

WHAT YOU DON'T KNOW COULD HURT YOU: EMPLOYING WORKERS IN CALIFORNIA



CLM2017 01/04/2017 01/04/2017

AGENDA



- Welcome- Sally Cimini, Department Chair
- California Labor Law, A-Z (well, sort of...)- Phil Toomey
- Wage and Hour and the Death of Independent Contractors- Eric J. Wu
- California Immigrant Worker Protection Act- Cristina Perez
- Elimination of Bias in the Workplace- Phil Toomey
- Cal-OSHA and Prop 65- Eric J. Wu
- Questions

ROADMAP OF TAKE-AWAY'S



- California Labor Law, A-Z
 - Majority Rule, Minority Rule, and California Rule
 - There is a Reason California Permits Recreational Use of Marijuana
- Wage & Hour and Death of the Independent Contractor
- Immigrant Worker Protection
- Elimination of Bias
 - California's Approach to Combating Traditional Areas of Discrimination
 - Non-traditional Areas of Discrimination and Developing Public Policy
- Cal-OSHA and Prop 65

WELCOME



- Sally Cimini, Employment Practice Group Chair

CA EMPLOYMENT LAW: A TO Z



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ROADMAP



- Majority rule, minority rule & California rule
- What rules apply, and when
- Attorney fees, the Unfair Business Practice Act and the Private Attorney General Act
- Why marijuana is legal in California



WHAT AND WHEN



All Employers

1. Child labor laws
2. Crime victims leave
3. Disability insurance
4. Domestic violence, sexual assault and stalking leave: legal proceedings and reasonable accommodation
5. Cal-OSHA
6. Fair Employment and Housing Act (FEHA)

All Employers

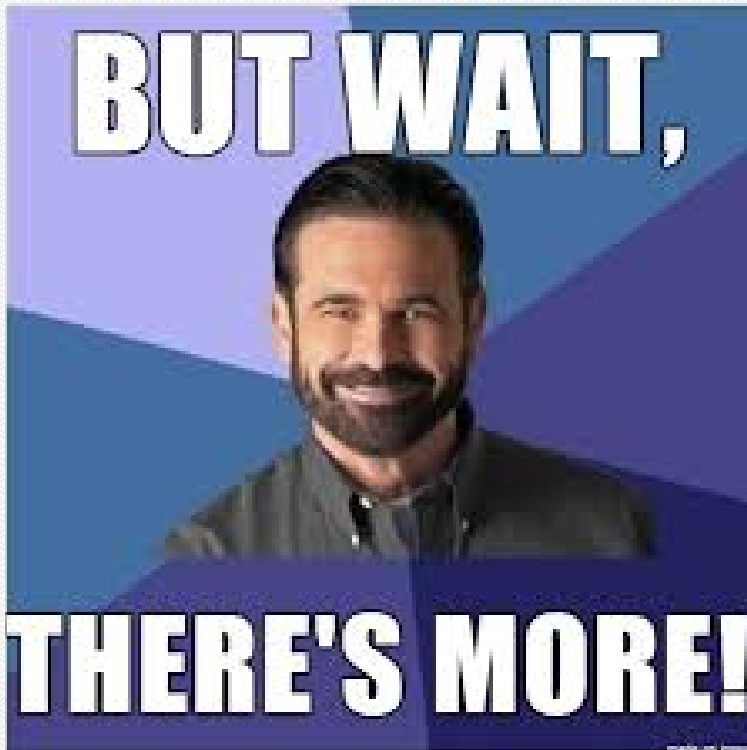
7. Injury and Illness Prevention Program
8. Independent contractors
9. Jury duty time off
10. Military leave (USERRA)
11. Reporting of new employees
12. Paid family leave
13. Posters and notices

WHAT AND WHEN



All Employers

- 14. Prior salary history ban
- 15. Privacy
- 16. School appearance leave
- 17. Smoking in the workplace
- 18. Unemployment insurance
- 19. Volunteer civil service leave
- 20. Workers compensation



AND OF COURSE ...



All Employers

- 22. Verifying eligibility to work
- 23. In actions to enforcement employment claims, legal status is irrelevant
- 24. Minimum wage and overtime
- 25. Paystub information
- 26. Personnel and payroll records
- 27. Written commission plans
- 28. Reimbursement of business expenses
- 29. Prohibition against non-competition agreements



WHAT AND WHEN



2 Employees

29. Cal-COBRA

4 Employees

30. Immigrant
Discrimination and
Worker Protection

5 Employees

31. Ban the Box

32. FEHA discrimination
laws

33. Pregnancy disability
leave

15 Employees

34. Americans with Disabilities
Act

35. EEOC & federal
discrimination laws

36. Organ and bone marrow
donors leave

16 Employees

37. Civil Air Patrol Leave

20 Employees

38. Federal COBRA

39. Parental leave

WHAT AND WHEN

25 Employees

- 39. Alcohol and Drug Rehabilitation
- 40. Domestic violence, sexual assault and stalking victims leave: medical treatment
- 41. School and Child Care Activities

50 Employees

- 42. Affirmative Action
- 43. Family and Medical Leave (FMLA and CFRA)
- 44. Mandatory Supervisor Sexual Harassment Training
- 45. Volunteer firefighter training

75 Employees

- 46. WARN Act (plant closing)

100 Employees

- 47. Equal Employment Opportunity Reporting

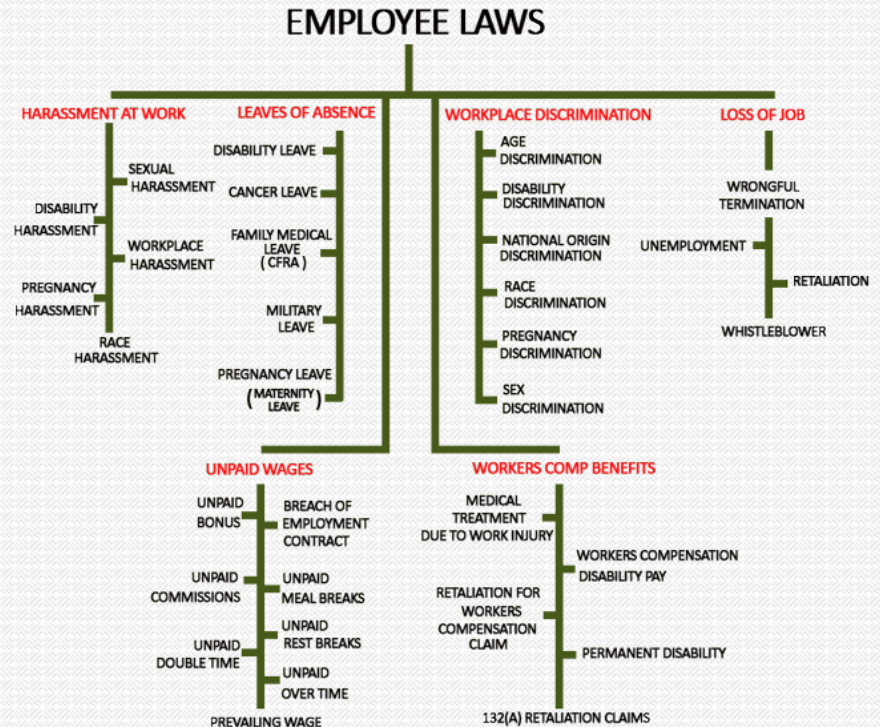
But an Employer must also pay attention to:

- 48. Special rules for particular industries (janitors and security guards)
- 49. Local ordinances related to paid sick leave (right now, Berkeley, Emeryville, Los Angeles, Oakland, San Diego, San Francisco and Santa Monica)
- 50. Local ordinances related to parity in pay (San Francisco)
- 51. Local minimum wage ordinances

HOW CALIFORNIA RULES



- California has a very strong emphasis on codes and regulations
- We have never seen a complicated situation we could not make worse
- California employees can choose the law that affords them the most protection or greatest recovery
- California allows local municipalities to have their own employment related ordinances



CALL US AT 1-877-525-0700

IF YOU THINK ANY OF THESE EMPLOYEE LAWS HAVE BEEN VIOLATED

FINANCIAL CONSIDERATIONS



- Attorney fees awards for Labor Code violations
- Attorney fees awards for violation of FEHA
- Restrictions on arbitration agreements
- Unfair Business Practice Act- Business & Profession Code §17200
- Private Attorney General Act

I allow my income
to constantly expand,
and I always live in
comfort and joy.

MARIJUANA IN CALIFORNIA



- Now you know why 57% of California votes approved recreational use of marijuana
- Suspect the margin reflected a large number of HR Professionals
- Questions?



WAGE & HOUR AND THE DEATH OF INDEPENDENT CONTRACTORS



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CA WAGE & HOUR LAWS



- California Regulations
- What are Wage Orders?
 - Regulates wages, hours, and working conditions for certain industries
 - Regulations: Hours and days of work; Minimum wages; Overtime; Meal periods; Rest periods; Alternative workweeks; Reporting time pay; Special licenses for disabled employees; Record retention; Cash shortage and breakage; Uniforms and equipment; Meals and lodging; Change rooms and resting facilities; Temperature; Seats
 - Posting requirement

CA MINIMUM WAGE



- Minimum Wage in California

Date	26 or more employees	25 or fewer
January 1, 2018	\$11.00	\$10.50
January 1, 2019	\$12.00	\$11.00
January 1, 2020	\$13.00	\$12.00

- Weekly minimum wage \$440.00 per 40-hour week
- Yearly minimum wage \$22,880.00
- Federal minimum wage \$7.25

I HAVE TO PAY WHAT, WHERE?!



City	Effective Date	Minimum Wage
Berkeley	October 1, 2017	\$13.75
	October 1, 2018	\$15.00
Cupertino	January 1, 2018	\$13.50
Emeryville	July 1, 2018	\$14.00 \$15.60 CPI
	1-55 employees	
	56+	
	July 1, 2018	\$12.00 \$13.25
	1-25 employees	
	26+	
	January 1, 2018	\$15.00
Mountain View	January 1, 2018	\$15.00
Palo Alto	January 1, 2018	\$13.50
San Francisco	July 1, 2018	\$15.00

OVERTIME, EXEMPTIONS, AND BREAKS!

OH MY...



- Overtime Pay
 - 1.5 x regular rate of pay
 - Double regular rate of pay
- Exemptions
 - Minimum Annual Salary
 - FLSA vs California
- Meal and Rest Breaks



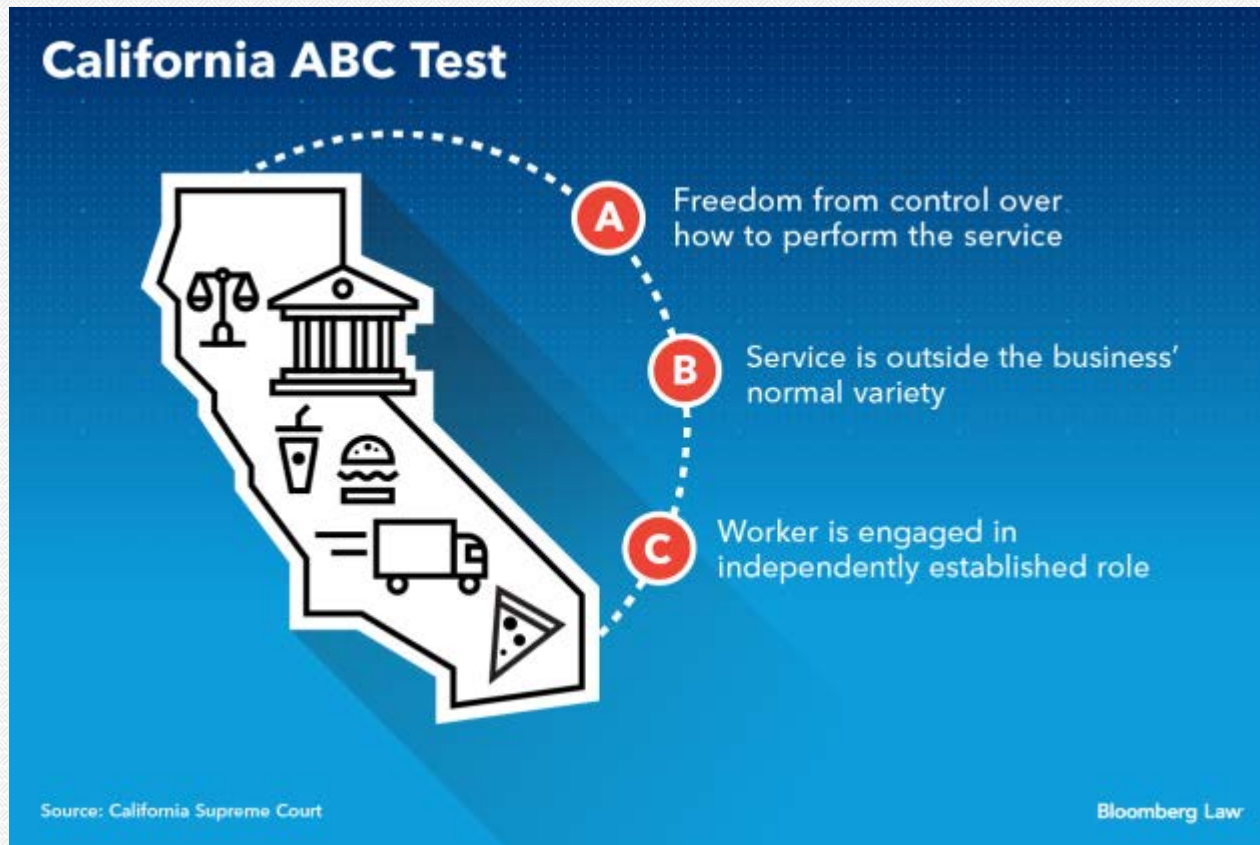
INDEPENDENT CONTRACTORS IN CALIFORNIA



- What is an Independent Contractor?

“[A]ny person who renders service for a specified recompense for a specified result, under control of his principal as to the result of his work only and not as to the means by which such result is accomplished.”
Labor Code § 3313.
- Tests to Define Independent Contractor
 - FLSA Economic Realities
 - Right to Control – *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989).
 - ABC Test – *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, No. S222732 (April 30, 2018).

ABC TEST



SO LONG, FAREWELL...



- Presumption All Workers are Employees
- Liability for Misclassification
- Best Practices
 - Carefully review IC relationships
 - Beware Vendors!
 - Consult with an Employment Practices Group Attorney at Leech Tishman Fuscaldo & Lampl



CALIFORNIA'S IMMIGRANT WORKER PROTECTION ACT (ASSEMBLY BILL 450)



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WHAT IS CALIFORNIA'S IMMIGRANT WORKER PROTECTION ACT (AB 450)?



- Starting January 1, 2018, AB 450 provides California workers with protection from immigration enforcement while on the job and imposes various prohibitions and requirements on private and public employers with regard to worksite inspections by immigration enforcement agents.
- Under AB 450, an employer cannot voluntarily grant:
 - Access to any non-public area of a worksite, unless the immigration enforcement agent presents a “judicial warrant;” or,
 - Consent to access, review, or obtain the employer’s employee records (e., I-9s, personnel files, etc.) without a “subpoena or judicial warrant.”

PROHIBITIONS IMPOSED ON EMPLOYERS:



Employers, or anyone acting on behalf of the employer, are prohibited, except as otherwise required by federal law (i.e., judicial warrant or subpoena) from:

1. Providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a place of labor/worksites unless the immigration enforcement agent presents a “judicial warrant.”

A “nonpublic” area is one that the general public is not normally free to enter or access (i.e., areas marked “private,” offices where payroll or personnel records are kept, areas where public is not permitted).

PROHIBITIONS IMPOSED ON EMPLOYERS:



Employers, or anyone acting on behalf of the employer, are prohibited, except as otherwise required by federal law (i.e., judicial warrant or subpoena) from:

2. Providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records unless the immigration enforcement agent presents a Subpoena or Judicial Warrant or Notice of Inspection (NOI) issued under federal law.

This prohibition does not restrict or limit an employer's compliance with the E-Verify Memorandum of Understanding governing the use of the federal E-Verify system.

PROHIBITIONS IMPOSED ON EMPLOYERS:



Employers, or anyone acting on behalf of the employer, are prohibited, except as otherwise required by federal law (i.e., judicial warrant or subpoena) from:

3. Reverifying the employment eligibility of a current employee at a time or in a manner not required by Section 1324a(b) of Title 8 of the United States Code.

This prohibition does not restrict or limit an employer's compliance with the E-Verify Memorandum of Understanding governing the use of the federal E-Verify system.

Under federal law, an employer may be required to reverify employees in certain situations, such as when an employee has an expiring EAD or when an employee comes forward with a new identity and basis of work authorization.

REQUIREMENTS IMPOSED ON EMPLOYERS:

AB 450 requires employers to give a written notice to employees of record inspections by federal immigration agencies. Namely:

1. Pre-Inspection Notice

Within 72 hours of receiving a Notice of Inspection of I-9 Employment Eligibility Verification forms, an employer must provide a written notice of the inspection to each current employee (and the employee's authorized union representative, if any).

Pre-Inspection Notices must be posted in the language the employer normally uses to communicate employment information to the employee and shall contain all the following information:

- a. The name of the immigration agency conducting the inspection
- b. The date that the employer received notice of the inspection
- c. The nature of the inspection to the extent known, and
- d. A copy of the Notice of Inspection must be given to an affected employee upon reasonable request.

*CA Commissioner Template Postings

REQUIREMENTS IMPOSED ON EMPLOYERS:

2. Post-Inspection Notice

Within 72 hours of receiving the written notice of inspection results, the employer must provide an affected current employee (and the employee's authorized union representative, if any)

- a) a copy of the written immigration agency results and
- b) written notice of the obligations of the employer and affected employee arising from the inspection results

Post-Inspection Notice Requirements:

- a. Must contain a description of any and all deficiencies or other items identified in the written immigration inspection results notice related to the affected employee.
- b. Must contain the time period for correcting any potential deficiencies identified by the immigration agency.
- c. Must contain the time and date of any meeting with the employer to correct any identified deficiencies, and
- d. Must contain notice that the employee has the right to representation during any meeting scheduled with the employer.
- e. Notice shall relate to the affected employee only and shall be hand delivered at the workplace, if possible, and if hand delivery is not possible, then by mail or e-mail to the affected employee and the affected employee's authorized representative, if any.

VIOLATIONS FOR NON-COMPLIANCE:



- If employer fails to comply with AB 450, it will be subject to civil penalties of \$2,000 to \$5,000 for a first violation, and \$5,000 to \$10,000 for each subsequent violation.
- Violations may subject employers to civil penalties in a suit brought by the California Attorney General and/or the State Labor Commissioner.
- In the case of a violation of the employment eligibility reverification provision, an employer shall be subject to a civil penalty of up to \$10,000.

SUMMARY & TIPS TO DEAL WITH AB 450:



- Establish a solid practice to accurately complete I-9 Forms. Confer with attorney or resources such as USCIS I-9 Central (<https://www.uscis.gov/i-9-central>)
- Understand the purpose of an immigration raid/inspection/audit: Occur as part of an investigation into the employer's hiring practices.
- ICE's intent during a raid may be to arrest individuals and/or seize documents that will then be used in supporting a criminal case against the employer. Indictments may also be issued to CEOs, managers, supervisors, and others in the management structure of a company.
- For example, on September 28, 2017, ICE, in collaboration with the Department of Justice ("DOJ") U.S. Attorney's Office, announced that Pennsylvania-based Asplundh Tree Experts, Co. would pay \$95 million to settle both criminal and civil immigration charges stemming from the company's hiring and rehiring of undocumented workers over a six-year period. This is the largest payment levied in an immigration or Form I-9 investigation to date. In 2016, a California company, Mary's Gone Crackers Inc., agreed to pay \$1.5 million and establish a corporate compliance program under a non-prosecution agreement
- Be prepared for immigration audits/raids/inspections: Confer with immigration and employment attorneys
- Train front office employees

SUMMARY & TIPS TO DEAL WITH AB 450:



- Understand the difference between non-public and public areas of the work place
- Do not give access to immigration agents to enter any non-public areas or provide access to records, without a valid warrant/subpoena or “Notice of Inspection.”
- Consult with your attorney to verify validity of a warrant/subpoena
- If you receive a "Notice of Inspection," notify employees promptly (within 72 hours)

IS CALIFORNIA DEFIANT OR A PROTECTOR?

Apart from California's Immigrant Worker Protection Act AB 450, other California laws provide additional protection to immigrants who have, or do not have, lawful authorization to work:

1. California Labor Code 1171.5(b): Makes Immigration status irrelevant in actions to enforce CA labor laws and limits discovery as to immigration status.

2.

California SB 785 (passed by the California Legislature on 5/10/18): A new section added to the California Evidence Code (Evidence Code 351.3) requires a private hearing on immigrant status in criminal actions and all civil actions (other than personal injury or wrongful death), prior to disclosure of such status.

CALIFORNIA'S REALITY

- California is the focus of the US Government
- The Trump Administration has clearly signaled that all undocumented immigrants are now enforcement priorities (clear deviation from prior policy to go after “serious” criminal offenders and prior immigration violators)
- In October 2017, California passed the widely publicized Senate Bill 54, the unofficial “sanctuary state” bill, which bars state and local law enforcement agencies from asking people about their immigration status.
- AB 450 provides worksite immigration protection for employees while on the job.
- Federal government views these laws as intended to “interfere with federal immigration enforcement authorities” and their ability to enforce federal immigration law.
- Given this climate, businesses must be prepared for increased immigration scrutiny

SOME FACTS TO THINK ABOUT

According to ICE 5/14/18 Announcement:

- Less than seven months after U.S. Immigration and Customs Enforcement (ICE) Deputy Director Thomas Homan issued a directive that called for increased worksite enforcement investigations. Homeland Security Investigations (HSI) has already doubled the amount of ongoing worksite cases this fiscal year compared to the last year.
- From Oct. 1, 2017, through May 4, 2018, HSI opened 3,510 worksite investigations; initiated 2,282 I-9 audits; and made 594 criminal and 610 administrative worksite-related arrests, respectively.
- Homan stated that ICE would QUADRUPLE workplace enforcement in CA in response to AB 450.
- California has already seen a jump in immigration enforcement/worksite raids. According to an ICE News Release on 2/16/18: “LOS ANGELES – U.S. Immigration and Customs Enforcement (ICE) deportation officers and special agents arrested 212 individuals for violating federal immigration laws and served 122 notices of inspection (NOIs) to businesses in the Los Angeles area.”

SOME FACTS TO THINK ABOUT

According to CA Labor Federation:

- Immigrants are the backbone of many California industries and widespread worksite raids.
- Over 2.6 million undocumented immigrants reside in California.
- Undocumented workers make up 45 percent of California's agricultural workforce and 21 percent of its construction workforce.
- In fact, almost 1 in every 10 workers in California is undocumented.

According to a study by the National Employment Law Project (NELP):

- Many employers use threats of immigration consequences to prevent workers from reporting abuses or organizing for better conditions.
- Both workers and employers need clear rules for when immigration enforcement agents show up at the worksite.

WHAT THE CA LABOR COMMISSIONER SAYS:

In speaking to the California Labor Commissioner, Julie Su, directly, after the implementation of AB 450, these are her office's conclusions:

- AB 450 is intended to protect employers/remind them of their rights in immigration raids/audits/inspections.
- Employers are victims as are the immigrant work force.
- No employers have been unjustly affected/fined.
- Labor Commissioner's office has only gone after employers who use ICE to retaliate against workers/employees who complain about work conditions or wages.

IMMIGRATION



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ELIMINATION OF BIAS IN THE WORKPLACE



- Phil Toomey



ROADMAP




California's approach

- Protected Classification
- FEHA Disability Distinctions
- Fair Pay/Parity in Pay
- Family, pregnancy and elimination of stereotypes
- New focus on “Nontraditional” Classification



FEHA PROTECTED CLASSES

- 
- | | | | |
|----|--|-----|--|
| 1. | Age | 7. | Pregnancy and perceived pregnancy |
| 2. | Genetic information/
characteristics | 8. | Race and color |
| 3. | Marital status | 9. | Religion |
| 4. | Medical condition (including
cancer or record or history of
cancer) or AIDS/HIV status | 10. | Sex and gender, including |
| 5. | Mental or physical | A. | Pregnancy, childbirth,
breastfeeding and related medical
conditions |
| 6. | National origin and ancestry,
including | B. | Gender identity or gender
expression, including transgender
status and those who are
transitioning or have transitioned |
| A. | Language use restrictions | C. | Sexual stereotypes |
| B. | Holding a 12081.9 CDL
(issued to persons unable
to prove lawful status) | 11. | Sexual orientation |
| | | 12. | Military and veteran status |

IMPORTANT CALIFORNIA DIFFERENCES



1. HR Professionals and other employees may have personal liability for retaliation against individuals who complain about harassment or discrimination (SB1038, passed by Assembly and before the Senate).
2. FEHA does not recognize the *Faragher-Ellerth* defense (reasonable care to prevent harassment or discrimination, prompt corrective action, and the employee fails to take advantage or reporting or corrective opportunities to avoid harm). It recognizes only a limited defense against economic damages that could have been reasonably avoided. It does not avoid liability.
3. An employee's legal status is irrelevant in any employment claim. A party or their attorney may not mention it in any court proceedings absent a court order .

IMPORTANT CALIFORNIA DIFFERENCES



7. Gender is specifically within the definition of prohibited sexual harassment or discrimination.
8. FEHA requires that the employer engage in the interactive process related to any disability. The failure to engage is a separate violation of FEHA.
9. When an employee is afforded different leaves, the employee may “stack” leaves (i.e., an employee may take CA-PDL, then CFRA. The spouse of a pregnant employee may take FMLA for the serious health care conditions of the spouse, then claim baby bonding under CFRA).
10. FEHA provides more protection to disabled employees than the ADA, and restricts employer challenges to claims of disability. Medical documentation that describes the nature, severity and duration of impairment, states impairment limits the ability to perform the job, and substantiates the need for leave is sufficient. Disclosure of the nature of the disability is not required.

EXAMPLE OF ADMINISTRATIVE EXPANSION



FEHA prohibits discrimination based upon “national origin.” That term is not defined in the statute, so enabling regulations have been adopted and go into effect July 1st.

- The regulations adopt a broader definition of the term. The term now means an individual’s or ancestor’s actual or perceived:
 - Physical, cultural or linguistic characteristics associated with a national origin group
 - Marriage to or association with persons of a national origin group
 - Tribal affiliation
 - Membership in or association with an organization identified with or seeking to promote the interests of national origin group
 - Attendance or participation in schools, churches, temples, mosques or other religious institutions
 - Name that is associated with the national origin group

EXAMPLE OF ADMINISTRATIVE EXPANSION



The following are examples that could constitute impermissible discrimination:

- Language restriction policies, including English-only policies. Under the new regulations, these policies are unlawful unless the restriction is justified by legitimate business necessity and are narrowly tailored. The employer also has an obligation to notify employees of the restrictions and the consequences for violating it. The regulations also state that English-only policies are never permitted during non-work time, such as meal and rest breaks and unpaid employer sponsored events.
- English proficiency, unless the employer has an objective standard for such proficiency and can show that proficiency is justified by legitimate business necessity.
- Height and weight requirements. The employer is obligated to police such requirements, and ensure that disparate impact does not occur. If disparate impact occurs, the employer must show the requirements are job-related and consistent with legitimate business necessity, and that the purposes of such requirements cannot be met by less discriminatory means.
- Recruiting applicants or employees based upon national origin, or to assign positions, facilities or geographical areas of employment based upon national origin.

REASONABLE ACCOMMODATION



1. The interactive process is a separate FEHA obligation.
2. The employer must engage in the process (a) upon the request of the employee or (b) when it is “aware of the need” for an accommodation, either by being told by a third party or by actual observation.
3. The employer may also become aware because the employee has exhausted leave under the Workers Compensation Act, CFRA, FMLA, and the employee’s medical care provider indicates further leave is necessary.
4. If the employer “perceives” an applicant or employee as disabled, the interactive process is also triggered.
5. Employees must cooperate in the process.

REASONABLE ACCOMMODATION



7. FEHA requires that any accommodation be “reasonable;” that is, “there is a nexus between the accommodation and the employee being able to perform the essential functions of the job.” While the employee’s suggested accommodation should be given preference, the employer can choose any accommodation that will be effective.
8. The employer must go beyond the initial accommodation. If it doesn’t work, it must reengage in the process to find one that does, and then follow up to ensure it works.
9. Examples of what FEHA regulations state are reasonable accommodations: (a) reassignment, (b) telecommuting, (c) extended non-paid leave (but employee’s position must be held for their return), assistive animals, assistants, equipment modifications.

FAIR PAY IN CALIFORNIA



Fair Pay- The Application Process

- As of January 1, 2018 an applicant may not be asked (directly or indirectly):
 - Salary history information;
 - Information about any other form or compensation or benefits (i.e., bonuses);
 - The employer may not attempt to obtain salary information through a third party (i.e., a recruiter);
 - Employment decision cannot be impacted by applicant refusing to disclose salary history.
- An employer may rely on salary information that is voluntarily disclosed “without any prompting.” However, the Fair Pay Act specifically prohibits salary history to substantiate different wages paid to employees of different genders, races or ethnicities who perform substantially similar work.
- An applicant is entitled to a copy of the pay scale for the position upon request.

FAIR PAY IN CALIFORNIA



The California Fair Pay Act

- Employers may not pay any employee less than employees of the opposite sex, race or ethnicity for “substantially similar work.”
- The burden is on the employer to justify pay differentials from an acceptable list of factors that must be reasonably applied. The relied upon factors must account for the entire wage differential. The factors are:
 - A seniority system;
 - A merit system;
 - A system that measures earnings by quantity or quality of production;
 - A bona fide factor other than sex, race or ethnicity, such as education, training or experience.
 - For the fourth factor to be valid:
 - It cannot be based on or derived from a sex, race or ethnicity-based difference in pay;
 - It must be job related; and
 - Consistent with “business necessity,” which means an overriding legitimate business. If there is an alternative, the employer cannot rely on the stated purpose

FAIR PAY IN CALIFORNIA



The California Fair Pay Act (con't)

- Pay secrecy is prohibited. An employer may not prohibit employees from:
 - Disclosing their own wages;
 - Discussing the wages of others;
 - Aiding or encouraging other employees to exercise their rights under the Fair Pay Act.
- The employer must keep records for three years of wages and wage rates, job classifications, and other terms and conditions of employment.
- Employees have the right to sue. There are also criminal penalties that can be assessed against the offending employer.
- SB1284 would require employers with 100 or more employees to submit a pay data report to the DIR, who would make the reports available to the DFEH upon request. The bill passed the Senate and is pending in the Assembly.

FAIR PAY IN CALIFORNIA



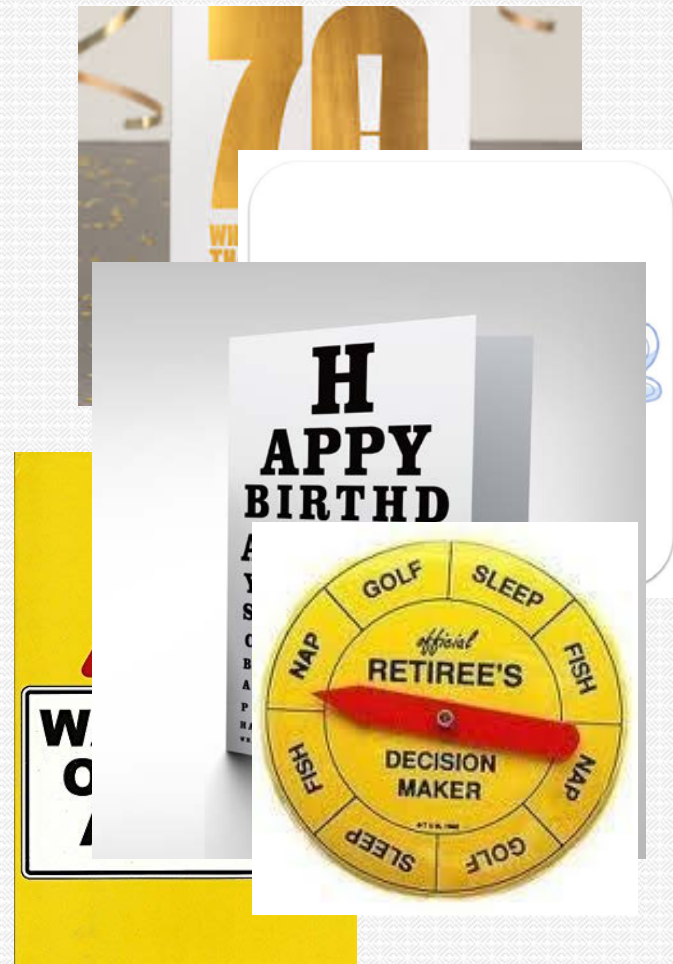
The San Francisco Fair Pay Act

- San Francisco has adopted its own Parity in Pay law. This is a good example of where a local entity enacts rules that expand upon the state law. The SCOCAL has repeatedly allowed local government to fashion their own laws to expand stated public policy.
- The Parity in Pay ordinance:
 - Applies to all employers in San Francisco including job placement, referral or employment agencies;
 - Requires notice of the ordinance to be posted in multiple different languages;
 - Prohibits:
 - Considering or relying upon salary history as a factor in deciding to hire an applicant or the salary to be offered;
 - Retaliating against anyone for refusing to disclose salary history;
 - A former employer from disclosing salary history .

FOCUS ON NONTRADITIONAL AREAS

Ageism

- The number of older workers is growing at a rate that outpaces the overall growth of the labor force (overall annual growth 2016-2026: .06%; workers 65-74 42%; workers >75 6.7%).
- Age discrimination can be present in responses to older workers managing healthcare issues, needing accommodation, balancing caregiving responsibilities and long-term health challenges.
- Largest growing group of workers is not millennials, but women over the age of 55.
- Ageism in particular has a very strong cultural stereotype that can work its way into workplace decisions.



FOCUS ON NONTRADITIONAL AREAS



Gender Expression

- As of January 1, 2018 an employer may not make inquiry that, directly or indirectly, identifies an individual on the basis of:
 - Sex;
 - Gender identity;
 - Gender expression.
- Employer cannot require documentation or proof of sex or gender identity/expression as a condition of employment.
- Employer must honor an employee's chosen name, gender identification and use of pronouns (including neutral pronouns). Failure to do so may result in a hostile work environment claim.
- Jobs may not be assigned based upon sexual stereotypes.

FOCUS ON NONTRADITIONAL AREAS



Expanded Workplace Training

- Required training must now include components that discuss:
 - Types of conduct that constitute sexual and other harassment;
 - Harassment based upon gender identity, gender expression and sexual orientation;
 - Supervisor's obligation to report sexual harassment, discrimination and retaliation;
 - Civil remedies available to victims;
 - The limited confidentiality of the complaint process;
 - The employer's obligation to conduct a workplace investigation of a complaint;
 - What constitutes retaliation, and how to prevent it;
 - Resources for victims of harassment, and to whom they should report incidents;
 - Preventing "abusive conduct" (i.e., workplace bullying).

FOCUS ON NONTRADITIONAL AREAS



Gender Transition

- Under FEHA, there are 2 distinct types of gender transition
 - “Social transition” which involves the process of aligning one’s gender with the internal sense of self (e.g., changes in names and pronouns, restroom facility usages, workplace and social activities)
 - “Physical transition” which refers to medical treatments an individual may undergo to physically align their body with their internal sense of self
- A person does not need to complete any particular step in gender transition to be protected by the law
- An employer may not condition accommodation upon completion of any particular steps

FOCUS ON NONTRADITIONAL AREAS



Gender Transition

- What may an employer ask?
 - More what they cannot- should not ask questions to ascertain gender, or whether an applicant will have surgery
- What about dress codes?
 - Absent a legitimate business necessity, an employee must be allowed to dress in accordance with their gender identity
- What about restrooms?
 - FEHA states the employee has the right to use a restroom or locker that corresponds to the employee's gender identity
 - Use of a unisex single stall restroom should always be a matter of the employee's choice
 - No employee should be forced to use a single stall unisex restroom as a matter of policy or due to harassment by other workers

ELIMINATION OF BIAS IN THE WORKPLACE



- Questions?



CAL-OSHA AND PROP 65



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CAL/OSHA



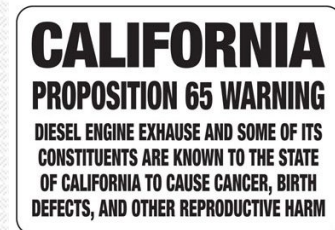
- What is Cal/OSHA?
- State vs. Federal
- Enhanced Fines
- Reporting Requirements
- Posting Requirements
- Inspection Process



PROP 65



- Safe Drinking Water and Toxic Enforcement Act of 1986
- List of Chemicals
- Business Requirements
- 2018 Regulations:
“Clear and Reasonable”



PROP 65



WARNING: This product can expose you to chemicals, including [CHEMICAL NAMES], which are known to the State of California to cause cancer. For more information, visit www.P65warnings.gov

SUMMARY AND QUESTIONS



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Q&A



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