the investigation. Upon completion of the investigation, if misconduct is substantiated, **Name of Organization** will take appropriate corrective and preventive action calculated to end the conduct up to and including formal discipline where warranted.
Contact information for Name of Organization’s EEO Officer is:

[Insert name and contact info here]

**FILING OF COMPLAINTS OUTSIDE OUR COMPANY**

Employees and applicants may file formal complaints of discrimination, harassment, or retaliation with the agencies listed below. Individuals who wish to pursue filing with these agencies should contact them directly to obtain further information about their processes and time limits.

**California Department of Fair Employment and Housing**
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
800-884-1684 (voice), 800-700-2320 (TTY) or California’s Relay Service at 711
contact.center@dfeh.ca.gov
https://www.dfeh.ca.gov

**U.S. Equal Employment Opportunity Commission**
450 Golden Gate Avenue 5 West,
P.O Box 36025
San Francisco, CA 94102-3661
1-800-669-4000 or 510-735-8909 (Deaf/hard-of-hearing callers only)
http://www.eeoc.gov/employees

**CALIFORNIA STATE AGENCIES ONLY:**
State Personnel Board Appeals Division
801 Capitol Mall
Sacramento, CA 95814
(916) 653-0799 or TDD Line (916) 653-1498
www.spb.ca.gov

**CORRECTIVE ACTION GUIDELINES**

Name of Organization will take appropriate corrective action(s) up to and including formal discipline against any employee(s) when an investigation has found that misconduct occurred. Such corrective action(s) may include, but are not limited to, letters of reprimand, suspension, demotion, or termination. Additionally, depending on the nature of the violation, civil liability could be imposed on the violator as well as Name of Organization.
COMPLAINANT INFORMATION

NAME:

DIVISION / UNIT:

OFFICE LOCATION:

WORK PHONE:

IMMEDIATE SUPERVISOR:

Please describe the conduct that you believe violates the Discrimination, Harassment or Retaliation Prevention Policy. In your narrative, describe: (1) What happened to you; (2) Why you believe you are being discriminated, harassed, or retaliated against, including the reason or evidence you have to support your belief, and; (3) When the acts of discrimination, harassment, or retaliation occur (attach additional pages if needed). If you require assistance with completing this form as a reasonable accommodation, please contact the EEO officer.
PERSON(S) ALLEGED TO HAVE VIOLATED THE POLICY

Person #1 - Name: Position: Work Location:

Person #2 - Name: Position: Work Location:

Person #3 - Name: Position: Work Location:

PERSON(S) WITH INFORMATION/KNOWLEDGE OF THE ALLEGED INCIDENTS

Witness Name: Position: Work Location:

Witness Name: Position: Work Location:

Witness Name: Position: Work Location:

HAVE YOU COMPLAINED TO ANYONE AT NAME OF ORGANIZATION ABOUT THIS MATTER?

If yes, explain the situation. When did you complain, to whom, and what was the result?

Please submit to the Equal Employment Opportunity Officer:
Sexual Harassment and Abusive Conduct Prevention Training
Information for Employers

S.B. 1343 requires that all employers of 5 or more employees provide 1 hour of sexual harassment and abusive conduct prevention training to non-managerial employees and 2 hours of sexual harassment and abusive conduct prevention training to managerial employees once every two years. Existing law requires the trainings to include harassment based on gender identity, gender expression, and sexual orientation and to include practical examples of such harassment and to be provided by trainers or educators with knowledge and expertise in those areas. The bill also requires the Department to produce and post both training courses to its website, which employers may utilize instead of hiring a trainer.

There is no requirement that the 5 employees or contractors work at the same location or that all work or reside in California.

Under the DFEH’s regulations, the definition of “employee” includes full-time, part-time, and temporary employees.

By what date must employees be trained?
Both managerial and non-managerial employees must receive training by January 1, 2020. After January 1, 2020, employees must be retrained once every two years. That means that all employees statewide must be retrained by January 1, 2022.

What if my employees were trained between January 1 and December 31, 2018?
The law requires that employees be trained during calendar year 2019. Employees who were trained in 2018 or before will need to be retrained.

When will the Department of Fair Employment and Housing’s online training courses be available?
S.B. 1343 requires that DFEH make online training courses available on the prevention of sexual harassment and abusive conduct in the workplace. DFEH expects to have such trainings available by late 2019. In the interim period, DFEH is offering a sexual harassment and abusive conduct prevention toolkit, including a sample sexual harassment and abusive conduct prevention training. Employers may use the training in conjunction with an eligible trainer to provide sexual harassment and abusive conduct prevention training.

What if my employees are not trained by January 1, 2020?
DFEH accepts complaints from employees that their employers have not complied with the law requiring that sexual harassment prevention training be provided. Complaints filed with DFEH after January 1, 2020, regarding an employer’s failure to provide required sexual harassment and abusive conduct prevention training will be reviewed in light of the totality of the
circumstances, which may include the availability of DFEH’s online training courses or the availability of qualified trainers. If DFEH finds that the law has been violated, it will work with employers to obtain compliance with the law.

What are the laws and regulations governing the sexual harassment and abusive conduct prevention trainings?
The law requiring sexual harassment and abusive conduct prevention training is Gov. Code 12950.1. The regulations governing such trainings are 2 CCR 11024.

Does the employer have to pay for sexual harassment abusive conduct prevention training?

Does the employer have to provide paid time for such training?
California law specifies that, “An employer . . . shall provide” sexual harassment and abusive conduct prevention training. Gov. Code 12950.1(a)-(b). The Department is authorized to seek a court order that “the employer” has not complied with this requirement. Gov. Code 12950.1(f). This language makes clear that it is the employer’s—not the employee’s—responsibility to provide the required training, including any costs that may be incurred. This language also makes clear that employees may not be required to take such training during their personal time; the training must be “provided” by the employer as part of an individual’s employment.
I. EMPLOYEE SCREENING

Credit Reports: The Consumer Credit Reporting Agencies Act (CCRAA) limits the type of information that can be used from credit reports in employment decisions. Cal. Civ. Code § 1785.10. Specifically, the law prohibits the use of records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release or parole, antedate the credit report by more than seven years. Id. § 1785.13(a)(6).

California statutes prevent employers from using consumer credit reports for employment purposes unless the position of the person for whom the report is sought is managerial, for the State of California Department of Justice, for a sworn peace officer or other law enforcement position, where information contained is required by law to be disclosed or obtained, where the position allows access to any one person’s bank information, Social Security number, or date of birth, where the person would be a named signatory on the bank or credit card account of the employer, authorized to transfer money on behalf of the employer, or authorized to enter into financial contracts on behalf of the employer, involves access to confidential or proprietary information, or involves regular access to cash totaling ten thousand dollars or more of the employer, a customer, or client, during a workday. Cal. Lab. Code § 1024.5. These are not the only provisions of the California Labor Code governing this area of the law, and employers should consult legal counsel for further guidance as liability may be significant.

Criminal History: Additionally, California law does not allow employers to ask applicants for employment to disclose information concerning an arrest or detention that did not result in a conviction or a conviction that has been judicially dismissed or ordered sealed pursuant to law. Cal. Lab. Code § 432.7. Furthermore, employers may not ask job applicants about information relating to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the applicant was a juvenile and subject to juvenile court jurisdiction. Id.

Employers are allowed to inquire about any criminal charges or arrests for which the applicant is currently out on bail or on his or her own recognizance. Cal. Lab. Code § 432.7. Employers may not use information from the Megan’s Law database to make employment decisions except “to protect a person at risk.” Cal. Pen. Code § 290.4(d)(1)-(2).

As of July 1, 2017, the Fair Employment and Housing Council (FEHC) has enacted new guidelines for consideration of criminal history. Any use of criminal records in the hiring context may run afoul of the regulations if it has an “adverse impact” on a protected group. Cal. Code Regs. tit. 2, § 11017.1. Employers considering using any criminal history in a hiring context...
should proceed with caution, as California's regulation of the issue is becoming increasingly complex.

Further, on October 14, 2017, Governor Jerry Brown signed Assembly Bill 1008, which added new state-wide restrictions banning questions about job applicants' criminal histories, effective January 1, 2018. CAL. GOV'T CODE § 12952. Employers can consider applicants' criminal record only after making a conditional job offer. Id. An employer that intends to deny an applicant solely or in part because of the applicant's conviction history must make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. Id. § 12952(c)(1)(A). If the employer makes a preliminary decision the applicant's conviction history disqualifies the applicant from employment, the employer is required to notify the applicant of this preliminary decision in writing. Id. § 12952(c)(2). If the employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer must notify the applicant in writing with the final denial or disqualification, any existing procedure the employer has for the applicant to challenge the decision or request reconsideration, and the right to file a complaint with the California Department of Fair Employment and Housing. Id. § 12952(c)(5).

On September 30, 2018, Governor Jerry Brown signed Senate Bill 1412 which amends California Labor Code Section 432.7. The amended law limits those exceptions to circumstances where the employer is required to inquire into a particular category of criminal offenses or criminal conduct, or where the employer is prohibited from hiring an individual with a particular conviction. “Particular conviction” means a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation, or state law that contains requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses. Also, the amendment clarifies that in such instances, the employer may inquire about convictions that have been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

Investigative Reports: The Investigative Consumer Reporting Agencies Act (ICRAA) also limits the type of information that can be used in background screening reports for employment purposes. CAL. CIV. CODE § 1786. The Act prevents employers from using certain types of criminal history reports in their employment decisions. Id. Specifically, ICRAA prohibits employers from using records or information of arrest, indictment, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. Id. § 1786.18(a)(7).

ICRAA also imposes other prohibitions on investigative consumer reports. Under ICRAA, employers may not use reports that contain (1) bankruptcies that antedate the report by more than 10 years, (2) lawsuits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than 7 years, (3) unsatisfied judgments that, from the date of entry, antedate the report by more than 7 years, (4) unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement, (5) paid tax liens that antedate the report by more than 7 years, (6) accounts placed for collection or charged to profit and loss that antedate the report by more than 7 years, or (8) any other adverse information that antedates the report by more than 7 years. CAL. CIV. CODE § 1786.18.
Salary History: On October 12, 2017, Governor Jerry Brown signed AB 168, which prohibits an employer from asking for a job applicant’s salary history information or for relying on salary history information as a factor in determining whether to offer employment or to determine what salary to offer an applicant, effective January 1, 2018. Cal. Lab. Code § 432.3(a)-(b). Further, an employer, upon reasonable request, will be required to provide the pay scale for a position to an applicant applying for employment. Id. § 432.3(c).

Effective January 1, 2019, AB 2282 provides guidance and clarifies Labor Code sec. 432.3. The new law allows employers to provide pay scales, upon their request, only to applicants for employment who have completed at least one interview. In addition, the new law allows employers to ask applicants about their “salary expectations” for the position sought.

Miscellaneous Issues

Marijuana Convictions: It is a violation for an employer to ask employment applicants for information relating to marijuana convictions that are more than two years old. Cal. Lab. Code § 432.8. The employer must include notice of this in the employment application immediately next to the question asking for information about convictions. See, for example, Starbucks v. Superior Court, 168 Cal. App. 4th 1436, 1444-45 (2008).

Pre-trial or Post-trial Diversion Programs: No employer shall ask an applicant for employment to disclose, in writing or verbally, information concerning a referral to, and participation in, any pretrial or post-trial diversion program. Cal. Lab. Code § 432.7(a)(1).

Applicant Fees: No employer may require the payment of a fee from an employment applicant in order (1) to apply for employment orally or in writing, (2) to receive, obtain, complete or submit an application for employment, or (3) to provide, accept, or process an application for employment. Cal. Lab. Code § 450.

Polygraphs: No employer shall demand or require any applicant for employment or prospective employment to submit to or take a polygraph, lie detector or similar test, or examination as a condition of employment or continued employment. Cal. Lab. Code § 432.2(a). No employer shall require any person to take such a test without first advising the person in writing at the time the test is to be administered of the rights guaranteed by this section. Id. § 432.2(b).


The law is not the same with regard to applicants and employees. Employers that are interested in drug testing current employees must have an individualized, reasonable suspicion that the employee is using drugs or the employee must hold a safety or security-sensitive position. Smith v. Fresno Irrigation Dist., 72 Cal. App. 4th 147, 160-61 (1999). Individualized reasonable suspicion can be evidenced by slurred or incoherent speech, suspicious conduct,
uncharacteristically poor work product, an unusually high number of accidents, or excessive absenteeism and tardiness. *Hind*, 66 Cal. App. 4th at 31-32. Proposition 64 codified the reasonable suspicion requirement in regards to marijuana and allows businesses to discharge employees even if there was no indication that they were actually impaired while at work. **Cal. Health & Safety Code § 11362.45(f).**

**Job Reference Liability:** Upon special request, employers may provide truthful statements concerning the reason a former employee’s separation from employment. **Cal. Lab. Code § 1053.** If the communications are about an applicant’s job performance or qualifications, they are considered confidential. **Cal. Civ. Code § 47(c).**

II. **RECORDKEEPING**

**Personnel Records:** Employers must keep personnel records at the place the employee reports to work for a reasonable amount of time or the employee must be permitted to inspect the records at the place of storage without loss of compensation. **Cal. Lab. Code § 1198.5(c).** Employers must also maintain a copy of each employee’s personnel records for a period of not less than three years after termination of employment. *Id.* Employers will, in some cases, have to produce personnel records if a current or former employee is involved in a lawsuit. **Cal. Civ. Proc. Code § 1985.6(c).** This may happen even in cases where the employer is not a party to the suit. If personnel records are subpoenaed, the employee must be notified and given an opportunity to object to the production of the records. *Id.*

**Job Applications:** Employers must maintain or preserve all job applications, personnel or employment referral records and files for at least two years after initially created or received and retain personnel files of applicants or terminated employees for at least two years after the employment action was taken. **Cal. Gov’t Code § 12946.**

If an applicant signs an employment application, the employer is required to furnish the application upon the applicant’s request. **Cal. Lab. Code § 432.** Employers are also required to request that applicants voluntarily disclose their race, sex, and national origin information. This information must be kept separated from personnel files. **Cal. Code Regs. tit. 2, § 11013(b) and (c)(3).**

**Wage Records:** Employers must maintain records of the employee wages and wage rates, job classifications, and other employment terms for three years. **Cal. Lab. Code § 1197.5(c).** Additionally, employers must keep, at the establishments where employees are employed, payroll records showing the hours worked daily by and the wages paid to employees. *Id.* § 1174. These records should include the names and addresses of all employees and be kept for not less than three years. *Id.*

Employers must issue the following information as a detachable part of the employee’s paycheck or in a separate itemized statement: gross wages earned, total hours worked (except salaried exempt employees), all deductions (including taxes, disability insurance, and health and welfare payments), net wages earned, the pay period’s inclusive dates, the name of the employee, and the last four digits of his or her Social Security number (SSN). **Cal. Lab. Code § 226(a).** Employers may print no more than the last four digits of an employee’s Social Security number.
on check stubs or similar documents and may substitute some other identifying number instead of the Social Security number.

The paycheck or accompanying statement must also include the name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period, and the corresponding number of hours the employee worked at each hourly rate. CAL. LAB. CODE § 226(a). These are not the only provisions of the California Labor Code governing this area of the law. Employers should consult legal counsel for further guidance as liability may be significant.

Effective January 1, 2019, SB 1252 amends California Labor Code Section 226, under which employers must afford current and former employees the right to inspect or copy records. The amended law adds that employees have a right to “receive a copy” of the records. According to the bill’s legislative history, the amendment’s purpose is to clarify that employers must provide a copy upon request, rather than requiring the employee to make a copy. The amendment leaves in place the employer’s right to charge the employee “the actual cost of reproduction.”

Unemployment Insurance Requirements: Employers must report the hiring of any employee who works in California and to whom the employer anticipates paying wages. Employers must also report the hiring of any employee who previously worked for the employer, but has been separated for at least 60 consecutive days. CAL. UNEMP. INS. CODE §§ 13050-13059.

III. HIRING CONSIDERATIONS

Employment at Will: California is an at-will employment state. CAL. LAB. CODE § 2922. This means there is a presumption that an employment relationship with no specified duration can be terminated by the employee or the employer at any time, with or without cause and with or without notice. Id. Of course, as with many legal issues in California, there are exceptions to the rule.

Exceptions to “Employment-at-Will Doctrine”


Statutory Exceptions: Several laws may defeat the at-will employment presumption. The Fair Employment and Housing Act (FEHA) prohibits employers from refusing to hire or from firing an employee based on a protected status such as race, ethnicity, gender, religious affiliation, national origin, marital status, disability, color, gender identity, gender expression, age, sexual orientation, military or veteran status, or any other characteristic protected by law. CAL. GOV'T CODE § 12940.

Public Policy: Public policy considerations can also limit the at-will employment relationship. Foley v. Interactive Data Corp., 47 Cal. 3d 654 (1988). An employer may not discharge an employee for refusing to violate explicit state or federal government public policy.
Gantt v. Sentry Insurance, 1 Cal. 4th 1083 (1992). This usually comes up in the context of employers asking their employees to violate statutes, but it may also come up when employers ask employees to violate state or federal regulations. Green v. Railee Engineering Co., 19 Cal. 4th 66 (1998).

**Implied-In-Fact Exception:** The presumption of at-will employment may be overcome when there is evidence showing that the parties agreed that the employer’s ability to terminate employment would be limited in some way, by evidence of an implied agreement. Guz v. Bechtel, 24 Cal. 4th 317, 336 (Cal. 2000). This evidence can come by way of (1) the personnel policies or practices of the employer, (2) the employee’s longevity of service, (3) actions or communications by the employer reflecting assurances of continued employment, and (4) the practices of the industry in which the employee is engaged. Foley v. Interactive Data Corp., 47 Cal. 3d 654, 680 (1988).

**Handbooks and Policy Manuals:** Employer handbooks and policy manuals that are given to employees may be found to be express employment contracts. Guz, 24 Cal. 4th at 344. Courts often find that employees may rely on these materials as the terms and conditions of employment. Tomlinson v. Qualcomm Inc., 97 Cal. App. 4th 934 (2002). Making clear that the employment status is “at will” in these materials may defeat a claim of any implied agreement contrary to at-will employment. Romaneck v. Deutsche Asset Mgmt., 2006 BL 106720, 25 IER Cases 71 (N.D. Cal. 2006).

IV. **WAGES**

**Minimum Wage:** California’s minimum wage will increase every year through 2023 by different amounts depending on employer size. Cal. Lab. Code § 1197.

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Employers With 25 Employees or Fewer</th>
<th>Employers With 26 Employees or More</th>
</tr>
</thead>
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<tr>
<td>January 1, 2018</td>
<td>$10.50 per hour</td>
<td>$11.00 per hour</td>
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<tr>
<td>January 1, 2019</td>
<td>$11.00 per hour</td>
<td>$12.00 per hour</td>
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<tr>
<td>January 1, 2020</td>
<td>$12.00 per hour</td>
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<tr>
<td>January 1, 2021</td>
<td>$13.00 per hour</td>
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<tr>
<td>January 1, 2022</td>
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<td>$15.00 per hour</td>
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<tr>
<td>January 1, 2023</td>
<td>$15.00 per hour</td>
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The California minimum wage applies to all men, women, and minors in any occupation, trade or industry, whether the compensation is measured by time, piece or otherwise unless exempted. Cal. Lab. Code § 1171. Minimum wage requirements apply to all workers, regardless of immigration status. Id. § 1171.5.

Note that many cities and localities in California have recently implemented minimum wage rates higher than the state minimum. More than a third of California’s population lives in a city or county with a minimum wage higher than the state rate. They are the following localities:
Employers should consult legal counsel for further guidance on the minimum wage rate applicable to the locations in which they operate.

Meals or lodging may not be credited against the minimum wage without a voluntary written agreement between employers and employees. CAL. CODE REGS. tit. 8, § 11000.

**Special Employees**

**Minors:** No minor under the age of 16 may be employed to work in any manufacturing establishment or other place of employment at any time except as may be provided in the child labor law. CAL. LAB. CODE § 1290.

School officials or their designees may issue permits for certain minors to work following the written request for a permit from the parent, guardian, or person in like position. CAL. EDUC. CODE §§ 49110-49110.1. Minors under the age of 15 may not work for more than 8 hours per day or more than 40 hours per week or before 7 a.m. or after 7 p.m. CAL. LAB. CODE § 1391. From June 1 through Labor Day, the child may be employed until 9 p.m. *Id.* For additional laws on minors and the types of positions minors may hold, see sections 1298, 1294.1, and 1294.3 of the California Labor Code.

**Sub-Minimum Wage:** Learners or employees who have no previous similar or related experience in the occupation and are under the age of 20 may be paid 85 percent of the minimum wage for their first 90 consecutive days of employment. CAL. CODE REGS. tit. 8, §§ 11020-11170.

**Handicapped Employees:** Employees who are mentally and/or physically handicapped may be paid at a wage less than the legal minimum wage if the Industrial Welfare Commission issues a license to the employer. CAL. LAB. CODE § 1191. The Commission will fix a special minimum wage for the employer, which may be renewed annually. *Id.*

**Piece Rate and Commissioned Employees:** Piece rate and commission-paid employees must receive at least the minimum wage. Piece rate employees must be paid for rest and recovery periods (and all other “nonproductive” time). CAL. LAB. CODE § 226.2. The rate of pay for rest and recovery periods is determined by dividing the employee’s total compensation for the workweek (not including compensation for rest and recovery periods and overtime premiums) by the total hours worked during the workweek. *Id.* If an employer already pays an hourly rate for all hours worked in addition to piece-rate wages, then those employers would not need to pay additional amounts. *Id.* Similarly, employers are required to directly compensate commission-

**Exempt Employees:** Employees who are in administrative, executive, or professional positions are exempt from the California minimum wage requirements. CAL. CODE REGS. tit. 8, §§ 11020-11170. These employees must earn a monthly salary that is not less than two times the state minimum wage for full time employment. *Id.*

Computer professionals are also exempt from the minimum wage requirements, unless: (1) they are a trainee or are involved in entry-level positions learning to become proficient in computer systems analysis, programming, and software engineering; (2) they have not attained the level of skill and expertise necessary to work independently and without close supervision; (3) they engage in the repair, manufacture, or maintenance of computer hardware and related equipment; (4) they are an engineer, drafter, or machinist or other professional who is highly dependent on or facilitated by the use of computers and computer software program; (5) they are a writer engaged in writing material such as box labels, product descriptions, documentation, promotional material, setup and installation instructions, either for print or for onscreen media, or writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMS; or (6) they create imagery for effects used in the motion picture, television, and theatrical industry. *Id.*

As of January 1, 2018, the computer professional’s minimum wage is an hourly wage of $43.58 per hour or a salary of at least $90,790.07 per year. *Id.* The Office of Policy, Research, and Legislation (OPRL) is responsible for adjusting this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers. *Id.*

**Tips:** California law prohibits employers from receiving or collecting any gratuity left for the employee. *Id.* Employers may not credit tips against an employees’ wages to satisfy wage requirements. *Id.* The same rule applies to any tip pools created for employees. *Id.* If the tips are paid by credit card, employees must receive their tip amounts no later than the next regular payday following the date the patron authorized the credit card payment. *Id.* Employers cannot deduct card processing fees from tips collected via debit or credit card. *Id.*

**Overtime Requirements:** Employers must compensate nonexempt employees age 18 and over (and certain minor employees) at one-and-one-half times the regular pay rate for work performed over 8 hours per workday, work over 40 hours per workweek, and the first 8 hours worked on the seventh work day in any 1 workweek. *Id.* Employers must compensate work performed over 12 hours in 1 day, and work over 8 hours on the seventh day of a workweek at no less than twice the employee’s regular pay rate. *Id.* For non-exempt full-time salaried employees, employers must compute overtime pay at 1/40th of the employee’s weekly salary. *Id.*
Commissioned Sales Employee Exemption: Commissioned sales employees are exempt from overtime if the employee earns more than one-and-one-half times the minimum wage and more than half of the employee’s compensation represents commission earnings. Cal. Code Regs. tit. 8, § 11040. Compliance with the exemption is calculated on a workweek basis. Id.

Alternative Workweeks: Employers may adopt regularly scheduled alternative workweeks for no longer than 10 hours per day within a 40-hour workweek, without payment of overtime compensation, if approved by 2/3 of affected employees in a secret ballot election. Cal. Lab. Code § 511. Overtime requirements would still apply to a regular schedule of 8-hour days. Id. Adopting alternative work schedules can be complicated, and employers must ensure that they follow the requirements outlined in § 511 of the California Labor Code carefully as to not incur unintended overtime costs.

New Formula for Flat Sum Bonuses: In March 2018, Alvarado v. Dart Container Corp. of California transformed the method for calculating overtime under California law when employees receive flat sum bonuses. 4 Cal. 5th 542 (2018). The California Supreme Court held that a flat sum bonus must be treated as if it were earned on a per-hour basis throughout the relevant pay period, for the purposes of calculating overtime. Id. at 562. Notably, the California Supreme Court rejected the argument that this formula should only have prospective effect, meaning it would apply retroactively to flat sum bonus payments. Id. at 572-73.

Other Special Wage Provisions

Reporting Time Pay: For each workday that an employee is required to report for work and does report but is not put to work or is furnished half of the employee’s usual or scheduled day’s work, the employee must be paid for half the usual or scheduled day’s work, but not less than two hours nor more than four hours at the employee’s regular rate of pay. Cal. Code Regs. tit. 8, § 11010; § 11040. If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, the employee shall be paid for two hours at the employee’s regular rate of pay. Id. This provision does not apply when (1) operations cannot commence or continue due to threats to employees or property or when recommended by civil authorities; (2) when public utilities fail to supply electricity, water, or gas, or (3) the interruption is caused by an “act of God” or other cause not within the employer’s control. Id.

Manufacturing, 24-hour Operations: Employers that continuously operate a manufacturing facility 24 hours per day for 7 days per week and who have had in operation an established pre-existing workweek arrangement that existed before November 1980 between the employer and at least two-thirds of its employees are not required to pay premium wage rates to employees unless they are required or permitted to work more than 12 hours in any workday, more than the scheduled 3 or 4 days in any workweek, or more than 40 hours in any workweek. Cal. Lab. Code § 1182.6.

Timing of Wages: Non-Exempt Employees. Wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Cal. Lab. Code § 204(a). Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th days of the month during which the labor
was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th days of the following month. Id. Employers may choose to pay employees weekly, biweekly, or semimonthly with payment within 7 days of the pay period. Id. § 204(d).

**Exempt Employees:** Exempt employees should be paid within the same time frames as non-exempt employees. Although rare, salaries of executive, administrative, and professional employees can alternatively be paid once per month on or before the 26th day of the month. CAL. LAB. CODE § 204. If this payment schedule is used, the check must include the yet unearned portion between the date of payment and the last day of the month. Id.

**Form of Payment:** Wages may be paid in cash or by order, check, draft, note, memorandum, or other acknowledgement of indebtedness, if negotiable and payable in cash on demand without discount at an established place of business within the state. CAL. LAB. CODE § 212. Sufficient funds must be available for payment for at least 30 days. Id. Section 213(d) of the Labor Code also authorizes payment of wages by direct deposit, and an opinion letter issued by the Division of Labor Standards Enforcement (DLSE) approves payroll debit cards.

**Wages Upon Termination:** Employers must pay discharged employee wages earned and unpaid immediately. CAL. LAB. CODE § 201. An employee who does not have a written agreement for a definite period of employment and who quits without giving prior notice must be paid his or her wages within 72 hours. Id. § 202. If 72 hours of prior notice of intention to quit is provided by the employee, then the employee is entitled to his or her wages at the time of quitting. Id. For detailed information on employers’ wage payment obligations upon termination of employment, see section VIII. Termination, below.

**Deceased Employee Wages:** If an employee dies, the surviving spouse, guardian, or conservator of the estate may collect salary or any other compensation owed by the employer, including compensation for unused vacation, not in excess of $15,000 net. CAL. PROB. CODE § 13600.

**The Wage Theft Protection Act:** The Wage Theft Protection Act of 2011 went into effect on January 1, 2012, adding section 2810.5 to California’s Labor Code. The act requires all employers, at the time of hire, to provide non-exempt employees with a written notice containing specified information, including information about the employer, wages, and workers’ compensation benefits. The law requires that employers provide the notice in the language that the employer normally uses to communicate employment-related information to the employee. The Labor Commissioner is required under the law to provide employers with a template that complies with the requirements of the notice. In May of 2012, the Labor Commissioner released a new “Notice to Employee” template in several languages. The new template requires employers to disclose if there is a written agreement that provides the employee’s rates of pay; it also makes it clear that the primary “hiring” employer is the party responsible for providing the notice. The Labor Commissioner also released answers to a series of frequently asked questions (FAQs) regarding the Wage Theft Protection Act. These FAQs can be found on the DLSE website at http://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html.
Enhanced Penalties for Employers and Their Agents: The Labor Commissioner is authorized to file a lien on an employer’s property or a levy on an employer’s bank account, and/or impose a stop order on an employer’s business to assist an employee in collecting unpaid wages where there is a judgment against the employer. CAL. LAB. CODE § 96.8. Any employer or an individual acting on behalf of an employer (which includes successor employers) may be held liable for violations of Industrial Welfare Commission orders. CAL. LAB. CODE § 558.1.

Independent Contractors: In Dynamex Operations W. v. Superior Court, two individual delivery drivers filed a complaint against Dynamex on their own behalf and on behalf of a class of allegedly similarly situated drivers. 4 Cal. 5th 903, 914 (2018). They alleged Dynamex misclassified its delivery drivers as independent contractors rather than employees. The trial court ultimately certified a class action, which the Court of Appeal upheld. Id. at 915. The California Supreme Court affirmed the Court of Appeal decision, looking to the “ABC” test. Id. at 916. Under the ABC test, a worker is properly considered an independent contractor if (A) “the worker is free from the control and direction of the hirer in connection with the performance of the work”; (B) “the worker performs work that is outside the usual course of the hiring entity’s business”; and (C) “the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.” The California Supreme Court affirmed the Court of Appeal’s judgment, holding there is sufficient commonality of interest as to whether drivers’ work was outside the company’s usual course of business and as to whether drivers were engaged in independent business, and thus, resolution on a classwide basis was warranted. Id. at 965-67.

Fair Pay Act. The California Fair Pay Act now prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex or different races or ethnicities for substantially similar work. CAL. LAB. CODE § 1197.5(a)-(b). The law places the burden on the employer to demonstrate that a wage differential is based upon one or more factors, including a seniority system; a merit system; a system that measures earnings by quantity or quality of production; or a bona fide factor other than sex, race, or ethnicity. Id. § 1197.5(a)(1). The “bona fide factor” defense can only be used if the employer can demonstrate that the wage differential is not derived from a factor related to sex, race, or ethnicity, is job-related, and is consistent with a business necessity. Id. § 1197.5(a)(1)(D)-(b)(1)(D).

The law also prohibits retaliation against any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of the Act. CAL. LAB. CODE § 1197.5(k)(1)-(2). The bill also bans an employer from prohibiting an employee from disclosing the employee’s own wages, discussing the wages of others, inquiring about another employee’s wages, or aiding or encouraging any other employee to exercise his or her rights under the act. Id. Recent amendments to the Fair Pay Act include a prohibition against employers using prior salary history as a defense to pay disparities. Id. § 1197.5(a)(4); § 1197.5(b)(4).

Employers should proceed with caution on pay equity issues, as the landscape on pay equity is constantly changing and increasingly complex.
V. MEALS AND BREAK PERIODS

Breaks: Employees must have an opportunity to take a 10-minute paid rest break for every four hours worked or major fraction thereof. Cal. Lab. Code § 226.7. Employers must afford employees the opportunity to take rest breaks, but employers need not ensure that the employees take them. Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1017 (2012).

Meal Breaks: An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. Cal. Lab. Code § 512.

If a work period is no more than six hours, however, the meal period may be waived by mutual consent of both the employer and the employee. Cal. Lab. Code § 512. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of at least 30 minutes. Id.

If the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. If an employer fails to provide a meal or rest period, the employer must pay the affected employee one additional hour of pay. Cal. Lab. Code § 226.7(c).

An employer’s providing of an additional hour of pay does not excuse a violation of the meal and rest break statute. Kirby v. Immoos Fire Prot., Inc., 53 Cal. 4th 1244, 1256 (2012). The additional hour of pay is subject to a statute of limitations of three years. Murphy v. Kenneth Cole Prods., Inc., 40 Cal. 4th 1094, 1102 (2007).

The employer does not have a duty to ensure that its hourly workers take their statutorily-mandated meal periods. It is enough to ensure that employees are afforded the opportunity to take them. Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1017 (2008). An employer may not, however, impede or discourage employees in any way from taking them. Id. at 1040.

Heat Illness: California law requires that when the outdoor temperature at a work area exceeds 85 degrees Fahrenheit, employers provide access to shade for employees. Cal. Code. Regs. tit. 8, § 3395(d). Employers are also required to give employees fully paid recovery periods from heat when requested or risk paying penalties. Cal. Lab. Code § 226.7.

VI. LEAVES

The California Labor Code provides a variety of required paid and unpaid leaves for time off work. The types of leave include:
- Military leave (CAL. MIL. & VET. CODE §§ 394, 395.9),
- Family military leave (CAL. MIL. & VET. CODE § 395.10),
- Disaster and emergency services leave (CAL. LAB. CODE § 230.3-230.4),
- Adult literacy leave (CAL. LAB. CODE §§ 1040-1044),
- Jury duty (CAL. LAB. CODE § 230(a)),
- Witness and victim testimony leave (CAL. LAB. CODE § 230(b) and § 230.5(a)),
- Special leave for victims of domestic violence, sexual assault, or stalking (CAL. LAB. CODE §§ 230 and 230.1),
- Leave for crime victims (CAL. LAB. CODE § 230.2(b)),
- Time off to appear in school on behalf of child (CAL. LAB. CODE § 230.7),
- Time off for school activities (or to find, enroll or re-enroll a child in a school or with a licensed child care provider, or to address a child care provider or school emergency) (CAL. LAB. CODE §§ 230.8 and 233),
- Alcohol and drug rehabilitation leaves (CAL. LAB. CODE § 1025),
- Time off to vote (CAL. ELEC. CODE §§ 14000-14002),
- Civil air patrol leave (CAL. LAB. CODE § 1501(a)),
- Organ and bone marrow donation leaves (CAL. LAB. CODE § 1510(a)), and
- Family and medical leave (CAL. LAB. CODE § 233, CAL. GOV’T CODE § 12945.2).

An employer may not require leave if the employee can work with other reasonable accommodation. While a leave of absence may be a reasonable accommodation, “when an employee can work with a reasonable accommodation other than a leave of absence, an employer may not require the employee to take a leave of absence.” Wallace v. County of Stanislaus, 245 Cal. App. 4th 109, 134 (2016).

**California Family Rights Act:** There are a number of key differences between the California Family Rights Act (CFRA) and the federal Family and Medical Leave Act (FMLA). Unlike the FMLA, the CFRA covers domestic partners rather than just spouses, does not require an employer to allow employees to work an intermittent or reduced schedule for baby bonding, and requires that employees taking pregnancy disability leave (PDL) be reinstated to the same position (and not just to a comparable one). The California Department of Fair Employment and Housing provides a thorough chart detailing PDL, CFRA, and FMLA requirements and obligations at https://www.dfeh.ca.gov/resources/frequently-asked-questions/employment-faqs/pregnancy-disability-leave-faqs/pdl-cfra-fmla-guide/.

The California Unemployment Insurance Code now provides increased compensation to lower-income employees seeking paid family leave. CAL. UNEMP. INS. CODE § 2655. The State Disability Insurance (SDI) and Paid Family Leave (PFL) programs will provide up to 70 percent of wage levels for 52 weeks or 6 weeks, respectively. Furthermore, the law has expanded to apply to workers who have a new child or are providing care to a sick relative. *Id.*

These are not the only provisions of the California Labor Code governing this area of the law, and employers should consult legal counsel for further guidance as failure to designate leave liability may be significant.
VII. EMPLOYEE PRIVACY

**Shopping Investigators:** Employers may use a person who shops in commercial, retail, and service establishments to test the integrity of an employee’s sales techniques or customer service. CAL. LAB. CODE § 2930. If an employer is disciplining or discharging an employee on the basis of a shopping investigator’s report, then the employer must provide the employee with a copy of that report. *Id.*

**Recordings:** Employers may not make audio or video recordings of employees in restrooms, locker rooms, or rooms designated by the employer for changing clothes, unless authorized by a court order. CAL. LAB. CODE § 435. Employers may conduct hidden workplace surveillance outside of these areas, so long as there is a legitimate business reason for doing so and the employer properly tailors the methods and scope of the surveillance. *Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272 (2009).

**Computers:** Employers have the right to examine any content on a computer used by an employee if the employer supplied the computer. *TGB Ins. Servs. Corp. v. Superior Court of Los Angeles Cty.*, 96 Cal. App. 4th 443 (2002). Under a well-drafted policy governing the use of a company’s computers, email and electronic data systems, an employee has no reasonable expectation of privacy in communications made using the company’s electronic data systems and as a result, the attorney-client privilege does not protect an employee’s emails from being offered into evidence. *Holmes v. Petrovich Dev. Company, LLC*, 191 Cal. App. 4th 1047 (2011).

**Social Security Numbers:** It is unlawful for an employer to (1) publicly post or display an individual’s Social Security number, (2) print a Social Security number on a card required for the individual to receive products or services provided by the person or entity, (3) require the transmission of a Social Security number over the Internet unless the connection is secure or the Social Security number is encrypted, (4) require the use of an individual’s Social Security number to access a website unless a password or unique personal identification number or other authentication device is also required to access the site, and (5) print an individual’s Social Security number on materials that are mailed to the individual, unless state or federal law requires the Social Security number to be on the document to be mailed. CAL. CIV. CODE § 1798.85.

**Social Media:** California law prohibits employers from requiring or requesting an employee or job applicant from disclosing his or her username or password for the purpose of accessing personal social media. CAL. LAB. CODE § 980(b). An employer is also prohibited from requiring or requesting that an employee access personal social media in the presence of the employer. *Id.* An employer may, however, request that an employee divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations. *Id.* § 980(e).

VIII. TERMINATION

**Notices Required Upon Discharge:** On the date of termination, employers must provide the terminated employee with the following notices:
The California Employment Development Department requires employers to provide the “For Your Benefit” pamphlet on unemployment benefits.

The written “Notice to Employee as to Change in Relationship” form is required under California Unemployment Insurance Code § 1089. This form is not required if the employee quits voluntarily, is promoted, is demoted, or changes location, or if work has stopped due to a trade dispute.

- Failure to provide this notice to discharged employees constitutes a misdemeanor punishable by up to one year in prison and a fine of no more than $1000.

The Health Insurance Premium Payment notice is required to be given to discharged employees who are covered under Medi-Cal.

For any benefits for which the discharged employee may qualify, the employee must be notified of those benefits. CAL. LAB. CODE § 2808(b).

COBRA and Cal-COBRA benefit information must be given to discharged employees who were a part of an employer health plan. These notices can be obtained from the insurance provider.

Constructive Discharge: An employer is considered to have discharged an employee when “the employer’s conduct effectively forces an employee to resign.” Turner v. Anheuser-Busch, Inc., 7 Cal. 4th 1238, 1244–45 (1994). Constructive Discharge occurs when the working conditions are so unbearable that a reasonable employee would resign rather than endure them. King v. AC & R Adver., 65 F.3d 764 (9th Cir. 1995). This type of discharge can make an employer liable for a wrongful termination claim. Turner, 7 Cal. 4th at 1245.

Final Pay: If an employee is discharged or laid off with no specific return date within the normal pay period, all wages and accrued vacation earned but unpaid are due and payable immediately at the employee’s final rate of pay. CAL. LAB. CODE § 201. With rare exception, it is illegal to withhold a final paycheck from an employee in order to induce him or her to return work tools, pay back money owed to an employer, or turn in reimbursement forms. DLSE Enforcement Policies and Interpretations Manual, Sec. 3.2.2. Employers cannot ask an employee to wait until the next regular payday for his or her final paycheck. CAL. LAB. CODE §§ 201, 202. The California Supreme Court has held that this requirement applies when an employee retires as well. McLean v. State of Calif., 1 Cal. 5th 615, 622 (2016).

In addition, an employee without a written employment contract for a definite period of time who quits without giving 72 hours prior notice must be paid all of his or her wages, including accrued vacation, within 72 hours of quitting. An employee who quits without giving 72 hours prior notice may request that his or her final wage payment be mailed to a designated address. The date of mailing will be considered the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. CAL. LAB. CODE § 202.

The place of the final wage payment for employees who are discharged (or laid off) is the place of termination. The place of final wage payment for employees who quit without giving 72 hours prior notice and who do not request that their final wages be mailed to them at a designated address, is at the office of the employer within the county in which the work was performed. CAL. LAB. CODE § 208.
Direct deposits of wages to an employee’s bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employer complies with the provisions of California Labor Code section 213 (d) relating to the payment of wages upon termination or quitting of employment.

An employer who willfully fails to pay any wages due a terminated employee (discharge or quit) in the prescribed time frame may be assessed a waiting time penalty. CAL. LAB. CODE 203 (a). The waiting time penalty is an amount equal to the employee’s daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) calendar days. Mamika v. Barca, 68 Cal. App. 4th 487 (1998). An employee will not be awarded waiting time penalties if he or she avoids or refuses to receive payment of the wages due. CAL. LAB. CODE 203 (a). If a good faith dispute exists concerning the amount of the wages due, no waiting time penalties would be imposed. A "good faith dispute" that any wages are due occurs when an employer presents a defense, based in law or fact which, if successful, would preclude any recovery on the part of the employee. CAL. CODE REGS., tit. 8, § 13520.

Illiteracy: An employee who discloses a problem of illiteracy and who satisfactorily performs his or her job cannot be subject to termination because of the disclosure of illiteracy. CAL. LAB. CODE § 1044.

Plant Closings, Layoffs, and WARN Laws: An employer may not order a mass layoff, relocation, or termination at any industrial or commercial facility or part thereof that employs or has employed 75 persons or more unless, 60 days before the order takes effect, the employer gives written notice of the order to the employees of the covered establishment affected by the order as well as to the Employment Development Department, local workforce investment board, and the chief-elected official of each city and county government where the mass layoff or terminations occur. CAL. LAB. CODE § 1400(a). The California Labor Code includes a number of detailed provisions governing this area of the law. Employers should consult with legal counsel for further guidance.

A "mass layoff" means a layoff during any 30-day period of 50 or more employees at a covered establishment. CAL. LAB. CODE § 1400(d).

90-Day Retention of Grocery Workers: Grocery employees who work in grocery stores that are at least 15,000 square feet in size are protected from being fired during a 90-day period after the store undergoes a change in ownership. CAL. LAB. CODE § 2500. Following the 90-day period, the new owner must provide inherited employees with a written performance evaluation and consider offering continued employment to employees who receive satisfactory evaluations. Id. The employer retains the right to discharge these employees for cause at any time. Id. Eligible employees must have worked for the predecessor employer for at least six months and not be a manager, supervisor, or confidential employee. Id. Grocery retail stores that have ceased operations for six months or more are excluded. Id.
Whistleblowers: Whistleblowers are protected from retaliatory termination under California law. CAL. LAB. CODE § 1102.5. Employers are prohibited from discharging an employee for disclosing information or believing an employee will disclose information about an employer that the employee believes is a violation of state or federal statute or a violation of or noncompliance with a local, state, or federal rule or regulation. Id. The employee is protected regardless of whether there is an actual violation of the law or the employee has reasonable cause to believe that there is such a violation. Id. Furthermore, the employee is protected regardless of whether he or she reports the violation internally or externally. Id.

Recent California appellate court decisions have extended the scope of Tameny claims to include instances in which the discharged employee was suspected of whistleblowing (Diego v. Pilgrim United Church of Christ, 231 Cal. App. 4th 913, 932 (2014)) and instances in which the only harm of violation of the law would be to the private financial interests of a private university (Ferrick v. Santa Clara Univ., 231 Cal. App. 4th 1337, 1357 (2014)).

Paid Time Off Cash Out: Cash out of vacation or paid time off must be calculated at the employee’s current pay rate. CAL. LAB. CODE § 227.3.

IX. DISCRIMINATION AND HARASSMENT STATUTES

Age Discrimination: Employers may not refuse to hire, discharge, or bar from employment; discriminate in compensation or terms of employment; print or circulate publications that express age limits; or require retirement of an employee who indicates in writing a desire or demonstrated ability to continue employment beyond a retirement day contained in a private retirement plan. CAL. GOV. CODE § 12942. The protected age group in California is employees over 40 years of age. CAL. GOV. CODE § 12926.

An otherwise prohibited action based on age can be taken if there is a genuine occupational qualification or there are age limitations based upon security regulations. Cal. Gov. Code § 12940.

Race and Color Discrimination: Employers may not refuse to hire, bar, or discharge from employment; discriminate in compensation or terms of employment; print or circulate publications that express race or color limits or discrimination; or harass an employee based on his or her race or color. CAL. GOV. CODE § 12940.

Sex Discrimination: Employers may not refuse to hire, bar, or discharge from employment; discriminate in compensation or terms of employment; or print or circulate publications that express sex limits or discrimination based on gender, pregnancy, and childbirth. CAL. GOV. CODE § 12926.

However, it is not an unlawful employment practice to take otherwise prohibited actions based on sex, if such actions are based on a bona fide occupational qualification or security regulation. CAL. GOV. CODE § 12940.

Sexual Orientation Discrimination: Employers may not refuse to hire, bar, or discharge from employment; discriminate in compensation or terms of employment; or print or circulate publications that express sex limits or discrimination based on sexual orientation, gender identity, or gender expression. CAL. GOV. CODE § 12940.
Employers may require an employee to adhere to reasonable workplace appearance, grooming, and dress standards not precluded by other provisions of state or federal law, provided that an employer shall allow an employee to appear or dress consistently with the employee’s gender identity or gender expression. CAL. GOV. CODE § 12949.

**Disability Discrimination:** Employers may not refuse to hire, bar, or discharge from employment based on a disability; discriminate in compensation or terms of employment based on a disability; print or circulate publications that express limitations based on a disability; make a medical or psychological inquiry regarding the nature or severity of the disability of an applicant; fail to make a reasonable accommodation for a known physical or mental disability of an employee; or fail to engage in a timely, good faith, interactive process with an applicant or employee to determine effective reasonable accommodations. CAL. GOV. CODE § 12940. “Disability” includes physical disability, mental disability, mental condition, or genetic condition. CAL. GOV. CODE § 12926. To assure compliance, employers should provide detailed job descriptions, including essential functions, physical demands, and time spent doing the various activities of the positions with the company. See Nealy v. City of Santa Monica, 234 Cal. App. 4th 359 (2015). Detailed job descriptions will be useful in the interaction with the employee’s doctor, who will be able to precisely determine which available positions the employee may or may not be qualified to perform. See id.

It is not an unlawful employment practice to (1) refuse to hire, bar, or discharge from employment or discriminate in compensation or terms of employment based on a physical or mental disability or medical condition, if the disability or condition is a bona fide occupational qualification or if based upon security regulations; (2) refuse to hire or discharge an employee who is unable to perform his or her essential job duties even with reasonable accommodation or who cannot perform those duties in a manner that would not endanger the employee’s health or safety or the health or safety of others even with reasonable accommodations; (3) inquire into the ability of an applicant to perform job-related functions; (4) require a medical or psychological exam or make a medical or psychological inquiry of an applicant after an employment offer has been made but prior to the commencement of employment duties (provided that all entering employees in the same job classification are subject to the same exam or inquiry); (5) require any exams or inquiries that are job-related and consistent with business necessity; (6) conduct voluntary medical exams, including voluntary medical histories, which are part of an employee health program available to employees at that worksite; and (7) fail to provide an accommodation that would produce an undue hardship to the employer’s operation. CAL. GOV. CODE § 12940.

Until recently, FEHA’s definition of “employee” excluded individuals who were granted special licenses from the state to work in certain nonprofit programs or rehabilitation facilities for less than the minimum wage. CAL. GOV. CODE § 12926. Those disabled individuals now have recourse under FEHA as the code has been amended to include them. CAL. GOV. CODE § 12926.05. This section also provides employers with the affirmative defense when the action they are challenged for was permitted by a state law and was for the purpose of serving employees with disabilities under the special license. Id.

**Religious Discrimination:** Employers may not refuse to hire, bar, or discharge from employment because of an employee’s religious creed; discriminate in compensation or terms of employment because of an employee’s religious creed; or print or circulate publications that
express religious creed discrimination. CAL. GOV. CODE § 12940. An employer may not discharge, refuse to hire, or discriminate in terms of compensation because of a conflict between a person's religious belief or observance and any employment requirement, unless the employer explores available reasonable alternative means of accommodating the religious belief or observance. Id.

"Religious Creed" includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices. CAL. GOV. CODE § 19702. No employer may require an employee to directly participate in the induction or performance of an abortion if such employee has filed a written statement with the employer or health care facility indicating a moral, ethical, or religious basis for refusal to participate. CAL. HEALTH & SAFETY CODE § 123420.

"National origin" includes the individual's or ancestor's actual or perceived (1) physical, cultural, or linguistic characteristics associated with a national origin group; (2) marriage to or association with persons of a national origin group; (3) tribal affiliation; (4) membership in or association with an organization identified with or seeking to promote the interests of a national origin group; (5) attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group; and (6) name that is associated with a national origin group. CAL. CODE REGS. tit. 2, § 11027.1 (a).

It is also an unlawful employment practice to enact "English-only" rules unless it is a business necessity; the restriction is narrowly tailored; and the employee is notified of the circumstances of when the language restriction is required. CAL. CODE REGS. tit. 2, § 11027.2 (a).

Per a recent case from the Supreme Court of the United States, Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc., an applicant with a disparate-treatment claim under Title VII of the Civil Rights Act of 1964 is not required to show that an employer had knowledge of his or her need for a religious accommodation. Instead, the applicant need only show that the need for an accommodation was a motivating factor in the employer's decision. EEOC v. Abercrombie & Fitch Stores, Inc., 135 S. Ct. 2028, 2033 (2015). Hence, employers must not consider an individual's need for a religious accommodation, perceived or actual, when deciding whether to hire an individual.

Pregnancy Discrimination: An employer is prohibited from refusing to hire or employ, refusing to select an applicant or employee for a training program leading to employment or promotion, discriminating, harassing, or transferring over objections of an employee because of pregnancy. CAL. CODE REGS. tit. 2, § 7291.3. According to the 2015 decision by the Supreme Court of the United States in Young v. United Parcel Service, Inc., even if an employer has a legitimate, nondiscriminatory reason for its actions, the pregnant employee may reach a jury on the issue of whether the employer's decision is pretextual "by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's 'legitimate, nondiscriminatory' reasons are not sufficiently strong to justify the burden, but rather—when considered along with the burden imposed—give rise to an inference of intentional discrimination." Young v. UPS, 135 S. Ct. 1338, 1343 (2015).
Lactation Accommodation: Effective January 1, 2019, AB 1976 amends California Labor Code Section 1031, which requires that employers provide lactating employees with breaks and rooms other than a toilet stall to express breast milk. Under the law as amended, employers must provide rooms other than a bathroom to express milk. An employer may comply with amended Section 1031 by providing a temporary lactation location if the employer is unable to provide a permanent lactation location because of operational, financial, or space limitations. The temporary location must be private, free from intrusion when in use, and not used for other purposes when in use. The amended law provides a limited undue hardship exception.

Requesting an Accommodation: Effective January 1, 2016, AB 987 amends FEHA to explicitly prohibit an employer from retaliating or otherwise discriminating against a person for requesting an accommodation of his or her disability or religious beliefs, regardless of whether the accommodation request was granted.

Sexual Harassment: It is prohibited for any employer to allow an employee, an applicant, or a person providing services pursuant to a contract to be sexually harassed in the workplace. Cal. Gov. Code § 12940(j). Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee is unlawful if the entity or its agents or supervisors knows or should have known of this conduct and fails to take immediate and appropriate corrective action. Id.

In addition, an employer may be responsible for the acts of nonemployees with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer or its agents or supervisors knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

"Harassment because of sex" includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire. Cal. Gov. Code § 12940(j).

Effective January 1, 2018, SB-820 prohibits confidential settlement agreements relating to sexual harassment claims. The new law provides that a provision in a settlement agreement that prevents the disclosure of factual information relating to a sexual harassment legal action is prohibited, “unless a claimant requests the inclusion of such a provision, if the pleadings state a cause of action relating to specified claims of sexual assault, sexual harassment, or harassment or discrimination based on sex.”

Effective January 1, 2019, SB-1300 amends the California Fair Employment and Housing Act (FEHA) to prohibit nondisclosure agreements related to alleged claims of sexual harassment and overturns prior court rulings that limited harassment lawsuits. In addition, this law expands employer liability for harassment by third parties. The law also significantly restricts an employer’s ability to have harassment claims dismissed on summary judgment.

Protected Classes: California’s list of protected classes is more extensive than the list of protected classes under Title VII. FEHA prohibits discrimination in employment and housing based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
gender expression, age, sexual orientation, or military and veteran status, and denial of medical leave, family care leave, or pregnancy disability leave. CAL. GOV. CODE §§ 12940, 12945, 12945.2.

Transgender Identity: Effective July 1, 2017, expanded protections go into place in the California Code of Regulations regarding transgender employees. Cal. Code of Regs. tit. 2, §§ 11030-11034. The codes include new definitions of “transitioning” and prohibit discrimination against individuals going through the transition process. Employers must now also honor an individual’s preferred gender, including the use of a preferred name. The exception to this is if the official gender or name must be used for a “legally-mandated obligation.” CAL. CODE OF REGS. tit. 2, § 11034. Employers must also allow employees to use restrooms and other facilities that correspond to their gender identity or gender expression. Id.

Expansion to Anti-Harassment Training: Current California law requires employers with 50 or more employees to provide sexual harassment and abusive conduct prevention training every two years, or within six months of an employee’s assumption of supervisory duties. CAL. GOV. CODE § 12950.1. Training is now expanded to include training on harassment based on gender identity, gender expression, and sexual orientation. Id.

Governor Brown recently signed SB-1343 which amends the current California sexual harassment prevention harassment training requirements. Beginning in 2020, any employer with 5 or more employees are required to provide two hours of harassment prevention training every two years to all supervisory and nonsupervisory employees. The employer can develop its own training program or, as an alternative, it could use an online sexual harassment training video that would be developed by the DFEH.

Retaliation: The Labor Code extends retaliation protections to family members of a person who engaged in, or is perceived to have engaged in, legally protected conduct. CAL. LAB. CODE § 98.6. FEHA also forbids discrimination based on a person’s association with someone who has a disability (in this case, where the employer refused to adjust the employee’s work schedule to administer home dialysis to his disabled son, Castro-Ramirez v. Dependable Highway Express, Inc., 2 Cal. 5th 1028, 1036 (2016)). Employers with five or more employees must develop a written harassment, discrimination, and retaliation prevention policy and disseminate it to their employees. The policy must be translated into every language spoken by 10 percent or more of the workforce. CAL. CODE OF REGS. tit. 2, § 11023. FEHC regulations set forth mandatory objectives of the training, qualification requirements for trainers, and recordkeeping requirements for employers. CAL. CODE OF REGS. tit. 2, § 11024.

Labor Commissioner Retaliation Investigations: The Labor Commissioner is authorized “to commence an investigation of an employer, with or without a complaint being filed, when specified retaliation or discrimination is suspected during the course of a wage claim or other specified investigation being conducted by the Labor Commissioner.” See S.B. 306. During the course of its investigation, and based on reasonable cause that an employer engaged in a violation, the Labor Commissioner may petition a superior court for injunctive relief against the employer. Cal. Lab. Code § 98.7 (b)(2).
X. BENEFITS

Unemployment: Employers must file returns with the Employment Development Department about an employee’s wages, contributions, taxes withheld, and other required information quarterly, not annually. CAL. UNEMP. INS. CODE § 1088. Contributions must be made according to a set schedule. CAL. UNEMP. INS. CODE § 977.

Workers’ Compensation: Workers’ compensation is a no-fault insurance system. If an employee suffers an injury on the job, the employer is liable for the employee’s temporary disability benefits, medical expenses, and possibly a permanent disability award. Any employer that has a person in service is considered a covered employer for workers’ compensation purposes. Cal. Lab. Code § 3300.

Employers must provide compensation for any employee injury or death that results from employment or occurs on the job, without regard to negligence. Cal. Lab. Code § 3600. Employers are deemed responsible to provide workers’ compensation benefits for injuries that occur incidental to work such as using the restroom or during a meal period taken on work premises. Allied Signal, Inc. v. WCAB (Briggs), 66 CCC 1333 (2001). When the death of an employee results from an industrial injury, death benefits are payable to the qualifying dependents. Cal. Lab. Code § 4700. A burial benefit is also payable. Cal. Lab. Code § 4701(a).

Additional death benefits are available to totally dependent minor children of the deceased employee, until the youngest child reaches the age of 18. Cal. Lab. Code § 4703.5.

Generally, there is a 50 percent reduction in benefits if the Workers’ Compensation Appeals Board (WCAB) finds that the employee’s serious and willful misconduct caused the injury. Cal. Lab. Code § 4551. This rule does not apply when the injury resulted in death or a permanent disability of 70 percent or more. Id. There is also an increase of 50 percent in benefits, together with costs and expenses not exceeding $250, where the employee is injured by the employer’s intentional act or failure to act with knowledge that a serious injury is a probable result. Cal. Lab. Code § 4553.

Psychiatric Injury: An employee may receive workers’ compensation benefits for a work-related psychiatric or stress injury if the work-related stress was the predominant cause of the psychiatric injury. Cal. Lab. Code § 3208.3.

Employee Protection: Employers are prohibited from discharging, threatening, or discriminating in any way against an employee because he or she received an award from, filed, or intends to file a workers’ compensation claim. Cal. Lab. Code § 132(a). An employee can still sue for other types of discrimination based on the work-related disability. City of Moorpark v. The Superior Court of Ventura County, 18 Cal. 4th 1143 (1998).

XI. IMMIGRATION

All protections, rights, and remedies that are available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of their immigration status. Cal. Lab. Code § 1171.5.
Unfair Immigration Practices: It is unlawful for an employer to engage in unfair immigration-related practices against any person for the purpose of or with the intent of retaliating against any person for exercising any protected right under the California Labor Code or local ordinance applicable to employees. CAL. LAB. CODE § 1019(a).

"Unfair immigration practices" are actions undertaken for retaliatory purposes and include requesting more or different documents than are required under state and federal law, threatening to file a false police report, or threatening to contact or contacting immigration authorities. CAL. LAB. CODE § 1019. It is now also unlawful for an employer to: (1) request more or different documentation than required under federal law; (2) refuse to accept documents that appear to be genuine on their face; (3) refuse to honor documents based on a person's status or a term that comes with their authorization to work; or (4) try to reinvestigate a current employee's status or work authorization using an unfair immigration practice. CAL. LAB. CODE § 1019.1.

Employers are prohibited from discriminating against undocumented applicants or employees and from inquiring into the applicant's or employee's immigration status "unless the employer has shown by clear and convincing evidence that it is required to do so in order to comply with federal immigration law." CAL. CODE REGS. tit. 2, § 11027.2 (f).

E-Verify: Effective January 1, 2016, AB 622 (which is codified as California Labor Code § 2814) makes it an unlawful employment practice for an employer or any other person or entity to use the federal E-verify system at a time or in a manner not required by a specified federal law or not authorized by a federal agency memorandum of understanding. This law requires employers that use the E-Verify system to provide the affected employee any notification issued by the Social Security Administration or the U.S. Department of Homeland Security that is specific to the employee's case or tentative non-confirmation notice. Each violation may result in a civil penalty of up to $10,000 for an employer.

Inspection of Employment Records:¹ Within 72 hours, employers must notify its employees that it received a written notice of an immigration agency's notice of inspection of records, including I-9 Employment Verification forms and other employment records. See S.B. 450; CAL. LAB. CODE § 90.2 (a). The employer must provide a copy of the results of the inspection to affected employees within 72 hours of receiving such results from the immigration agency, the notice must include: a) description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee; b) The time period for correcting any potential deficiencies identified by the immigration agency; c) The time and date of any meeting with the employer to correct any identified deficiencies; and d) Notice that the employee has the right to representation during any meeting scheduled with the employer. Id. § 90.2(b).

Effective January 1, 2019, SB 1252 amends California Labor Code Section 226, under which employers must afford current and former employees the right to inspect or copy records. The amended law adds that employees have a right to "receive a copy" of the records. According

¹ While Senate Bill 450 (where the inspection of employment records provision comes from) went into effect January 1, 2018, large portions of this bill has since been placed on hold pending judicial review. See United States of America v. California, Case No. 2:18-cv-490-JAM-KJM. The inspection of employment records is the only portion of S.B. 450 that is currently enforceable.
to the bill’s legislative history, the amendment’s purpose is to clarify that employers must provide a copy upon request, rather than requiring the employee to make a copy. The amendment leaves in place the employer’s right to charge the employee “the actual cost of reproduction.”

XII. OTHER CONSIDERATIONS

Smoking in the Workplace: Under California law, the smoking of tobacco is prohibited in all enclosed spaces of employment. CAL. LAB. CODE § 6404.5(a). No employer may knowingly or intentionally permit, nor may any person engage in, the smoking of tobacco products (including e-cigarettes and vaporizers) in an enclosed space at a place of employment. Id.

No Need to Accommodate Marijuana Use

Security Breach: Any person or business that conducts business in California and owns or licenses computerized data that includes personal information must disclose a security breach to California residents whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. CAL. GOV. CODE § 1798.82.

Reimbursement: California Labor Code section 2802(a) requires employers to reimburse employees for business-related expenses. Specifically, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

This section also requires employers to reimburse employees for their use of personal cellular phones, even if the employee has a cellular phone plan with an unlimited amount of minutes. Cochran v. Schwan’s Home Service, Inc., 228 Cal. App. 4th 1137 (2014).

Sick Pay: Effective July 1, 2015, employees will accrue 1 hour of paid sick leave for every 30 hours worked. Employers, however, have no obligation to allow the accrual to exceed 48 hours (6 days). Employees can take paid sick leave after 90 days of employment, and the paid sick leave carries over from year to year. An employer may set a minimum use of two hours for each employee’s use of paid sick leave. The employer may limit its use to 24 hours (3 days) per year of employment, and the employer does not need to pay out this benefit at termination. The employee’s accrued paid sick leave must appear on the employee’s wage statement or “in a separate writing provided on the designated pay date with the employee’s payment of wages.” Healthy Workplaces, Healthy Families Act of 2014 (codified as California Labor Code §§ 245 et seq.); CAL. LAB. CODE § 2810.5(a)(1)(H).

Paid sick leave can be used for the “[d]iagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member.” For purposes of the Healthy Workplaces, Healthy Families Act, a family member includes a spouse, registered domestic partner, sibling, child, stepchild, adoptive child, legal ward, parent, stepparent, adoptive parent, legal guardian, grandparent, or grandchild. This use is broader than FMLA/CFRA provisions. Furthermore, section 246.5 provides for paid sick days for “an employee who is a victim of domestic violence, sexual assault, or stalking.”

Finally, employers must display a poster from the Labor Commissioner containing the pertinent employee rights related to the act. Id. § 247.
**Labor Contractors:** Assembly Bill 1897 was signed into law on September of 2014, creating Labor Code section 2810.3. The new section applies to all but a very limited number of companies with 25 or more employees (i.e., the “client employer”) that obtain or are provided workers to perform work within their “usual course of business” from companies that provide workers (i.e., “labor contractors”). Effective January 1, 2015, the new law makes such companies liable for payment of wages to the contractor’s employees; the contractor’s failure to secure valid workers’ compensation coverage; and compliance with all occupational health and safety requirements.

This new statutory liability on the part of companies legally contracting for labor services is not, in any manner, related to any required finding of joint or co-employment or any control over the workers’ working conditions, manner of payment, scheduling, or working environment. Companies are liable under the new law even if they can show that they were unaware that any violations existed or were occurring.

The statute defines a company’s “usual course of business” to mean “the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.” It also defines “workers” to exclude employees who are exempt from overtime as executive, administrative, or professional employees under California law.

There are a few exemptions from the definition of a covered “client employer.” These exceptions include companies with less than 25 workers; ones with 5 or fewer workers supplied by labor contractors at any given time; the state or any political subdivision of the state; homeowners (including home-based businesses) for labor or services received at their homes; and motor carriers of property providing transportation services. There are also limited exemptions from the definition of covered “labor contractors” that include non-profit, community-based organizations that provide services of workers; unions, hiring halls, or apprenticeship programs; motion picture payroll services companies; third parties subject to bona fide employee leasing arrangements; motor club services; and cable operators, satellite service providers, and telephone corporations.

**Arbitration Agreements:** Employers cannot require California employees to arbitrate or litigate their claims in other states or require arbitrators to apply the laws of any other state to controversies arising in California. CAL. LAB. CODE § 925.

**Electronic Signature on Arbitration Agreements:** Under California Code of Civil Procedure section 1281.2, a court must order arbitration “if it determines that an agreement to arbitrate the controversy exists.” A California Court of Appeal held that a valid arbitration agreement did not exist where the employer could not prove that the employee electronically signed the arbitration agreement. *Ruiz v. Moss Bros. Auto Grp., Inc.*, 232 Cal. App. 4th 836, 838 (2014). California’s Uniform Electronic Transactions Act (CAL. CIV. CODE §§ 1633.1-1633.17) states that the burden of proving that an agreement was signed electronically is to show “the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.” CAL. CIV. CODE § 1633.9. *Ruiz* held that this evidentiary burden is low and that the employer only had to make the following inference chain with respect to Ruiz’s claim:

25
[T]hat an electronic signature in the name of “Ernesto Zamora Ruiz” could only have been placed on the 2011 agreement (i.e., on the Employee Acknowledgement Form) by a person using Ruiz’s “unique login ID and password”; that the date and time printed next to the electronic signature indicated the date and time the electronic signature was made; that all Moss Bros. employees were required to use their unique login ID and password when they logged into the HR system and signed electronic forms and agreements; and the electronic signature on the 2011 agreement was, therefore, apparently made by Ruiz on September 21, 2011, at 11:47 a.m.


As a practical matter, if an employer wants to use an electronic arbitration agreement, it should assure that the employee accessed the agreement via a “unique login ID and password,” that an electronic time stamp was created when the agreement was signed, and that electronic forms and agreements are signed by all employees via electronic signature using their unique login ID and password.

**Class Action Waivers in Arbitration Agreements:** The Supreme Court of the United States recently resolved a dispute as to whether class action waivers in employment arbitration agreements are enforceable. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018). The Court held that arbitration agreements “must be enforced as written,” therefore endorsing the validity of class action waivers in employment arbitration agreements. *Id.* at 1632. However, the California Supreme Court in *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014), held that a class waiver in an arbitration agreement was unenforceable to prevent a representative action under the Private Attorneys General Act (PAGA).

**Pants Provision:** It is an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the sex of the employee. *CAL. GOV. CODE § 12947.5*. An employer may, however, require employees to wear uniforms. *Id.*

**Language:** It is unlawful for an employer to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless (1) the language restriction is justified by a business necessity and (2) the employer has notified its employees of the circumstances and the time when the language restriction is required to be observed and of consequences for violating the language restriction. *CAL. GOV. CODE § 12951.* *See also*, Department of Fair Employment & Housing National Origin Regulations.

**XIII. LABOR AND EMPLOYMENT LEGISLATION SIGNED BY GOVERNOR BROWN**

As of September 30, 2018, several additional bills were signed into law by Governor Brown. Unless otherwise specified, these laws become effective on January 1, 2019:

- **Prohibition Against Confidential Sexual Harassment Settlements:**
  - SB-820 prohibits confidential settlement agreements relating to sexual harassment claims. The new law provides that a provision in a settlement agreement that prevents the disclosure of factual information relating to a sexual harassment legal
action is prohibited, "unless a claimant requests the inclusion of such a provision, if the pleadings state a cause of action relating to specified claims of sexual assault, sexual harassment, or harassment or discrimination based on sex."

- **Female Quotas for Corporate Boards:**
  - Senate Bill (SB) 826 requires that by the end of 2019, publicly held California corporations with principal executive offices in California include at least one female individual on their boards. By 2021, that number would increase to 2 or 3, depending on the total number of directors on the board.

- **Right to Copies of Payroll Records**
  - SB 1252 amends California Labor Code Section 226, under which employers must afford current and former employees the right to inspect or copy records. The amended law adds that employees have a right to "receive a copy" of the records. According to the bill's legislative history, the amendment's purpose is to clarify that employers must provide a copy upon request, rather than requiring the employee to make a copy. The amendment leaves in place the employer's right to charge the employee "the actual cost of reproduction."

- **Non-Disclosure Provisions in Harassment Settlement Agreements**
  - SB-1300 amends the California Fair Employment and Housing Act (FEHA) to prohibit nondisclosure agreements related to alleged claims of sexual harassment and overturns prior court rulings that limited harassment lawsuits. In addition, this law expands employer liability for harassment by third parties. The law also significantly restricts an employer's ability to have harassment claims dismissed on summary judgment.

- **Expanded Sexual Harassment Prevention Training:**
  - SB-1343 amends the current California sexual harassment prevention harassment training requirements. Beginning in 2020, any employer with 5 or more employees are required to provide two hours of harassment prevention training every two years to all supervisory and nonsupervisory employees. The employer can develop its own training program or, as an alternative, it could use an online sexual harassment training video that would be developed by the DFEH.

- **Criminal History Inquires**
  - SB 1412 amends California Labor Code Section 432.7, which limits the information an employer may ask a job applicant about his or her criminal history. The amended law limits those exceptions to circumstances where the employer is required to inquire into a particular category of criminal offenses or criminal conduct, or where the employer is prohibited from hiring an individual with a particular conviction. "Particular conviction" means a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation, or state law that contains requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses. Also, the amendment clarifies that in such instances, the employer may inquire
about convictions that have been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

- **Lactation Accommodation:**
  - AB 1976 amends California Labor Code Section 1031, which requires that employers provide lactating employees with breaks and rooms other than a toilet stall to express breast milk. Under the law as amended, employers must provide rooms other than a bathroom to express milk. An employer may comply with amended Section 1031 by providing a temporary lactation location if the employer is unable to provide a permanent lactation location because of operational, financial, or space limitations. The temporary location must be private, free from intrusion when in use, and not used for other purposes when in use. The amended law provides a limited undue hardship exception to some of these requirements and specifies lactation accommodations required for agricultural employees.

- **Privileged Communications:**
  - AB 2770 expands Civil Code sec. 47 to define “privileged communications” to include internal sexual harassment complaints and determinations if they are disclosed without malice. Such communication cannot be used in defamation claims by the alleged harasser. Privileged communications also include statements by a former employer to a potential employer regarding a determination that a former employee engaged in sexual harassment.

- **Salary History**
  - AB 2282 provides guidance and clarifies Labor Code sec. 432.3. The new law allows employers to provide pay scales, upon their request, only to applicants for employment who have completed at least one interview. In addition, the new law allows employers to ask applicants about their “salary expectations” for the position sought.

(Revised October 2018)

Author:
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Finding Your Way in the Wild West: A Primer on California Employment Law

Presenters
Cara F. Barrick (San Francisco), Anthony J. DeCristoforo (Sacramento), Robert R. Roginson (Los Angeles), and Spencer C. Skeen (San Diego)

Moderator
Betsy Johnson (Los Angeles)

California is Very Special!
Is There “At Will” Employment in CA?

“An employment having no specified term, may be terminated at the will of either party on notice to the other.”

– CA Labor Code sec. 2922

So Many Exceptions

- Fair Employment & Housing Act (FEHA)
  - Harassment and discrimination
  - California Family Rights Act (CFRA)
  - Pregnancy disability
- Public Policy

- Labor Code (LC)
  - Immigration
  - Time off
  - Payroll practices
  - Equal pay
  - Off-duty activities
  - Workers’ comp
  - “Whistleblowing”
Whistleblower Protections

- Labor Code sec. 1102.5
  - Protects employees who report violations of California law to government agencies and certain management employees
  - Company can’t retaliate against employees who complain about violations or refuse to violate law
- Company has to prove that it did not violate law

Harassment and Discrimination
Fair Employment & Housing Act (FEHA)

- Age (40 and over)
- Religion (also dress & grooming)
- Disability (mental and physical)
- Marital status
- Medical condition (cancer & genetic characteristics)
- Genetic information
- National origin/ancestry (also language restrictions)
- Race/color
- Sex (also pregnancy, childbirth, breastfeeding, and related medical conditions)
- Gender, gender identity, and gender expression
- Sexual orientation
- Unpaid interns and volunteers
- Military and veteran status

Discrimination and Harassment Reminders

- Independent contractors, paid interns, and volunteers are covered by FEHA
- Unlawful sexual harassment “need not be motivated by sexual desire”
- CA recognizes “mixed motive” defense
- CA does not recognize “avoidable consequences” as a complete defense
DFEH Issues Model EEO Policy

- Employers are not required to use DFEH policy
- Employers must customize policy to suit their needs

DFEH Workplace Harassment Guide

- Identifies components of effective anti-harassment program
  - Easy to understand written policy distributed to employees and regularly discussed at meetings
  - Training for supervisors and managers
  - Specialized training for complaint handlers
  - Policies/procedures for responding to and investigating complaints
  - Prompt investigation and remedial action
How Did We Get Here?

New Legislation
- SB 1300 – Summary Judgment
- SB 1343 – Mandatory Harassment Training
- SB 820 – Settlement Agreements
- AB 3109 – Contracts and Settlement Agreements
Mandatory Harassment Training: Gov’t Code Sec. 12950

- Employers with 50 or more employees anywhere in U.S.
  - Requires two hours of “interactive” training
  - Presented by trainers who meet certain requirements
  - For all supervisors with direct reports in CA
- Training required every 2 years and within 6 months for new supervisors
- New regulations address training content, qualifications for trainers, and record-keeping

Additional Training Topics

- “Abusive Conduct”: Malicious conduct that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests
  - A single act generally not enough
  - Includes: verbal abuse (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
- Gender, gender identity, and gender expression
**SB 1300 – Amends Gov’t Code**

- Harassment claims are “rarely” amenable to summary judgment
- Single incident of harassment enough to raise a triable issue
- Broadens liability for third-party harassment
- Encourages “bystander” training

**SB 1343 – Mandatory Training**

- Employers with 5 or more employees must provide 2 hours of training to supervisors and 1 hour of training to non-supervisors
- First round completed by 1/1/20 then every 2 years
- DFEH to develop online courses
**AB 820 – Settlement Agreements**

- Prohibits non-disclosure of facts relating to sexual harassment complaints
- Provisions precluding disclosure of amount – OK
- Provision that shield identity of complainant – OK

**AB 3109 – Contracts and Settlement Agreements**

- Nullifies any waiver of right to testify about alleged harassment or criminal conduct
- Subpoena to testify or written request from agency or legislature
- Applies to arbitration agreements
DFEH New National Origin Regulations

- Expands definition of national origin:
  - Physical, cultural, or linguistic characteristics
  - Marriage/association with person in group
  - Membership/association with organization identified with national origin group
  - Attendance/participation in schools, churches, temples, or mosques associated with national origin group

- English-only rules are presumed unlawful
  - Employer must show business necessity
  - Never lawful during non-work time

- Unlawful to discriminate based on an applicant’s or employee’s accent unless accent interferes materially with ability to perform the job

- Discrimination based on an applicant’s or employee’s English proficiency is unlawful
DFEH New National Origin Regulations

- Immigration related practices
  - Cannot seek/request or refer applicants or employees based on national origin
  - Cannot assign positions, facilities, or geographical areas of employment based on national origin

DFEH Transgender Regulations

- Prohibits discrimination against “transitioning” employees
- Transitioning = the process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth
  - Alterations in name or pronoun usage
  - Facilities usage
  - Hormone therapy, surgery
DFEH Transgender Regulations

- Must allow employees to use facilities that correspond with their gender identity or gender expression, not the sex assigned to them at birth
- Employers must allow employees to carry out duties that correspond with the person’s gender expression or gender identity, not the sex assigned to the person at birth

Religious Dress & Grooming

- Employers must accommodate religious clothing, adornments, and grooming requirements unless undue hardship
  - May have to alter dress code or grooming standard
  - What about safety or sanitation risks?
Disability Regulations

- CA disability discrimination regulations require employers to focus on engaging in “interactive process” and providing a “reasonable accommodation” – not on whether the employee actually has a disability

- Easier standard of proof for disability claims (can’t consider mitigating measures)
- Add a “list” of covered disabilities
- Expands meaning of “major life activity”
- Expands definition of “health care provider”
- Focus on “interactive process”
- Expands “reasonable accommodation”
Interactive Process

- Employers may NOT ask about the underlying medical condition
- Employer duty to initiate when aware of need for interactive process:
  - Employee asks
  - Through own observation
  - Through third party
  - At end of FMLA/CFRA, doctor says need more leave

Request for Accommodation is “Protected Activity” Under FEHA

- FEHA prohibits an employer from retaliating or otherwise discriminating against a person for requesting a religious or disability related accommodation
- Protected activity even if the accommodation is not granted
- Failure to engage in “interactive process” is a separate cause of action
Broader “Reasonable Accommodation”

- Expand concept of reasonable accommodation:
  - Reasonable accommodation for “residual effects of a disability” (e.g., follow-up doctors appointments)
  - Reasonable accommodation in the form of “paid or unpaid leaves of absence” if it would be effective in allowing the employee to return to work (but not for “indefinite” leaves)
  - Duty to consider reassignment to vacant position if other accommodations not feasible

Help Wanted
Equal Pay Act

- **LC 1197.5**: California’s Equal Pay Act has been around a while, but rarely used
- EPA expanded and includes race and ethnicity to CA EPA
- Changes “equal pay/equal work” in *the same establishment* to “equal pay/substantially similar work” anywhere in the organization
- Think about conducting a pay equity audit

Salary History

- LC sec. 432.3 prohibits asking for salary history
  - Voluntary disclosure OK
  - Must provide “pay scale” upon “reasonable request”
- AB 2282 amends law to clarify undefined terms
  - “Applicant” = job seeker; not current employee
  - “Pay scale” = salary or hourly wage; not bonus
  - “Reasonable request” = request made after 1st interview
  - Can ask for salary expectation
SF Parity in Pay Ordinance

- Effective 07/01/18 – Penalties begin 07/01/19
- Can’t inquire about an applicant’s salary history and can’t use it if disclosed
- Can release salary history only with written authorization
- Workplace poster

Ban the Box

- Gov’t Code sec. 12952 prohibits inquiries regarding a job applicant’s criminal history, until a conditional job offer is made
- Requires individualized assessment of criminal history for the job in question
- Written notice of disqualification, and opportunity to rebut
- SB 1412 creates limited exceptions for “particular convictions”
Use of Criminal History

- **LC 432.7**: Cannot ask about or consider arrest, detention, diversion, supervision, conviction, adjudication, or court disposition in juvenile courts (LC 432.7); Cannot ask about marijuana convictions that are more than 2 years old (LC 432.8)
- **DFEH Regs.**: If using criminal background history has an adverse impact on individuals in a legally protected FEHA class
- Employer must show that its policy of using convictions is “job related and consistent with business necessity” AND is narrowly tailored
- Applicant can still prevail by demonstrating an effective and less discriminatory way of achieving the specific business necessity

San Francisco Fair Chance Ordinance

- Amendment effective 10/01/18
- Covers applicants and employees working 8 hours or more per week in SF & employers of 5+
- Can’t ask or base employment decision on crime that has been decriminalized (marijuana use)
- Can’t ask about convictions until conditional offer
Los Angeles “Fair Chance Initiative for Hiring” Ordinance

- Covers job applicants in L.A., employers of 10+
- Prohibits, before a job offer:
  - Criminal inquiry on job application, or
  - Asking about criminal history during interview
  - Conducting independent research
- Before rejecting, explain and give applicant 5 days to rebut

Investigative Consumer Reporting Agencies Act (ICRAA)

- Separate written disclosure stating:
  - A report may be obtained
  - The permissible purpose of the report
  - Report may include information on character, general reputation, personal characteristics, and mode of living
  - Name, address, and phone number of agency
  - Web address where agency’s privacy practices can be found
- Authorization cannot be “evergreen”
Consumer Credit Reporting Agencies Act (CCRAA)

- **CA Civil Code sec. 1785.1**
- Generally same notice, disclosure, and authorization as FCRA
- Authorization cannot be “evergreen”

Labor Code Sec. 1024.5

- Limits credit checks to one of the following:
  - Managerial positions
  - Position for which the information is required by law
  - Regular access to bank or credit card information, SSN, and DOB
  - Person is a named signatory on the bank or credit card; can transfer money for employer; or can enter into financial contracts
  - Position has access to confidential or proprietary information
  - Position involves regular access to cash totaling $10,000 or more of the employer, a customer, or client, during the workday
CA Immigrant Worker Protection Act

- CA is a Sanctuary State
  - Requires notice to employees of ICE audits
  - Can’t allow ICE on property without warrant
    - DOJ challenge – Court enjoined access restriction and reverification provisions
  - No I-9s unless subpoena or court order
- LWDA reaffirms that Labor Code protects undocumented workers

Immigration-Related

- LC 1019 creates “unfair immigration-related practice”
  - Requesting more or different documents for I-9 or refusal to honor documents tendered
  - Using E-Verify system if not required or authorized under any MOU
  - Cannot re-verify employees if not allowed by law
  - Threatening to file or the filing of a false police report
  - Threatening to contact or contacting authorities
  - DLSE enforcement – $10,000 fine
More Immigration Protections

- **LC 244** – Can’t report or threaten to report employee or family member immigration status
- **B&P 494.6** – DLSE can revoke or suspend business license if employer retaliates against employee who complains
- **B&P 6103.7** – Disbarment for threats to report individuals to prevent or end a lawsuit

Wage Theft Prevention Act

- **LC 2810.5**
  - Give notice to non-exempt employees at time of hire
  - Contains paid sick leave notice
  - Update within 7 days of any change unless noted on next pay stub
Employment Contracts

- **LC 925**
- Applies to all employment-related agreements
- Cannot require an employee who primarily resides and works in California to:
  - agree to bring legal claims in another state;
  - agree to application of another state’s laws.
- Exception: employee is represented by counsel.

Arbitration Agreements
Pros & Cons

**Pros**
- Confidential process
- Control arbitrator selection
- Flexible procedural rules
- No runaway jury awards
- Waivers of class & representative actions?

**Cons**
- Waivers of class & representative actions?
- Arbitration fees
- Limited appeal
- Risk of “splitting the baby”
- Loose rules of evidence
- Low chance of MSJ

Test for Enforceability

**Armendariz v. Foundation Psychcare Services, Inc.**

**Requirements:**
- Separate agreement
- Bilateral (“We agree” v. “I agree”)
- Neutral arbitrator (JAMS, ADR, AAA)
- All relief available in court
- Adequate discovery
- Employer bears all expenses unique to arbitration
- Written award
Legislation

- **SB 3247**: Provides that a court will not enforce an arbitration agreement where “grounds exist for *rescission* of the agreement”
  - For example, where the agreement does not comply with any one of the requirements set forth in *Armendariz*

- **VETOED**: AB 3080 would ban mandatory arbitration agreements

FAA and California?

- **Iskanian**: *Class action* waivers are enforceable in California
  - Any procedures that interfere with the Federal Arbitration Act are preempted
  - Consistent with *Epic*
  - PAGA representative actions are **not** waivable in arbitration agreements
Private Attorneys General Act of 2004

- “Bounty Hunter’s” Law
- Gives employees (and plaintiffs’ lawyers) incentive to pursue Labor Code violations
  - But they have to share with the state
- All the major provisions of Labor Code covered (except workers’ comp law)
- Limited opportunity to avoid some wage statement claims

PAGA Amendments

- More pre-lawsuit procedural hoops for plaintiffs
- More time and money for LWDA to investigate and issue citations for California Labor Code violations (60 or 180 days)
- More Court oversight over PAGA actions and
- An opportunity to object to proposed PAGA settlements as insufficient
Williams v. Superior Court

- CA Supreme Court (2018)
- PAGA plaintiffs entitled to contact information of “aggrieved employees”
- Defendants have burden to identify grounds for withholding information
- The “default position” is to allow broad discovery

Raines v. Coastal Pacific Food Dist.

- CA Court of Appeal (2018)
- PAGA plaintiff need not prove injury or intentional violation of wage statement law to recover for “aggrieved employees” (LC sec. 226)
- Plaintiff must prove injury to recover on individual claim under LC sec. 226
- “Penalties” v. “Damages”
Employee Time Off

California Laws

- FEHA
- CA Family and Medical Leave Act (CFRA)
- Pregnancy disability
- Workers’ comp
- Military leave
- Military spouse leave
- Jury/witness duty
- Crime victims
- Domestic violence
- Volunteer civil servants
- School activities
- Rehab (LC 1025)
- Employee literacy
- Voting time
Small Business Parental Leave

- Gov’t Code sec. 12945.6 requires CFRA-like unpaid parental leave
- Employers of 20-49 employees w/in 75 miles
- Employees work 1,250 hour w/12 months of service
- 12 weeks unpaid leave to bond with newborn, foster child, or adoptive child

Lactation Accommodation (New)

- AB 1976 requires “lactation rooms” (other than a bathroom)
- Must be private and free from intrusion
- Limited undue hardship defense
Pregnancy Regulations

- Expands “disabled by pregnancy” to include severe morning sickness, post-partum depression, needing to take time off for pre- or post-natal care
- Employers *must* engage in the “interactive process” to determine if employee needs accommodation when recommended by doctor
  - Can’t force her to go on leave if she can work

Reasonable Accommodation and Interactive Process for Pregnancy Disability

- Reasonable accommodations include:
  - Transfer to less strenuous job
  - Modifying duties and schedules,
  - Providing furniture,
  - Providing time to express milk, and
  - Granting *additional* time off
Pregnancy Regulations

- Expand list of medical conditions related to pregnancy
- Expand definition of reasonable accommodation
- Changes to notice and medical certification requirements
- Clarifies pregnancy disability leave rules
- Expanded obligations to employees returning from pregnancy disability leave
- DFEH Medical Certification form

Pregnancy Disability Leave (PDL)

- Must grant up to 4 months of “disability” leave
  - Defined as one-third of a year or 17 1/3 weeks,
    693 hours for F/T employees working 40 hours,
    346.6 hours for P/T employees working 20 hours
  - An employee who works 48 hours per week is entitled to 832 hours
Additional Requirements

- Leave is unpaid
  - Can require use of sick time, but not vacation/PTO
- Notice requirements
- Leave can be continuous, intermittent, or reduced schedule
- Must provide group health insurance as if the employee continued working

Reinstatement

- Must reinstate to same position unless employee would not have been in position due to some reason unrelated to leave (such as plant closure/layoff)
- Eliminates prior defense of must reinstate unless keeping the position open “would substantially undermine the employer’s ability to operate the business safely and efficiently”
More Leave?

- *Sanchez v. Swissport*
  - Employer terminated employee after she exhausted all of her leave. The employer contended it had met its obligations under FEHA by allowing her all leave mandated by PDLL and CFRA.
  - Court held that after exhaustion of these leaves, the employer is still required to consider reasonable accommodations under FEHA, which could include further leave as long as it did not impose an undue hardship.
  - This obligation is independent of PDLL and CFRA.

PDL & CFRA

- PDL is separate and distinct from CFRA leave.
- Provides *additional* 12 weeks of leave for “baby bonding”.
- CFRA begins after PDL and is used for “bonding” after baby is born.
- May require employee take leave in minimum of 2-week increments (exceptions to these rules).
CFRA v. FMLA

- CFRA does not cover military caregiver leave
- CFRA does not cover exigency leave
- CFRA does cover registered domestic partners

State Paid Sick Leave (PSL)

- Covers most ALL Employees
- Employee must work in CA for at least 30 days/year
- 90-day waiting period for use by new hires
- No payout at termination or at year-end
- Available PSL leave must be on wage statement or other document
- Notice & posting requirements
- PTO policies are impacted by PSL
Use of PSL

- Employee can use PSL for:
  - Diagnosis, treatment, care of own health condition
  - Diagnosis, treatment, care of family members’ health condition
    - Spouse, REGISTERED domestic partner, sibling, child, parent, stepchild, stepparent, grandparent, grandchild
    - Note that use is broader than FMLA/CFRA (sibling, grandparent, grandchild)
  - If victim of domestic violence, sexual assault, or stalking
  - Preventive care
- Use in minimum increments of 2 hours

Employer Compliance Options: Accrual

- Accrual begins on date of hire
- Non-exempt = 1 hour of PSL per 30 hours worked or an accrual that results in an employee having at least 24 hours of PSL by the 120th calendar day of employment
- FT exempt = assume 40-hour week
  Must allow carry over of unused PSL
- Can cap **accrual** at 48 hours per year
- Can limit **use** to 24 hours per year
Compliance Options: Frontload

- “Grant” at least 24 hours at beginning of each year
- Employee must be able to use full amount right away
  - Limit immediate use to 24 hours
- No accrual, no cap, and no carry over required
- Employer may “grant” more than 24 hours
- Employer may “grant” 24 hours up front, but use an accrual method for rest of year

Compliance Options

- Employers may have different policies for different categories of employees
- Employers may still use “PTO” policies but they need to be at least as generous as the PSL law provides and be revised to include specifics of PSL law (i.e., employees covered and use requirements)
Misc. Requirements

- Employer must keep records for three years
- Employees under a collective bargaining are NOT covered by the Act IF:
  - CBA provides for hourly wages that are 30% above the state’s minimum wage
  - CBA provides for paid time off
- Employer cannot require employee find replacement as a condition of use of PSL

Enforcement of PSL Law

- Labor Commissioner and Attorney General enforce PSL law (no private right of action?)
- Penalties
  - Treble damages (3x the amount owed!) or $250 whichever is greater, but not to exceed $4,000
  - Other fines assessed on daily basis up to $4,000
- No retaliation
Sick Time—“Kin Care”

- **LC 233**—Employees must be allowed to use \( \frac{1}{2} \) of their annual sick time for sickness of:
  - Parent, spouse/registered domestic partner, child/child of a registered domestic partner
- **LC 234**—It’s unlawful for employers to count protected sick time against employees for any reason.

Paid Sick Leave

- **State Law**—Eff. July 1, 2015
- **San Diego**—Eff. July 11, 2016
- **Los Angeles**—Eff. July 1, 2016 (Employers with 26 or more employees)
- **Santa Monica**—Eff. January 1, 2017
- **Emeryville**—Eff. July 2, 2015
- **Oakland**—Eff. March 2, 2015
- **San Francisco**—Eff. February 5, 2007
Vacation & PTO – LC 227.3

- Employer can:
  - Determine accrual rate
  - Determine when and how much can be used
  - Place reasonable cap on accrual

- Employer cannot:
  - Have a “use-it-or-lose-it” policy
  - Impose forfeiture of accrued vacation

- Unused vacation/PTO paid at termination

- Beware: Unlimited vacation policy may not be OK

McPherson v. EF Intercultural Foundation

- CA Superior Court (2018) (on appeal)
- Invalidated “unlimited” vacation policy
- Such policy violates LC sec. 227.3
- Employer “practice” of approving at least 20 days of vacation creates inference that vacation time “vests”
Victims of Crimes

- **LC 230.1** – victims of domestic violence, sexual assault and/or stalking
- Covers employers *w/25 or more* employees
- No retaliation for taking time off to seek assistance
- Employers must provide notice to new hires of protections

More for Crime Victims

- **Labor Code sec. 230.2**
  - Employer must give time off to employees who are victims, “immediate family” of victim, “domestic partner” of victim, or child of domestic partner or victim *to attend judicial proceedings*
  - Employee must give notice unless “not feasible”
  - Employer can’t take adverse action if employee submits a notice from court, DA, or victim advocate’s office
  - Employer must keep information confidential
School Activities

- **LC 230.7**
  - May not discharge or discriminate “in any manner”
  - Must grant time off to “parent” or “guardian” to appear at school because child was suspended
  - Employee must give “reasonable” notice

More School-Related Leave

- **LC 230.8**
  - Must grant up to 40 hours per year (no more than 8 per month) to “participate in” school or day-care activities
  - Applies to “parent,” “guardian,” or “grandparent having custody”
  - Employee must give “reasonable notice”
  - Employer may require documentation
Time Off Work for Childcare or School Emergencies

- Extends definition of “parent” to stepparent, foster parent, or loco parentis
- Allows time off for:
  - Childcare provider emergencies
  - Finding, enrolling, or reenrolling a child in school

Leave for Military Spouses

- Military & Veterans Code 395.10 – leave for spouses of active military
  - Applies to employers with 25 or more employees; must work at least 20 hours per week
  - Provides 10 days of unpaid time off when spouse is home on leave
  - Employees must give at least 2 days notice and provide certification
Types of Contingent Workers

- Independent Contractors, Individual or Third-Party Employees
- Part-time and temporary workers
- Seasonal workers
- Staffing agency workers
- Consultants
Dynamex Operations West, Inc. v. Superior Court

- CA Supreme Court (2018)
  - Issue: What standard applies in determining whether workers should be classified as employees or as independent contractors for purposes of California wage orders?
  - Held: When determining whether a worker was employed under a wage order, the hiring entity must prove each factor in the ABC test.

- Under the wage orders, “employ” means either:
  - to suffer or permit to work, or
  - to engage, thereby creating a common law employment relationship, or
  - to exercise control over the wages, hours, or working conditions.

- Dynamex focused on what it means under the wage orders to “suffer or permit” to work
- Does it apply retroactively? Probably

What is the ABC Test?

A. Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?
B. Does the worker perform work that is outside the usual course of business of the hiring?
C. Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?
Liability for Misclassification

- Class/representative actions
- Unreimbursed business expenses
- Overtime, meal periods, and rest periods
- Workers’ compensation
- Unemployment taxes
- Disability insurance
- Income taxes

Labor Code Sec. 226.8

- Makes it unlawful to “willfully” misclassify an individual as an independent contractor
- Can’t make deductions from compensation for improperly classified I/Cs
- Penalties
  - $5,000-15,000 for each violation
  - $10,000-25,000 for each violation if pattern and practice of violations
Joint Employer Issues

- Different definitions under federal and state laws
- *Martinez v. Combs*—adopted the IWC’s definition: person/entity who exercises control over the wages, hours, or working conditions of the employee; or suffers or permits the employee to work; or engages the employee

Transient Employees

- *Sullivan v. Oracle Corp.*, 51 Cal. 4th 1191 (CA Sup. Ct. 2011)—California overtime laws apply to work performed in California for California-based employers by their employees who do not live in California
- Paid sick leave applies to employees who work 30 days or more in CA
Common Wage/Hour Mistakes

State Minimum Wage Increases

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>26 or More Employees</th>
<th>25 or Less Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/19</td>
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</tr>
<tr>
<td>01/01/23</td>
<td>$15.00</td>
<td>$15.00</td>
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</table>
## Min. Salary For Exempt Employees

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>26 or More Employees (2x state min. wage)</th>
<th>25 or Less Employees (2x state min. wage)</th>
</tr>
</thead>
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<td>01/01/19</td>
<td>$960 wk/$49,920 yr</td>
<td>$880 wk/$45,760 yr</td>
</tr>
<tr>
<td>01/01/20</td>
<td>$1,040 wk/$54,080 yr</td>
<td>$960 wk/$49,920 yr</td>
</tr>
<tr>
<td>01/01/21</td>
<td>$1,120 wk/$58,240 yr</td>
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<tr>
<td>01/01/22</td>
<td>$1,200 wk/$62,400 yr</td>
<td>$1,120 wk/$58,240 yr</td>
</tr>
<tr>
<td>01/01/23</td>
<td>$1,200 wk/$62,400 yr</td>
<td>$1,200 wk/$62,400 yr</td>
</tr>
</tbody>
</table>

## More Minimum Wage Increases

- **Exempt Commissioned employees (WO 4 & 7)**
  - 1.5x state min. wage ($18.00 per hour) and more than 50% compensation comes from commissions

- **Exempt Computer Professionals**
  - 2019: $45.41 per hour for all hours OR $94,603.25 annual salary
Local Minimum Wage Ordinances

- Local minimum wage ordinances:
  - Berkeley, Cupertino, El Cerrito, Emeryville, Los Altos, Long Beach, Los Angeles (city and county)
  - Malibu, Mountain View, Oakland, Palo Alto,
  - Pasadena, Richmond, San Diego, San Francisco, San Jose, San Leandro, San Mateo, Santa Clara, Santa Monica and Sunnyvale
- Usually adjust on July 1st

Labor Code and Wage Orders

- Labor Code Sections:
  - 200-205.5 – Payment of wages
  - 221-224 – Deductions
  - 226-226.6 – Wage statements
  - 350-356 – Tips & Gratuities
  - 500-556 – Hours and Overtime
- Wage Orders 1-17
Payroll Practices

- **LC 204** – Set paydays & poster
- **LC 212** – Pay must be immediately negotiable in CA and w/o charge
  - Bank’s name & address must be on check
- **LC 213** – Special rules for electronic payroll and pay cards

Final Check Rules

- **LC 201** – If employee terminated (for any reason), final check due **immediately**—**NO MATTER WHAT**!
- **LC 202** – If employee quits w/less than 72 hours’ notice, final check must be given within 72 hours
- **LC 203** – “Waiting time” penalties
- **LC 206.5** – Wage releases are “voidable”
Deductions & Setoffs

- **LC 221** – “Anti-kickback” statute
  - Illegal for employer to require repayment of wages paid
  - What about overpayments?

- **LC 224** – Deductions limited to insurance and “other deductions” authorized by employee, BUT ...
  - Employers CANNOT make deductions for “costs of doing business” unless:
    - Employer can prove dishonesty, gross negligence, or willful misconduct of employee

LC 226: Itemized Wage Statements

- Must provide accurate and complete information so that employees can *promptly and easily determine* from the wage statement alone:
  - The gross or net wages, deductions, name and address of employers; and/or employee’s name and identification number or last four digits of SSN

- Monetary penalties per paycheck
  - Maximum penalty $4,000
Inspect Wage Statements

- LC 226 current and former employees can inspect wage statements
- *(New)* SB 1252-Employees have right to get a copy
- Employers must retain copies of “wage statements” and deduction records
- Employers must comply with request within 21 days or $750 penalty

Maldonado v. Epsilon Plastics

- CA Court of Appeal (2018)
- Inaccurate wage statements do not justify penalties under LC sec. 226 if wage statement accurately reflects what employee was paid for that pay period.
Inspection of Personnel Records

- LC 1198.5: Current and former employees have the right to inspect records “related to the employee’s performance or to any grievance concerning the employee”
- Employers must allow inspection or copying within 30 days of the request (5-day extension can be agreed)
- Penalty for non-compliance $750 AND an award of attorneys’ fees and costs for bringing the action.
- Failure to comply is a criminal infraction

Overtime and Exemptions
Daily Overtime

- OT after 8 hours in a day or 40 in workweek
- 1.5x the regular rate for hours worked in excess of 8 hours up to and including 12 hours in any workday
- 1 and 1/2x the regular rate for the first eight (8) hours worked on the seventh (7th) consecutive day in a workweek

More Overtime Rules

- 2x the regular rate for hours worked in excess of 12 hours in any workday
- 2x the regular rate for hours worked in excess of 8 hours on the 7th consecutive day in a workweek
- No “pyramiding” of OT
- Must use “weighted average” if employee is paid at 2 or more rates
- No “fluctuating” workweek or “Belo” agreements allowed
Alternative Workweek Schedules (AWS)

- Wage Orders and Labor Code sec. 511
- Allows employers to implement workdays of over 8 hours w/o OT
- Very strict rules for implementation
  - Notice and disclosure to employees
  - Limited AWS
  - Employees must vote on AWS and report to state
  - Employers must follow AWS once in place

Definition of “Hours Worked”

- All time during which an employer suffers, permits, or “controls” employee
  - Martinez v. Combs
Troester v. Starbucks Corp.

- CA Supreme Court (2018)
  - Rejects FLSA *de minimis* rule
  - Employees must be paid for all working time
  - CA statutes and Wage Orders have not adopted rule
- What Court left open possibility that rule may apply on case-by-case basis
  - “Regularly reoccurring activities”?

Travel Time for Non-Exempt Employees

- All travel is compensable
- Normal commute time *may* be deducted
- The employee must be paid for all hours spent between the time he arrives at the airport and the time he arrives at his hotel
- Special rules for employees who take company vehicles home
Hernandez v. Pac Bell Tel. Co

- CA Court of Appeal (2018)
- Employees who voluntarily agree to take company vehicle home each day do not have to be compensated for travel time to and from worksites
- Transporting tools and equipment not compensable
  - No extra time or effort required

Reporting Time Pay for Non-Exempt

- If employee reports to work but does not work or is given less than half scheduled shift, employee must be paid 1/2 shift or 2 hours pay (max. 4 hours) whichever is greater
- Some exceptions for unpredictable events and unfit employees
- Special rules for employee meetings and training
- Beware: On-call employees who call in but are not required to report may be entitled to reporting time (Ward v. Tilly’s)
“Make Up Time” for Non-Exempt

- Allowed by some Wage Orders
- Employers may allow employees to make up time if:
  - Employee requests and employer approves
  - Make up work is done in SAME workweek
  - Employee cannot work more than 11 hours on a “make up” day
  - Employer cannot force employees to request make up time

Day of Rest


- “[n]o employer of labor shall cause his/her employees to work more than six days in seven.” The Court found:
  - Determined per workweek, not a rolling 7 days
  - Employee can work on seventh day if he or she does not work more than 6 hours in any day or 30 hours in the week
  - Employees can volunteer to work, but employer must maintain “absolute neutrality” and “apprise employees of their entitlement to a day of rest”
Employee Expenses

- Labor Code sec. 2802 – Requires reimbursement for “all necessary expenditures or losses incurred by the employee in the direct consequence of the discharge of his or her duties”
  - *Gattuso v. Harte-Hanks Shoppers*
  - *Cochran v. Schwan's Home Service*

Uniforms

- “Uniform” is any “wearing apparel and accessories of distinctive design or color” and include anything you require employees to wear (except some protective gear)
- Employers have to “provide and maintain” (i.e., pay for it and replace it at no charge to employee)
Meal Periods and Rest Breaks for Non-Exempt Employees

- *Brinker v. Superior Court* (2012)
- Cases make it clear that written policies must clearly set forth rules and they must be communicated to employees

What’s the Big Deal?

- Penalties:
  - One hour at regular hourly rate of pay for each meal or rest period missed
  - But maximum of two wage premiums a day (regardless of how many meals or rest breaks missed)
- Very limited ability to waive meal periods
Meal Period Requirements

- Employer duty to “provide” meal period
  - At least 30 minutes
  - Duty-free
  - Start within first five hours of work (before the start of 6th hour)
  - Employees are free to leave premises

- If work day is not more than six hours
  - Meal period can be waived
  - Mutual consent required

Meal Period Requirements

- If employee works more than 10 hours
  - Second 30-min meal period must be provided
  - Duty-free
  - “Rolling” five-hour meal periods not required

- If employee does not work more than 12 hours
  - Waiver of second meal period permitted
  - Employee must have taken first meal period
  - Mutual consent required—best practices

- “On-duty” meal periods?
Serrano v. Aerotek

- CA Court of Appeal (2018)
- Joint employer liability
  - Staffing company or contracting employer?
- Staffing company must provide rest breaks and meal periods for their employees
  - Staffing company policies and training
  - Contracting employer cannot impede employees from taking meals and rest breaks

Donohue v. AMN Services

- CA Court of Appeal (2018)
- Upheld employer rounding policy
- Policy was neutral over all
- *Rounding could be applied to meal periods*
  - Don’t count on this ruling
Rest Breaks

- Must “authorize and permit” rest breaks
- Must be clear about when/how many rest periods are authorized
- Policy is deficient because if it does not make clear that multiple rest periods are authorized
- **Reiterates importance of having a policy and communicating it to employees!**

Rest Break Requirements

- Rest breaks are paid
- 1st rest break required only if employee works at least 3.5 hours
- Thereafter, a net 10 minutes must be provided for every four hours worked or “major fraction” thereof (2 hours)
- “Insofar as practicable,” must be taken in middle of each work period
**Augustus v. ABM Security Services, Inc.**

- CA Supreme Court (2017)
- On Duty & On-Call Rest Breaks
- Guards required to keep pagers and radios on during their 10-minute rest breaks and “remain vigilant” in case an incident required a response
- Court: California law prohibits “on-duty” and “on-call” rest breaks
  - Must be free from all work-related duties and free from employer control
  - DLSE adopts *Augustus*

**Vaquero v. Stoneledge Furniture, LLC**

- CA Court of Appeal (2017)
- Inside sales associates paid on commission basis
- Received draw that guaranteed at least $12.01 per hour, but subject to offset against future commissions
- Employees sue for unpaid rest breaks
- Court: Must separately compensate for rest breaks and other “non-productive” time when using an “activity based” compensation system
Recovery Periods

- **LC 226.7**: Employers must provide paid “recovery” periods to “outdoor” workers to “cool down” in order to prevent heat illness
- Must get **at least 5 minutes** in the shade when “employees feel the need to do so to protect themselves from overheating”
- No limit on # of recovery periods

Commissions v. Bonuses

- Both are a matter of contract between employer and employee
- Commissions are % of goods or services sold
  - Rules for off-sets/forfeitures are stricter
- Bonuses are paid for extraordinary performance
  - Rules for off-sets/forfeitures more flexible
- **Both must be included in “regular rate”**
Alvarado v. Dart Container Corp

- CA Supreme Court (2018)
- Only non-overtime hours worked can be used to calculate “regular rate” for overtime purposes on flat rate, lump sum bonuses
  - No more than 40 hours can be used
  - Results in higher regular rate for OT
- Different than federal law

Commission Agreements

- **Labor Code sec. 2751**: Must be in writing
- Agreement must set forth method for computing and paying commissions
  - How commissions are earned
  - When commissions are earned
  - Detail chargebacks and setoffs
  - When commissions are paid
- Employees must sign and get a copy
Piece-Rate Wages

- Increases difficulty in using piece-rate pay
- Requires employers to pay for rest & recovery periods (and all “nonproductive” time)
- Requires the following on pay statements:
  - Total hours of compensable rest and recovery periods
  - The rate of compensation for those periods
  - The gross wages paid for those periods during that period
- [http://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm](http://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm)

Exemptions: California Duties Test

- Labor Code sec. 515 and Wage Orders
  - Professional, Administrative, Executive
  - Commissioned employees and computer professionals
- California uses “primarily engaged” test
- No exception for “highly compensated” employees
Exemption: California “Salary” Test

- Employee must make at least 2x minimum wage x 40 hours
  - $960 per week for employers with 26 or more employees
  - $880 per week for small employers
  - Will go up every year until 2023
- Limited deductions allowed

Commission-Paid Employees

- Wage Orders 4 and 7 only
  - Not limited to retail or service industries
  - Where the commissions are more than one-half of the employee’s wages, and
  - Employee’s total compensation is at least 1.5x times the California minimum wage
- Must use “representative period”
Computer Professional Exemption

- Must be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering within the meaning of Labor Code sec. 515.5
- Must be paid a minimum of $45.41 per hour for all hours OR $94,603.25 annual salary per year to be exempt from overtime

Employee Privacy
Privacy Basics

- CA Constitution, Art. I, Sec. 1
- Labor Code sec. 980
  - Social media
- Penal Code secs. 631 & 632
  - Monitoring phone calls
- Civil Code sec. 56
  - Confidentiality of medical information

Privacy Issues for Employers

- Employer’s right to access and monitor employees is limited
- Policies at issue:
  - Employer-owned resources vs. BYOD
  - Email, Internet, and social media
  - Wearable devices and surveillance
  - Marijuana in the workplace
Brownies Anyone?

- Legalizes recreational use of marijuana
- Regulates marijuana cultivation and sale
- Employer right to drug free workplace
- Ross v. RagingWire: Federal law trumps state medical marijuana law
- Marijuana use is not a protected class...yet

Drug and Alcohol Tests

- Applicant Testing
  - Loder v. City of Glendale, 14 Cal. 4th 846 (1997)
  - Post-offer/pre-employment—OK
- What about medical marijuana cards?
  - CA’s Compassionate Use Act
Drug and Alcohol Testing

- Employee Testing
  - Must have reasonable suspicion to test
  - No random testing unless safety sensitive job

Rehabilitation Leave

- Labor Code sec. 1025
  - More than 25 employees
  - Employee must come forward before it becomes a disciplinary or performance issue
Where Are You and What Are You Doing?

- It’s scary and amazing what’s out there!
  - Microchips, brain trackers, and smart clothes—oh my!

- GPS and wearable devices (fitness bands, digital glasses, body cameras, tablets, smart phones, smart watches, and smart caps and clothes) can turn employees into mobile databases

- Must have employee consent to monitor

Pros of BYOD Policies

- Employee’s technology may be better than yours!
- There’s an App for that!
  - Timekeeping
  - Location and productivity tracking
  - Wellness and fitness information
  - Inventory and customer information

- Can save money on hardware
- Boost worker efficiency and productivity
- Increase worker mobility—the “virtual office”
- Reduce IT management, troubleshooting, and support costs
BYOD Policy

- Who is eligible?
- What devices may be used?
- Reimbursement
- Define security protocols
- No “friends and family” use
- Limit information that can be stored on device (if possible)

- Define protocol for lost or stolen devices
- Define protocol for terminating employees
- Define acceptable and non-acceptable use
- Get signed acknowledgement

Social Media Accounts

- Labor Code sec. 980
- Prohibits employers from requiring or requesting employees or applicants to disclose social media usernames or passwords
- Employers can request information reasonably believed to be relevant to allegations misconduct or violation of laws and regulations
### Social Media Policy

- Do you need one?
- Work-related or non-work-related or both?
- Who owns it (account names, access, edit)?
- Integrate existing policies
- Protocol for identification of users
- Protection of intellectual property
- Non-disparagement of competitors
- No interference w/rights under NLRA
- No illegal activity

### Electronic Media Policy

- Informs employees that email/text service is the employer’s property and is for business use only
- Notifies employees that they have NO express or implied privacy rights in any matter created, received, or sent through the company’s email/text system, or the sites that they visit on the Internet, including web-based email
- Notifies employees that contents of email/text history will be monitored
Trade Secrets & Restrictive Covenants

Information
Pattern, formula, compilation, know-how, technique, etc.

Not Generally Known
Yellow pages rule

Valuable because a secret? Can you prove it?

With Independent Economic Value

Reasonable Efforts to Maintain Secrecy
Requires reasonable efforts, consistency, documentation
Examples of Trade Secrets

- Client/customer lists (relating to non-public information; e.g., pricing information, buying habits, etc.)
- Business or commercial plans, including marketing strategies and infrastructure organization
- Technical information and devices
- “Know-How” and “Negative Know-How”

Not a Trade Secret

- Information derived from reverse engineering
- Business forms and procedures
- Patented inventions
- Sales telemarketing scripts and pitch materials
- Course and training materials, and instruction materials
## Restrictive Covenants

<table>
<thead>
<tr>
<th>Types of Covenants</th>
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<tr>
<td>Non-disclosure</td>
<td>?</td>
</tr>
<tr>
<td>Employee non-solicit</td>
<td>?</td>
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<tr>
<td>(&quot;anti-raiding&quot;)</td>
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<tr>
<td>Customer non-solicit</td>
<td>?</td>
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<tr>
<td>Non-compete</td>
<td>?</td>
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<tr>
<td>Invention Agreement</td>
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## Public Policy in Favor of Employee Mobility

- **B&P Code 16600** invalidates restrictions on lawful business
- **B&P Code 17200** prohibits business practices that are unfair, fraudulent or illegal
AMN Healthcare, Inc.

- CA Court of Appeal (2018)
- Held that contractual provisions that prohibit former employees from soliciting current employees to change jobs are void under B&P Code sec. 16600
- Departure from *Loral Corp v. Moyes* (1985) decision

Additional Resources

- FEHA & CFRA Regs
  - [http://dfeh.ca.gov/FEHCouncil.htm](http://dfeh.ca.gov/FEHCouncil.htm)
- DFEH Information
  - [http://www.dfeh.ca.gov](http://www.dfeh.ca.gov)
- DLSE Information
  - [http://www.dir.ca.gov/dlse/](http://www.dir.ca.gov/dlse/)
- CA Workplace Posters
  - [http://www.dir.ca.gov/wpnodb.html](http://www.dir.ca.gov/wpnodb.html)
Finding Your Way in the Wild West: A Primer on California Employment Law

Presenters
Cara F. Barrick (San Francisco), Anthony J. DeCristoforo (Sacramento), Robert R. Roginson (Los Angeles), and Spencer C. Skeen (San Diego)

Moderator
Betsy Johnson (Los Angeles)