2021 NEW EMPLOYMENT LAWS *and* ANNUAL REMINDERS

The following is a brief summary of some of the noteworthy new California laws enacted in 2020 which impact the day-to-day operations and policies of California employers. Unless otherwise indicated, all new legislation is effective *January 1, 2021*. There were also a number of cases decided in 2020 which provide guidance and set new standards governing the employment relationship. The information contained in this document is current through March 9, 2021, and is subject to change. Should you have any questions about this material, or any other employment related matters, feel free to contact:

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1. WAGE AND HOUR

	Minimum Wage • $14.00 per hour for employers with 26+ employees. • $13.00 per hour for employers with 25 or fewer employees. • More than 20 California cities and counties have their own minimum wage requirements, which must be complied with if employees are working in those areas. **Exempt Employee Salary Requirement (CA)** • Employers with 26+ employees must pay exempt employees a minimum of $58,240 annually. • Employers with 25 or fewer employees must pay exempt employees a minimum of $54,080 annually.

AB 1512
 	
Effective 9/30/20
 	
AB 2479
	Rest Periods for Security Guards and Petroleum Facilities May be Restricted
	• Amends Labor Code §§226.7 and 226.75
	• Existing Law – Employers are prohibited from requiring an employee to work during a mandated meal, rest or recovery period, with limited exceptions. Employers who fail to provide an employee a mandated meal, rest or recovery period are required to pay the employee 1 additional hour of pay for each workday that the meal, rest or recovery period was not provided ("Meal Period Premium" or "Rest Period Premium").
	• Security Guard Exception – If the conditions set forth below are met, a person employed as a security officer who is registered pursuant to the Private Security Services Act, and whose employer is a registered private patrol operator, may be required to remain on the premises during rest periods, to remain on call and carry and monitor a communication device during rest periods, and if a rest period is interrupted, may restart the rest period as soon as practicable, with the subsequent uninterrupted rest period deemed to satisfy the rest period obligation. A security officer who is not permitted to take an uninterrupted rest period of at least 10 minutes for every 4 hours worked or major fraction thereof, is entitled to receive a Rest Period Premium.
	  • *Required Conditions* – The employee must be covered by a collective bargaining agreement and be paid at least $1.00 more than minimum wage per hour.
	  • *Timeframe for Exception* - The Security Guard Exception does not apply to cases filed before 1/1/21 and shall only remain in effect until 1/1/27.
	• Petroleum Facility Exception – If the conditions set forth below are met, employees who hold a safety-sensitive position at a petroleum facility may be required to remain on the premises during rest periods, to remain on call and carry and monitor a communication device during rest periods, and if a rest period is interrupted, may restart the rest period as soon as practicable, with the subsequent uninterrupted rest period deemed to satisfy the rest period obligation. An eligible employee who is not permitted to take an

	uninterrupted rest period of at least 10 minutes for every 4 hours worked or major fraction thereof, is entitled to receive a Rest Period Premium. • *Required Conditions* – The employee must be covered by a collective bargaining agreement and be paid at least 30% more than minimum wage per hour. • *Timeframe for Exception* - The Petroleum Facility Exception expires 1/1/26.
David v Queen of Valley Medical Center (2020) 51 Cal.App.5th 653	**Meal and Rest Period Interruptions** • Former nurse employee brought a case alleging wage and hour violations against her hospital employer claiming her co-workers interrupted her meal and rest periods on occasion with work-related questions and requests and that she cut her meal and rest periods short to get back to patient care. The employee alleged she felt pressure to clock-in early because she was expected to put her patient's needs first and her supervisors would walk into the break room and look at the clock, signaling they expected her to clock-in. • The Court found in favor of the employer for the following reasons: • The hospital had a proper meal and rest period policy, provided meal and rest periods in accordance with the law, did not discourage compliant meal or rest periods and did not tell the employee to cut her breaks short. • When the employee's co-worker asked her questions and she told them she was on a break, they left her alone. • The employee did not complain to a Supervisor about taking non-compliant meal or rest periods and the mere fact that there were some short meal periods on the employee's timecard was not sufficient to put the employer on notice of non-compliant meal and rest periods. • When the employee missed a break and she reported it to the employer and received the required premium pay. • A Supervisor merely looking at the timeclock when the employee is on a break did not support a reasonable inference that the employee was pressured to end her meal or rest periods early.
AB 2231 Effective 7/1/21	**New "De Minimis" Standard for Public Works Projects for Purposes of Prevailing Wage Requirements** • Amends Labor Code §1720 • Existing Law – With limited exceptions, the general prevailing rate of per diem wages is required to be paid to workers employed on public works projects. Currently exempt from the definition of the term "public works" are (among others) an otherwise private development project if the State of a political subdivision provides, directly or indirectly, a public subsidy to the private development project that is "de minimis" in the context of the project. • New "De Minimis" Standard – With the exception of projects that are advertised for bid, and contracts awarded before 7/1/21, the following new standards apply: • A public subsidy is "de minimis" if it is *both* less than $600,000 and less than 2% of the total project cost. • A public subsidy for a residential project consisting entirely of single family dwellings is "de minimis" if it is less than 2% of the total project costs.
AB 3075	**Successor Liability for, and Required Registration of, Violations of Wage Orders and Labor Code** • Amends and adds Labor Code §§200.3, 1205 and Corporations Code §§1502, 2117 and 17702.9 • Registration of Violations – Corporations are required to file a Statement of Information (among other documents) with the Secretary of State ("SOS"). Starting 1/1/22, or upon certification by the SOS that California Business Connect is implemented, whichever is earlier, the Statement of Information must contain a statement indicating whether any officer, director, member or manager, has an outstanding final judgement issued by the DLSE or a court of law for the violation of a California Wage Orders and/or Labor Code. • Successor Liability for Judgments – In addition to other means of establishing successor liability for wages, damages and penalties, a Successor to a judgment debtor shall be liable for final judgments in favor of the judgment debtor's former workforce. Successorship is established if any of the following criteria are met:

	• The Successor uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the judgment debtor. This factor does not apply to employers who maintain the same workforce pursuant the Displaced Janitor Opportunity Act (Labor Code §1060, et seq.) • The Successor has substantially the same owners or managers that control the labor relations as the judgment debtor. • The Successor employs as a managing agent any person who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor. • The Successor operates a business in the same industry and the business has an owner, partner, officer or director who is an immediate family member of any owner, partner, officer or director of the judgment debtor. • Local Jurisdiction Enforcement – Local jurisdictions are expressly authorized to enforce local standards relating to the payment of wages that are more stringent than State standards.
SB 973	**Pay Data Reporting Required** • Amends Government Code §12930 and adds Government Code §§12999, *et seq*. • DFEH Reporting – On or before 3/31/21, and every year thereafter by 3/31, private employers with 100+ employees who are required to file an annual Employer Information Report (EEO-1) with the EEOC under Federal law are now required to submit a Pay Data Report to the DFEH. The Report requires employers to identify the pay, hours-worked, sex, race and ethnicity data for employees in 10 job categories. All jobs are considered as belonging in 1 of the 10 categories • *Counting Employees* - An employer will be deemed to have 100+ employees if the employer either employed 100+ employees in the Snapshot Period chosen by the employer or regularly employed 100+ employees during the Reporting Year. • A person is an employee if the person is on an employer's payroll, the employer is required to include the person in an EEO-1 Report and the employer is required to withhold federal social security taxes from that person's wages. • Full time and part time employees are counted, as are employees located inside and outside of California and employees who are on paid or unpaid leave. • Consistent with federal EEO-1 filing requirements, an employer with fewer than 100 employees is required to file with DFEH "if the company is owned or affiliated with another company, or there is centralized ownership, control or management (such as central control of personnel policies and labor relations) so that the group legally constitutes a single enterprise, and the entire enterprise employs a total of 100 or more employees." • *Regularly Employed* – The number of employees is determined by the nature of the business that is recurring, rather than constant. For example, in an industry that typically has a 3 month season during a calendar year, an employer that employed 100+ employees during that season will be deemed to have regularly employed the requisite number of employees and would be required to file a Pay Data Report to DFEH, if the employer is also required to file an EEO-1 Report. • *Snapshot Period* – Employers are free to choose a single pay period between October 1 and December 31 of the Reporting Year. • *Reporting Year* – The previous calendar year. • *Establishment and Consolidated Reports* - There are 2 types of Pay Data Reports: establishment reports and consolidated reports. An employer that has a single establishment will submit to DFEH 1 Pay Data Report covering all employees. An employer that has multiple establishments will submit to DFEH 1 Pay Data Report for each establishment and 1 consolidated report. • Establishment is defined as "an economic unit producing goods or services." An employer's headquarters is an establishment for the purposes of Pay Data Reporting to DFEH. • Form - The DFEH has issued the forms and created a Pay Reporting Portal for employers to use to submit the data online. • Resources • *DFEH Information Page*: https://www.dfeh.ca.gov/paydatareporting/ • *Federal EEO-1 FAQs*: https://www.dol.gov/agencies/ofccp/faqs/eeo1-report • *Federal EEOC Data Collections Page*: https://eeocdata.org/

	• *Federal EEO-1 Instruction Booklet*: https://www.eeoc.gov/employers/eeo-1-survey/eeo-1-instruction-booklet

AB 2257
 	
Effective 9/4/20
 	
AB 323
 	
Prop 22
	Independent Contractor Test and Exceptions
	• Adds Labor Code §2775, *et seq*. and repeals §2750.3, Amends and adds various sections of the Revenue and Taxation Code
	• In General - The ABC test for independent contractors implemented 1/1/20 by AB 5 continues to apply, with 26 new exceptions.
	• ABC Test vs. *Borello* Test to Determine Independent Contractor Status - A person providing labor or services is considered an employee *unless* the employer establishes that *all* of the A, B and C conditions are satisfied or an exception applies. If the ABC conditions are satisfied, or an exception to the ABC Test applies, the *Borello* factors must be considered to ensure that the person will qualify as an Independent Contractor.
	  • The significant difference between the ABC test and *Borello* test is that the *Borello* test does not require a business to satisfy all factors. The *Borello* factors are weighed and considered in each case, making it more flexible and less rigid than the ABC test, which requires satisfaction of all factors to establish that a person is an independent contractor.
	• ABC Test - A person providing labor or services is considered an employee *unless* the employer establishes that *all* of the A, B and C conditions are satisfied
	  • A – The person is *free from the hiring entity's control* in connection with the performance of the work, both under the terms of the contract and in actually performing the work.
	  • This factor essentially examines whether the hiring entity has the right to, or does, *control the manner and means* by which the work is performed.
	  • This factor involves *both* the *right* to control and the actual *exercise* of control.
	  • If a worker is subject to the kind of control the hiring entity would normally exercise over its employees, the worker is not an independent contractor.
	  • B – The person performs *work that is outside of the usual course* of the hiring entity's business.
	  • This factor requires the hiring entity to look at the tasks being performed by the worker to determine whether those tasks are part of the businesses or services the hiring entity typically provides.
	  • C – The person is *engaged in an independently established trade, occupation or business* of the same nature as that involved in the work performed.
	  • The key question for this factor is whether the worker was *self-employed* before performing services for the hiring entity.
	  • Indicators that worker satisfies this factor include, but are not limited to: a business license, business cards, the person advertises his/her services, the person offers services to a number of customers or has clientele other than the hiring entity, the person provides his/her own tools, business cards, etc.
	  • If the hiring entity ends the worker's services and that termination causes the worker to "join the ranks of the unemployed," the worker will likely be deemed an employee.
	• Exceptions to the ABC Test – Every exception should be examined to determine applicability, as many contain specific criteria that must be satisfied and AB 2257 made many changes to the AB 5 standards.
	  • Business to Business Contractors (should not be an individual other than Sole Proprietorship)
	  • Construction Subcontractors
	  • Insurance Agents, Surplus Line Brokers and Analysts
	  • Licensed Real Estate Agents and Brokers
	  • Referral Agencies
	  • Direct Sales Salespersons
	  • Physicians, Attorneys, Dentists, Podiatrists, Psychologists, Veterinarians, Architects, Engineers, Private Investigators and Accountants
	  • Securities Broker-Dealers and Investment Advisors
	  • Commercial Fisherman
	  • Drivers for Motor Clubs
	  • Newspaper Distributors

- Marketing Professionals
- Administrators of Human Resources
- Travel Agents
- Graphic Designers
- Grant Writers
- Fine Artists
- Enrolled Treasury Agents
- Payment Processors
- Still Photographers, Photojournalists, Freelance Writers, Editors and Newspaper Cartoonists
- Estheticians, Electrologists, Manicurists, Barbers and Cosmetologists
- Recording Artists, Songwriters, Lyricists, Composers, Proofers, Managers of Recordings Artists, Record Producers and Directors, Musical Engineers, Musicians Engaged in Creating Sound Recordings, Vocalists, Photographers Working on Album Covers and Other Press and Publicity Photos Related to Recordings, and Independent Radio Promoters
- Musicians and Musical Groups for the Purpose of a Single-Engagement Live Performance Event
- Performance Artists
- Licensed Landscape Architects
- Freelance Translators
- Registered Professional Foresters
- Home Inspectors
- Persons who Provide Underwriting Inspections, Premium Audits, Risk Management or Loss-Control Work for the Insurance Industry
- Manufactured Housing Salespersons
- Persons Engaged in Conducting International and Cultural Exchange Visitor Programs
- Competition Judges with Specialized Skill Sets
- Digital Content Aggregators Who Serve as Licensed Intermediaries for Digital Content
- Specialized Performer Hired to Teach a Master Class for No More than 1 Week
- Feedback Aggregators

- <u>*Borello* Test</u> - Relationships that fall within an exception to the ABC Test or satisfy the ABC criteria must still satisfy the *Borello* test to ensure the person will not be deemed an employee of the hiring entity
  - Under the *Borello* test, the most important factor in determining proper worker classification is whether the business has the *right to direct and control the manner and means of performing the work ("right to control test").*
  - In addition to the right to control, several factors must be considered, including:
    - Ability to discharge at will or without cause.
    - Whether the one performing the services is engaged in a distinct occupation or business (e.g. does the person have a business license, maintain a business location that is separate from the hiring entity, perform services for other businesses, advertises, etc.).
    - The kind of work, and whether it is usually done under close direction or supervision or by a specialist without supervision.
    - Skill required in the particular occupation.
    - Whether the hiring entity or the worker supplies the instrumentalities, tools and the place of work for the person doing the work.
    - Length of time for which the services are to be performed.
    - Method of payment, whether by the hour or by the job.
    - Whether the work being performed is a part of the hiring entity's regular business.
    - Whether the parties believe they are creating the relationship of employer-employee.
- <u>App Based Drivers</u> - App-Based drivers of Transportation Network Companies ("TNCs") and Delivery network Companies ("DNCs") are independent contractors and not employees if the following criteria are met:
  - The TNC or DNC does not unilaterally prescribe the driver's schedule or minimum number of hours required;
  - Drivers are free to accept or reject any specific ride request;

	• Drivers are free to work for other network-based companies or hold other jobs; and
	• Drivers receive the following benefits:
	  • Pay of no less than 120% of minimum wage for the time engaged
	  • Reimbursement per mile driven
	  • Health care subsidies
	  • Insurance coverage
	  • Anti-harassment policies
	  • Mandatory safety training
	  • Criminal background checks conducted on all drivers

Frlekin v Apple, Inc. (2020) 8 Cal. 5th 1038	**Time Spent During Employer Search Process is Compensable as Time Worked** • The issue presented in this case was: Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags or personal technology devices brought to work purely for personal convenience by employees compensable as "hours worked" within the meaning of Wage Order 7? • Employee estimates of the time spent awaiting and undergoing an exit search to range from 5 – 20 minutes, and up to 45 minutes on busy days. • The court held the mandatory exit searches qualified as an employer-controlled activity and was therefore considered compensable time. • When deciding whether an activity constitutes time worked, the level of control, rather than the fact that the employer requires the activity is determinative. Factors to consider include, but are not limited to, whether the activity was conducted on the work premises, the degree of the employer's control, whether the activity primarily benefits the employer or employee and whether the activity is enforced through disciplinary measures.
Kim v Reins Int'l California, Inc. (2020) 9 Cal. 5th 243	**PAGA Case Continues After Settlement of Individual Claim** • California's Private Attorney General Act ("PAGA") allows an "aggrieved employee" to file a lawsuit to recover civil penalties on behalf of themselves and other aggrieved employees. • In this case, the court held that even after the employee had settled individual wage and hour claims against his employer and received compensation for his injury, the employee was still considered an aggrieved employee with standing to maintain a claim for penalties pursuant to PAGA. • The court reasoned that PAGA is defined in terms of violations, not the injury. Accordingly, if the employee experienced the Labor Code violation, he is an aggrieved employee, regardless of whether the violation has been remedied.

2. COVID-19

CDC & California	**COVID-19 Recommendations & Requirements**
	• <u>Testing</u> – The following people should get tested:
	  • People who have symptoms of COVID-19
	  • People who have had close contact with someone who is confirmed to have COVID-19
	  • People who have taken part in activities that put them at higher risk for COVID-19 because they cannot socially distance as needed (e.g., travel, attending large social or mass gatherings, being in crowded indoor settings)
	  • People who have been asked or referred to get testing by their health care provider, local or State health care provider
	• <u>Close Contact</u> – Defined to include any of the following:
	  • You were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more in a 24 hour period starting from 2 days before the person experienced symptoms, for asymptomatic individuals, 2 days before the person took the COVID-19 test
	  • You provided care at home to someone who is sick with COVID-19
	  • You had direct physical contact with a person who has COVID-19 (hugged or kissed them)
	  • You shared eating or drinking utensils with a person who has COVID-19

- A person who has COVID-19 sneezed, coughed, or somehow got respiratory droplets on you

- Quarantine Recommendations Following Close Contact – Although the CDC & State of CA have issued the following recommendations for how long a person should quarantine after having Close Contact with a person who has COVID-19, each person should follow the recommendations of their Local Public Health Department or health care provider, which may be more restrictive.
  - *14 Days* – The general recommendation is that a person should quarantine for 14 days after having Close Contact with a person who has COVID-19 because symptoms can appear 2 – 14 days after exposure. If a person ends quarantine early, s/he should still watch for symptoms, wear a mask, stay at least 6 feet away from others, wash hands, avoid crowds and take other steps to prevent the spread of COVID-19 until 14 days have passed since the Close Contact occurred.
  - *10 Days* – A person *without* symptoms may end quarantine on day 10 following Close Contact, regardless of whether the person gets tested for COVID-19.
  - *7 Days With a Negative PCR Test Result for Test Taken on or After Day 5* – During critical staffing shortages where there are not enough staff to provide safe patient care, essential critical infrastructure workers in the following categories are not prohibited from returning after Day 7 from the date of the last exposure if they have received a negative PCR test result from a specimen collected after Day 5:
    - Exposed asymptomatic health care workers; and
    - Exposed asymptomatic emergency response and social service workers who work face to face with clients in the child welfare systems or assisted living facilities.

    *CDC guidance does not limit the 7 day rule to specified categories of individuals.
  - *Exceptions* - Quarantine recommendations do not apply to:
    - People who have had COVID-19 in the past 3 months, have recovered and remain without COVID-19 symptoms *unless* they develop symptoms again.
    - People who have been in close contact with someone who has COVID-19 if they have been fully vaccinated within the last 3 months and show no symptoms.
- Quarantine Recommendations Following Positive Test or Experiencing Symptoms – Although the CDC & State of CA have issued the following recommendations for how long a person should quarantine following a positive test or experiencing symptoms, each person should follow the recommendations of their Local Public Health Department or health care provider, which may be more restrictive.
  - *Positive Test but No Symptoms*
    - 10 days after the positive viral test was taken, provided the person continues to not have any symptoms
  - *Positive Test with Symptoms*
    - 10 days since symptoms first appeared *and*
    - 24 hours with no fever without the use of fever reducing medications *and*
    - Other symptoms are improving (except loss of taste and smell, which may persist for months after recovery)
  - *Positive Test and Severely Ill with COVID-19 or Severely Weakened Immune System due to Health Condition or Medication*
    - May need to stay home longer than 10 days and up to 20 days
    - May need to have testing to determine when to be around others
- Re-Testing
  - Most people do not require testing to decide when they can be around others. However, if your health care provider recommends testing, they will let you know when you can resume being around others based on your test result.
  - People who have had COVID-19 in the past 3 months generally do not need to be retested after exposure through Close Contact *unless* they develop symptoms again.
- Travel
  - All air passengers coming to the U.S., including U.S. citizens, are required to be tested no more than 3 days before boarding a flight to the U.S. and have a negative COVID-19 test result or documentation of recovery from COVID-19.
  - After traveling, the CDC recommends (but does not require) a viral test be taken 3-5 days after travel and self-quarantining for 7 days after travel.
  - CA Department of Public Health Travel Advisory, as updated on 1/6/21:

	• Californians should avoid non-essential travel to any part of California more than 120 miles from one's place of residence, or to other states or countries. • All persons arriving in or returning to California from other states or countries, should self-quarantine for 10 days after arrival, except as necessary to meet urgent critical healthcare staffing needs or to otherwise engage in emergency response. • Essential travelers are not required to comply with the Travel Advisory, but are required to strictly adhere to the face covering and physical distancing guidelines. • "Essential travel" is travel associated with the operation, maintenance, or usage of critical infrastructure or otherwise required or expressly authorized by law (including other applicable state and local public health directives), including work and study, critical infrastructure support, economic services and supply chains, health, immediate medical care, and safety and security. • Resources • *General Information from California:* www.covid19.ca.gov • *General Information from CDC:* https://www.cdc.gov/coronavirus/2019-nCoV/index.html • *Employer Portal*: https://saferatwork.covid19.ca.gov/employers/ • *Self-Isolation / Quarantine Instructions*: • https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/CDPH-Home-Quarantine-Guidance_9-16-2020.pdf • https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/CDPH-Home-Isolation-Guidance_9-16-2020.pdf • *CA Executive Order N-84-20*: https://www.gov.ca.gov/wp-content/uploads/2020/12/12.14.20-EO-N-84-20-COVID-19-text.pdf • *CDC Travel Requirements*: https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html • *CA Travel Requirements*: https://covid19.ca.gov/travel/ • *CA Travel Advisory Updated 1/6/21*: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Travel-Advisory.aspx • *Masks:* https://covid19.ca.gov/masks-and-ppe/
Cal/OSHA **COVID-19 Emergency Temporary Standard** Effective 11/30/20	**COVID-19 Prevention Program, Training, Workplace Modifications, Responding to COVID-19 in the Workplace and Record Keeping Requirements** • Adds 8 Cal. Code Regs. §§3205, 3205.1, 3205.2, 3205.3 and 3205.4 • Website - https://www.dir.ca.gov/dosh/coronavirus/ETS.html • Application – The requirements apply to all employers, employees and places of employment, except: • Workplaces with 1 employee who does not have contact with any other person • Employees working from home • Employees covered by the Aerosol Transmissible Diseases Regulation (8 Cal. Code Regs. §5199) • Understand the definitions to determine if the Regulations apply and how to respond to COVID-19 in the workplace. • *COVID-19 Case* – A person who has a positive COVID-19 test, is subject to a COVID-19 related order to isolate issued by a local or state health official, or has died due to COVID-19. • *COVID-19 Exposure* – Being within 6 feet of a COVID-19 Case for a cumulative total of 15 minutes or greater in any 24-hour period within or overlapping with the High-Risk Exposure Period (regardless of the use of face coverings). • *High-Risk Exposure Period* • *For people who develop COVID-19 symptoms* – from 2 days before the person first developed symptoms until 10 days after symptoms first appeared, and 24 hours have passed with no fever (without the use of fever reducing medications) and symptoms have improved; or • *For people who test positive but do not develop COVID-19 symptoms* – from 2 days before until 10 days after the specimen for the person's first positive test for COVID-19 was collected. • Create and implement a written COVID-19 Prevention Program. Cal/OSHA has created a model Program, which is attached. If you elect to use the model Program as a starting point, you must be sure

to make all necessary modifications to address the specific operations and circumstances at your worksite. The COVID-19 Prevention Program must either be a stand-alone policy or incorporated into your IIPP (which should be updated to include an Infection Prevention section).

- Train your employees. The Regulation contains a list of specific topics employers must include in their employee training.
- Enforce face covering requirements. Employers must either provide face coverings for their employees or reimburse employees for the cost of face coverings and also ensure that they are worn by employees in compliance with the State's guidelines and Cal/OSHA's Regs.
- Identify, evaluate and correct COVID-19 hazards. Employers must have a process for screening and responding to employees with COVID-19 symptoms, implement State and local guidance regarding hazard prevention, conduct a site-specific evaluation of potential COVID-19 transmission, conduct periodic inspections, and correct COVID-19 hazards.
- Require physical distancing of employees. Teleworking arrangements should be considered and permitted when appropriate. For those employees who cannot telework, the employer must implement physical distancing requirements to the extent possible. In addition to making physical changes, employers should consider staggering schedules, modifying meal and rest period times and other methods for reducing the number of people who are working in close proximity.
- Implement engineering and administrative controls and provide PPE. The Regulations and FAQs specify the requirements employers must implement.
- Investigate / contract trace potential COVID-19 exposures in the workplace. Employers must follow the requirements set forth in the Regulation for investigating when the COVID-19 Case was last in the workplace, which employees may have been exposed, whether workplace conditions could have contributed to the risk of exposure and what corrections would reduce exposure.
- Notify potentially exposed employees within 1 day of a COVID-19 Exposure. Written notification must be provided to potentially exposed employees in a way that protects the identity of the person who is the COVID-19 Case.
- Determine if there is an "Outbreak" or "Major Outbreak" in the "Exposed Workplace" in the High-Risk Exposure Period.
  - *Outbreak* - 3 or more COVID-19 cases in an Exposed Workplace within a 14-day period.
  - *Major Outbreak* - 20 or more COVID-19 cases in an Exposed Workplace within a 30-day period.
  - *Exposed Workplace* - A work location, work area or common area used or accessed by a COVID-19 Case during the High-Risk Exposure Period, including bathrooms, walkways, hallways, aisles, break or eating areas and waiting areas.
- Offer free testing to potentially exposed employees. The testing requirements differ depending on whether the workplace experiences an Outbreak or a Major Outbreak. Employers must ensure the employees are paid as though they are working, and that the employees comply with all applicable meal and rest period requirements, while participating in the testing process.
- Report COVID-19 cases. Employers are required to follow the reporting requirements of the Local Public Health Department and to report when there are 3 or more COVID-19 cases in the workplace within a 14-day period. Employers must also comply with Cal-OSHA's existing regulations regarding reporting of serious occupational illnesses.
- Exclude COVID-19 Cases and employees with a COVID-19 Exposure from the workplace until the criteria for returning is satisfied. Employees must be informed of COVID-19-related benefits that may be available. The Regulations specify the timeframes for excluding COVID-19 Cases and employees with a COVID-19 Exposure from the workplace, as well as the requirements that the employer maintain the employee's earnings, seniority and all other rights while they are out of work. This requirement essentially creates a new paid leave right when the employee has exhausted other applicable leave rights, unless an exception applies.
  - *Executive Order N-84-20 Change to Return to Work Timeframes* – The Executive Order states that the timeframes set forth in the Regulation for excluding employees for the workplace are suspended to the extent they exceed:
    - Any applicable quarantine or isolation period recommended by the CDPH, including the 12/14/20 Updated COVID-19 Quarantine Guidelines; or

	• Any applicable quarantine or isolation period recommended or ordered by a local public health officer who has jurisdiction over the workplace. • *Exceptions to Payment Obligation* • Employee is unable to work for reasons other than protecting persons at the Workplace from possible COVID-19 transmission. • Employer demonstrates the COVID-19 exposure is not work related. • *Negative test cannot be required* - Employers cannot require employees to receive a negative COVID-19 test result in order to return to work. • Comply with Housing and Transportation prevention requirements. Employers who provide housing and/or transportation to employees must take additional steps to prevent the potential for spreading COVID-19 among the relevant employees. • Keep comprehensive and accurate records regarding your compliance with all requirements.
Cal/OSHA **IIPP Addendum**	**Injury and Illness Prevention Program ("IIPP")** • IIPP Requirements - California employers are required to establish and implement an IIPP pursuant to 9 Cal. Code Regs §3203 to protect employees from workplace hazards, including infectious diseases. • Infection Prevention Measures – For most employers implementing infection control measures in the IIPP is mandatory since COVID-19 is widespread in the community and therefore presents a hazard in the workplace. • Resources • *Cal/OSHA's Guide to Developing an IIPP*: https://www.dir.ca.gov/dosh/dosh_publications/iipp.pdf • *Cal/OSHA's Interim Guidelines*: https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html
Cal/OSHA Recording & Reporting of COVID-19 Cases	**Log of Work-Related Illnesses & Injuries** • Recording Requirements - California employers are required to record work-related fatalities, illnesses and injuries throughout the year on a Form 300, 300A and 301. • *COVID-19 Illness Recording* - To be recordable, the illness must be work-related and result in 1 of the following: • Death • Days away from work • Restricted work or transfer to another job • Medical treatment beyond first aid • Loss of consciousness • A significant injury or illness diagnosed by a physician or other licensed health care professional. • *Work-Related Exposure* - An injury or illness is considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition, or significantly aggravated a pre-existing injury or illness. For COVID-19 cases, a work-related exposure in the work environment would include: • Interaction with people known to be infected with COVID-19. • Working in the same area where people known to COVID-19 had been. • Sharing tools, materials or vehicles with persons known to have COVID-19. Employers must evaluate the employee's work duties and environment to determine the likelihood that the employee was exposed during the course of their employment. Employers should consider factors such as: • The type, extent and duration of contact the employee had at the work environment with other people, particularly the general public. • Physical distancing and other controls that impact the likelihood of work-related exposure. • Whether the employee had work-related contact with anyone who exhibited signs and symptoms of COVID-19. • *Quarantine* - Unless the employee also has a work-related illness that would otherwise require days away from work, time spent in quarantine is not "days away from work" for recording purposes.

	• Reporting Requirements - In addition to the recordkeeping requirements, employers must also report to Cal/OSHA any *serious illness, serious injury or death* of an employee that occurred at work or in connection with work within 8 hours of when they knew or should have known of the illness.
	  • *Serious Illness* - Includes, among other things, any illness occurring *in a place of employment or in connection with any employment* that requires *inpatient hospitalization for other than medical observation or diagnostic testing*. If a worker becomes ill while at work and is admitted as in-patient at a hospital — regardless of the duration of the hospitalization — the illness occurred in a place of employment, so the employer must report this illness to the nearest Cal/OSHA office.
	  • *Sick At Work But Possibly Not Work-Related* - For reporting purposes, if the employee became sick at work, it does not matter if the illness is work-related. Employers must report all serious injuries, illnesses or deaths occurring at work without making a determination about work-relatedness. For some diseases such as COVID-19, associated respiratory symptoms such as difficulty breathing can be caused by a variety of occupational exposures. It is important for employers to report these cases to Cal/OSHA so that the Division can make the preliminary determination of work-relatedness.
	  • *Symptoms Experienced Outside of Work* - Reportable illnesses are not limited to instances when the employee becomes ill at work. Serious illnesses include illnesses contracted "in connection with any employment," which can include those contracted in connection with work but with symptoms that begin to appear outside of work. An employer should report a serious illness if there is cause to believe the illness may be work-related, regardless of whether the onset of symptoms occurred at work. To determine whether there is evidence suggesting transmission of COVID-19 at or during work so as to make the serious illness reportable, employers should consider factors such as:
	  • Multiple cases in the workplace.
	  • The type, extent and duration of contact the employee had at the work environment with other people, particularly the general public.
	  • Physical distancing and other controls that impact the likelihood of work-related exposure.
	  • Whether the employee had work-related contact with anyone who exhibited signs and symptoms of COVID-19.
	  Even if an employer cannot confirm that the employee contracted COVID-19 at work, the employer should report the illness to Cal/OSHA if it results in in-patient hospitalization for treatment and *there is substantial reason to believe* that the employee was exposed in their work environment.
	• Resources
	  • *FAQs regarding Recording and Reporting Requirements for COVID-9 Cases*: https://www.dir.ca.gov/dosh/coronavirus/Reporting-Requirements-COVID-19.html
	  • *Electronic Submission of Workplace Injury and Illness Records*: https://www.dir.ca.gov/dosh/calosha-updates/log300-reporting.html
	  • *Cal/OSHA Recordkeeping Forms and Publications*: https://www.dir.ca.gov/dosh/puborder.asp#RK

AB 685	**Notice to Employees of COVID-19 Exposure**
	• Amends, Repeals and Adds Labor Code §§6325, 6409.6 and 6432
	• Notice to Employees - Employers must provide written notice of a Potential Exposure to COVID-19 within 1 business day to all employees, the exclusive representative of the employees (if any) and employers of subcontracted employees who were at the same Worksite with a Qualifying Individual within the Infectious Period.
	  • *Manner of Delivering Notice*- The notice must be sent in the manner used by the employer to normally communicate employment-related information and can include personal service, email or text, if it can be reasonably anticipated to be received by the employee within 1 business day.
	  • *Language* - The notice must be in English and the understood by a majority of the employees
	  • *Contents* – The notice shall contain information regarding:
	  • The potential exposure.
	  • COVID-19 benefits that the employee may be entitled to receive under applicable Federal, State or Local laws, including, but not limited to workers' compensation benefits.
	  • Options for the employee, including COVID-19-related leave, company paid sick leave, State-mandated leave, supplemental sick leave or negotiated leave provisions.

- The Company's disinfection protocols and safety plan to eliminate further exposure in accordance with the CDC guidelines.
- The Company's anti-discrimination, anti-harassment and anti-retaliation policies.

- *Multi-worksite Employer* – In a multi-worksite environment, the employer need only notify employees who were at the same Worksite as the Qualified Individual.

- Notice to Local Public Health Agency – Employers must notify the Local Public Health Agency of any Workplace Outbreak within 48 hours of becoming aware of the number of cases that meets the definition of Outbreak. Employers must provide the following information:
  - Names, phone numbers, occupations and worksites of employees who may have COVID-19 or who are under a COVID-19 isolation order from a Public Health Official.
  - Busines address and NAICS industry codes of the worksite where the infected or quarantined individuals work.
- Key Definitions
  - *Imminent Hazard* – Any condition or practice which poses a hazard to employees, which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such hazard can be eliminated through normal enforcement procedures.
  - *Infectious Period* – The time a COVID-19 positive individual is infectious as defined by the State Department of Public Health, which is defined as:
    - For an *individual who develops symptoms* - the infectious period begins 2 days before they first develop symptoms and ends when the following criteria are met: 10 days have passed since symptoms first appeared, *and* at least 24 hours have passed with no fever (without use of fever-reducing medications), *and* other symptoms have improved.
    - For an *individual who tests positive but never develops symptoms* - the infectious period begins 2 days before the specimen for their first positive COVID-19 test was collected and ends 10 days after the specimen for their first positive COVID-19 test was collected.
  - *Outbreak* – 3 or more laboratory confirmed cases of COVID-19 who live in different households within a 2 week period.
  - *Potential Exposure to COVID-19* – The Qualifying Individual was at the Worksite within the Infectious Period.
  - *Qualifying Individual* – Any person who has any of the following:
    - A laboratory confirmed COVID-19 case.
    - A positive COVID-19 diagnosis from a licensed health care provider.
    - A COVID-19-related order to isolate provided by a public health official.
    - Died due to COVID-19, as determined by the County Public Health Department or per inclusion in the COVID-19 statistics of the County.
  - *Worksite* – The building, store, facility, agricultural field or other location where the Qualified Individual worked during the Infectious Period. It does not apply to buildings, floors or other locations where the Qualified Individual did not enter.
- Record Keeping – Employers are required to maintain records of written notices for at least 3 years.
- Stop Work Orders – From 1/1/21 – 1/1/23, Cal/OSHA can issue an Order Prohibiting Use ("OPU") to shut down an entire worksite, shut down a specific worksite location, or prohibiting the use of something in the place of employment, that exposes employees to an imminent hazard related to COVID-19
- Serious Violation Citations – From 1/1/21 – 1/1/23, Cal/OSHA can issue citations for Serious violations related to COVID-19 without giving employers a notice 15 days before issuance of the citation.
- Resources
  - *Cal/OSHA AB 685 Information:* https://www.dir.ca.gov/dosh/coronavirus/AB6852020FAQs.html
  - *CA Department of Public Health Employer Guidance*: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Employer-Guidance-on-AB-685-Definitions.aspx
  - *CA Department of Public Health AB 685 COVID-19 Workplace Outbreak Reporting Requirements*: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/ab685.aspx
  - *CA Department of Public Health FAQs:* https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Employer-Questions-about-AB-685.aspx

SB 1159
 	
Effective 9/17/20 - 1/1/23
	Workers' Compensation for COVID-19 Related Illness
	• Expands and supersedes Executive Order N-62-20 by adding Labor Code §§77.8, 3212.86, 3212.87 and 3212.88
	• Definition of Injury - The definition of "injury" in the context of workers' compensation is expanded to include illness or death resulting from COVID-19 in certain circumstances.
	• Disputable Presumption - This law creates a "disputable presumption" that an employee's COVID-19 illness or death that occurs on or after 7/6/20 through 1/1/23, during an outbreak, is presumed to arise out of and in the course of employment.
	  • *Covered Employers and Employees* - The presumption applies to employers with *5 or more employees* and extends to *all employees who test positive during an outbreak* at the employee's specific place of employment.
	  • The employee must test positive for COVID-19 *within 14 days after* the employee performed labor or services at the employee's place of employment at the employer's direction and the positive test must occur during an outbreak for the presumption to apply.
	  • *Outbreak* - An outbreak exists if within 14 calendar days, 1 of the following occurs at a specific place of employment:
	  • Employers with *100 or fewer employees* at a specific place of employment – 4 employees test positive for COVID-19.
	  • Employers with *more than 100 employees* at a specific place of employment – 4% of the number of employees who reported to the specific place of employment test positive for COVID-19.
	  • A specific place of employment is ordered to close by a local health department, the State Department of Public Health, the division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.
	  • *Place of employment*
	  • *Includes*: building, store, facility or agricultural field where the employee performs work at the employer's direction.
	  • *Excludes*: an employee's home or residence unless the employee provides home health care services to another individual at the employee's home or residence.
	  • *Date of Injury* – The date of injury shall be the last day the employee performed labor or services at the employee's place of employment at the employer's direction prior to the positive test.
	• Disputing the Presumption
	  • *Employer's Evidence* - An employer may dispute the presumption with evidence showing, among others:
	  • Measures in place to reduce potential transmission of COVID-19 in the employee's place of employment.
	  • The employee's non-occupational risks of COVID-19 infection.
	  • Statements made by the employee.
	  • Any other evidence normally used to dispute a work-related injury.
	  • *Timeframe for Denying a Claim for Non-Essential Employees*
	  • If the date of the employee's injury is *before* 7/6/20, the claim administrator has 30 days to deny the claim.
	  • If the date of the employee's injury is on or *after* 7/6/20, the claim administrator has 45 days to deny the claim.
	  • *Timeframe for Denying a Claim for Essential Employees* - The claim administrator has 30 days to deny the claim.
	  • *Benefits* - Until the employer makes a determination, the employee is eligible for up to $10,000 in medical treatment for the COVID-19 related illness. If the claim is not denied in a timely manner, the injury is presumed to be compensable under the workers' compensation structure. The presumption of compensability is rebuttable, but only with evidence that is discovered subsequent to the applicable investigation period (e.g. after the 30 or 45 day timeframes).
	• Workers' Compensation Benefits *Without* the Presumption – Even if the disputable presumption does not apply, an employee who believes s/he contracted COVID-19 at work can still file a workers' compensation

claim and may be eligible to receive benefits if the employee can prove that the injury or illness arose out of the employee's employment.

- Diagnosis Confirmation Requirement
  - *Certification*
    - *For positive tests before 5/6/20* - The employee must be certified for temporary disability by a licensed physician no later than 5/21/20, documenting the period for which the employee was temporarily disabled and unable to work, and shall be recertified every 15 days thereafter for the first 45 days following diagnosis.
    - *For positive tests on or after 5/6/20* - The employee must be certified for temporary disability by a licensed physician within the first 15 days after the initial diagnosis and then recertified every 15 days thereafter for the first 45 days following diagnosis.
  - *Types of Tests*
    - *For injuries that occurred between 3/19/20 and 7/5/20* – The employee may utilize either a viral test or a serologic antibody test to confirm the diagnosis.
    - *For injuries that occurred on or after 7/6/20* – The employee must test positive using a PCR (Polymerase Chain Reaction) Test approved by the U.S. Food and Drug Administration (FDA) to detect the presence of viral RNA, or any other viral culture test approved for use by the U.S. FDA to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test. The employee cannot rely on a serologic antibody test to confirm the diagnosis.
- Reporting Requirement
  - *For positive tests on and after 9/17/20 - Within 3 business days* of when the employer knows or reasonably should know that an employee has tested positive for COVID-19, the employer must report the following to its claims administrator, *via fax or e-mail*:
    - The fact that an employee has tested positive for COVID-19. However, the employer shall not provide any personally identifiable information about the employee who tested positive unless the employee claims that the infection is work-related or has filed a workers' compensation claim pursuant to Labor Code §5401.
    - The date the employee tests positive, which is the date the specimen was collected for testing.
    - The address(es) of the employee's specific place(s) of employment during the 14-day period preceding the date of the employee's test.
    - The highest number of employees who reported to work at the employee's specific place(s) of employment in the 45 day period preceding the last day the employee worked at each specific place of employment.
  - *For positive tests between 7/6/20 and 9/17/20* – The employer has *30 business days* following 9/1720 to report the foregoing information to the claims administrator, with 1 exception. The last bullet point above is replaced with: the highest number of employees who reported to work at each of the employee's specific places of employment on any work date between 7/6/20 and 9/1720.
- Outbreak Determination - The claims administrator will use the information reported by the employer to determine whether an outbreak has occurred. If there has been an outbreak, the presumption of compensability under workers' compensation is applicable.
- Additional Benefits – Eligible employees may receive all of the following benefits*:* medical care, temporary disability benefits, permanent disability benefits, supplemental job displacement benefits and death benefits.
- Paid Leave and Temporary Disability Benefits - Employees are required to use any available paid sick leave under the FFCRA or California's Supplemental Paid Sick Leave requirements (Executive Order N-51-20) before collecting temporary disability benefits. If an employee does not have paid sick leave available under the FFCRA or California's Supplemental Paid Sick Leave, the employee is entitled to temporary disability benefits immediately upon becoming disabled as a result of a COVID-19 diagnosis (without the 3 day waiting period).
- Penalty for Violations – A penalty of $10,000 may be assessed by the Labor Commissioner if an employer intentionally submits false or misleading information, or fails to submit the required information.
- Denial of Workers' Compensation Claims before 9/17/20 – If an employee filed a workers' compensation claim for COVID-19 before 9/1720, which was denied by the employer, the employer may (but is not required to) reconsider and accept the claim. If the employer does not reverse its decision and the

	employee is not satisfied with the decision, the employee may file for a hearing at the local Division of Workers' Compensation District Office. • First Responders and Health Care Workers – Additional provisions apply. • Resources • *DLSE FAQs*: https://www.dir.ca.gov/dwc/COVID-19/FAQ-SB-1159.html
Additional Resources	• **Cal/OSHA Employer Portal** - https://saferatwork.covid19.ca.gov/employers/ • **Cal/OSHA -** https://www.dir.ca.gov/covid/ • **EEOC**- https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws • **California DLSE** - https://www.dir.ca.gov/dlse/COVID19resources/ • **California Department of Public Health** - https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx

3. LEAVES OF ABSENCE AND BENEFITS

SB 1383
 	
&
 	
AB 1867
	California Family Rights Act ("CFRA") Expanded to Employers with 5+ Employees with New Rules
	• Amends Government Code §§12945.2, 12945.6 and 12945.21
	• Leave Right – Employers with 5 or more employees are required to comply with CFRA, which provides that eligible employees are entitled to up to 12 workweeks of job protected leave in a 12 month period.
	  • *Length* – The number of CFRA leave days/hours an employee may take is based upon the employee's regular workweek.
	  • *To care for the employee or family member* - The amount of leave an eligible employee may take is determined by the employee's health care provider.
	  • *Baby bonding* – The employee may take up to 12 weeks of leave during the first year of the baby's life or placement with the employee.
	  • *12 Month Period* – Employers have the following options to determine the 12 month period:
	  • Calendar year
	  • Any fixed 12 month period
	  • Measured forward from the date the employee takes CFRA/FMLA leave
	  • Measured backward from the date on which the employee takes CFRA/FMLA leave on a "rolling basis"
	  • *In Addition to PDL* - CFRA is separate leave right from Pregnancy Disability Leave ("PDL") under Government Code §12945, which provides for up to 4 months (17 1/3 weeks) of protected (unpaid) leave for eligible female employees.
	  • *Sometimes Runs Concurrently with FMLA* – CFRA and FMLA shall run concurrently where FMLA applies (employer must have 50 or more employees within a 75 mile radius) except:
	  • Leave taken for a female employee's conditions covered by PDL.
	  • Leave taken for the serious health condition of a person who does not qualify as a covered family member under FMLA (e.g. grandparent, grandchild, sibling).
	• Eligible Employees
	  • *Employment Duration* – Employee qualifies for CFRA leave if s/he has worked at least 1,250 hours for the employer during the previous 12 month period.
	  • A different standard applies to air carrier employees who are flight deck or cabin crew members.
	  • *Qualifying Reasons for Leave*
	  • Bond with a new child (birth, adoption or foster care).
	  • Employee's own serious health condition that makes the employee unable to perform the functions of the employee's position (excluding conditions covered by PDL).
	  • *Serious Health Condition* – Illness, injury, impairment or physical or mental condition that involves either inpatient care in a hospital, hospice or residential health care facility or continuing treatment or supervision by a health care provider.

- Care for a family member who has a serious health condition.
- Leave because of a qualifying exigency related to the covered duty or call to covered active duty of the employee's spouse, domestic partner, child or parent in the Armed Forces of the United States.

- *Family Member* - Includes all of the following: a child, parent, spouse, domestic partner, child of a domestic partner, grandparent, grandchild or sibling.
  - *Child* – biological, adopted, foster, step, legal ward, child of domestic partner or person with whom employee stands in loco parentis.
  - *Parent* – biological, adoptive, foster, step, legal guardian, or person who stood in loco parentis to the employee when the employee was a child.
  - *Sibling* – person related to another person by blood, adoption or affinity through a common legal or biological parent.
- *Supporting Documentation* – The employer may require an employee's request for leave because of the employee's own serious health condition or to care for a family member to be supported by a certification issued by the relevant individual's health care provider. If leave is foreseeable, the supporting documentation must be provided prior to leave. If not foreseeable, the certification must be provided within 15 days of the employer's request. DFEH provides a standard medical certification form (which needs to be updated). The certification must state:
  - Date the serious health condition commenced
  - Probable duration of the condition
  - For Employees – statement that due to the serious health condition, the employee is unable to perform the functions of the employee's position
  - For Family Members – estimate of the amount of time that the health care provider believes the employee needs to care for the family member

  * Recertification may be required if additional leave is needed
- *Second Opinion* – When the employer has good faith and objective reason to doubt the validity of the certification provided to support leave for the employee's own serious health condition, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider who may be designated or approved by the employer, but who cannot be employed on a regular basis by the employer.
  - Second opinions are *not* permitted for serious health conditions of an employee's family member.
- *Third Opinion* – When the second opinion differs from the first, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider who must be designated or approved jointly by the employer and employee. The opinion of the third health care provider shall be binding on the employer and employee.
  - Third opinions are *not* permitted for serious health conditions of an employee's family member.

- <u>Employer Notice to Employees</u> – Within 5 business days of employee's request for leave, or employer learning of the need for leave, employer must provide:
  - *Notice of Eligibility, Rights & Responsibilities.*
  - *Denial due to employee not being eligible* - Don't forget other leave rights that may apply to the employee's need for time off of work.
  - *Certification form* – The employee must return the completed form within 15 days to support the need for leave.
- <u>Intermittent or Reduced Schedule Leave</u> - Leave may be taken on an intermittent or reduced schedule basis for a maximum of 12 workweeks in accordance with the following:
  - *Length of Time* – Smallest increment of leave is 1 hour.
  - *Serious Health Conditions* – The health care provider must determine that intermittent or reduced schedule leave is medically necessary.
  - *Baby Bonding* – Leave may be taken in 2 week blocks of time.
- <u>Payments</u> - CFRA is *unpaid* leave *except* to the extent that:
  - *Vacation / PTO* – Employee may elect and employer may require employee to use accrued vacation or PTO during CFRA.
  - *Paid Sick Leave* – Employee may elect and employer may require employee to use paid sick leave during CFRA for the employee's own serious health condition (excluding conditions covered by

PDL). For all other CFRA reasons, the employee and employer must mutually agree that the employee will use paid sick leave.
    - *State Paid Benefits* - Employee may apply for partial wage replacement through California's Disability and/or Paid Family Leave Programs. If an employee receives partial wage replacement, employer provided paid leave can be used to supplement the State payments to the employee up to 100% of his/her regular wages.
- Benefits
    - *Group Health Plan* - Employers must continue to provide group health plan benefits while the eligible employee is on leave under the same terms and conditions as if the employee was not on leave. An employer may recover premiums paid by the employer while the employee was on leave if the employee does not return from leave when the CFRA leave right has expired for any reason other than the continuation, recurrence or onset of a serious health condition that entitles the employee to leave or other circumstance beyond the employee's control.
    - *Other Benefit Plans* (retirement, life insurance, short or long-term disability, accident insurance, supplemental unemployment benefits) – Employee may continue to participate in these plans to the same extent and under the same conditions as apply to employees on unpaid leave for any other form of unpaid leave.
        - *Retirement Plans* – Employer is not required to make contributions while the employee is on leave.
- Reinstatement – CFRA is protected leave. The employer is required to provide the employee with a guarantee of employment in the same or a comparable position upon termination of leave. The employee shall retain employment status and shall return with no less seniority for purposes of layoff, recall, promotion, job assignment and seniority-related benefits (e.g. vacation).
    - *Same or Comparable Position* – Position that has the same or similar duties and pay and can be performed at the same or similar geographic location as the prior position held.
    - *Limitation on Reinstatement Rights* – Employees on CFRA leave have no greater right to reinstatement than if they had been continuously working.
- Employee Notice Requirements
    - *Foreseeable Leave* – When the need for leave is foreseeable, the employee shall provide the employer with reasonable advance notice.
    - *Planned Medical Treatment or Supervision of Family Member* – When foreseeable, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of the employer's operation, subject to approval of the health care provider of the person requiring the treatment or supervision.
- Employer Additional Notice Requirements – Employers must notify employees of CFRA rights by posting information about CFRA, providing the CFRA pamphlet at the time of hire and when the need for leave is requested, known or suspected, and in the Employee Handbook.
- Return to Work Certification – Employers may have a uniformly applied practice or policy that require, as a condition of an employee's return to leave, that the employee obtain a certification from his/her health care provider confirming the employee is able to return to work and indicating whether the employee is subject to any work restrictions.
- Mediation Pilot Program for Small Employers – Employers with 5 – 19 employees may request mediation to resolve an alleged CFRA violation within 30 days of receipt of a right-to-sue notice based upon the alleged violation. If the employee or employer requests mediation, the employee is prohibited from pursuing a civil action until mediation is complete and the statute of limitation for the employee's claims are tolled. The mediation will be conducted by the DLSE and will be deemed complete when, at any time after the employer or employee's request, the DLSE notifies the parties that it believes further mediation would be fruitless.
    - The Mediation Pilot Program ends 1/1/24.
- New Parent Leave Act – Leave right that previously applied to employers with 20+ employees is revoked.
- Reminders
    - Both parents can qualify for baby bonding.
    - If CFRA and FMLA do not overlap, an employee may qualify for 24 weeks of protected leave. PDL may add another 5 1/3 weeks for female employees.

	• The key employee exception no longer applies to CFRA. • After an employee's CFRA/FMLA leave rights have been exhausted, if the employee is in need of additional leave or accommodations, the employer must analyze whether the ADA/FEHA requires the employer and employee to engage in the interactive process to determine whether the employee can perform the essential functions of his/her position with or without a reasonable accommodation. • CFRA Regulations (2 Cal. Code Regs. §§11087-11098) need to be examined and likely amended. • Resources: • *DFEH Family, Medical and PDL Overview*: https://www.dfeh.ca.gov/family-medical-pregnancy-leave/
AB 2017	**Kin Care Leave** • Amends Labor Code §233 • Existing Law – Employers who provide sick leave for employees are required to permit an employee to use no less than ½ of the employee's accrued and available sick leave for the diagnosis, care or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Employers are prohibited from denying an employee the right to use sick leave and from discharging, threatening to discharge, demoting, suspending or in any manner discriminating against an employee for using, or attempting to exercise the right to use, sick leave for kin care. • Employee's Right to Designate – The designation of sick leave taken for kin care can only be made in the sole discretion of the employee.
AB 2992	**Expansion of Leave for Victims of Domestic Violence, Sexual Assault and Stalking to Include Crime Victims** • Amends Labor Code §§ 230 and 230.1 • Existing Law – All employers are currently prohibited from discharging, discriminating against or retaliating against an employee who is a victim of domestic violence, sexual assault or stalking, from taking time off to obtain or attempt to obtain relief to help ensure the health, safety or welfare of the victim or the victim's child. In addition, employers with 25+ employees must allow the employees to take time off of work for additional reasons, including to seek medical attention for injuries caused by domestic violence, sexual assault or stalking, and must provide employees with information about their rights in writing at the time of hire and upon request by the employee. Employees are currently required to give reasonable advance notice of the need for time off, unless infeasible. When an unscheduled absence occurs, employers are prohibited from taking action against the employee if s/he, within a reasonable time after the absence, provides a certification to the employer satisfying the required criteria. • Expansion of Protection • *Victims of Crime or Abuse* – The protection is expanded to include victims of crime or abuse and to identify additional categories of protected leave. • *Certification Documentation* – Victims of crime or abuse may provide certification that they were receiving services or undergoing treatment for physical or mental injuries or abuse, or provides any other form of documentation that reasonably verifies that the crime or abuse occurred.
SB 1123 **AB 2399**	**Paid Family Leave Program Expanded** • Amends and adds Unemployment Insurance Code §§3301, 3302, 3302.1, 3302.2, 3303, 3303.1 and 3307 • Existing Law – The Family Temporary Disability Insurance Program, which is commonly referred to as Paid Family Leave ("PFL"), provides partial wage replacement benefits to employees who take time off of work to care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling or domestic partner, or to bond with a minor child within 1 year of birth or placement in connection with foster care or adoption. • Military Service Expansion - Time off to participate in a qualifying exigency related to the covered active duty, or call to covered active duty, of the employee's spouse, domestic partner, child or parent in the U.S. Armed Forces. • Supporting Documentation – EDD may require the employee to provide a copy of the active duty orders or other documentation issued by the military indicating the covered family member is on covered active duty or call to covered active duty and the dates of the service.

AB 1731
 	
Effective 9/28/20
	Work Sharing Program Reform
	• Amend and adds Unemployment Insurance Code §§ 1279.5, 1279.6 and 1279.7
	• Existing Law – Employers can apply for California's Unemployment Insurance ("UI") Work Sharing Program as a temporary alternative to layoffs if the Company's production or services have been reduced. The Program allows employees whose hours and wages have been reduced to receive prorated UI benefits and keep their current job**.**
	• Program Changes
	  • *Online Applications* – Employers may submit applications to participate in or renew participation in the Program on-line.
	  • *1 Year Approval* - Applications submitted by eligible employers between 9/15/20 and 9/1/23 which are approved by the EDD shall be deemed approved for 1 year unless a shorter period is requested.
	  • *Claim Packets and Forms* – EDD is required to mail eligible employers a claim packet for each participating employee, and to make online claim forms available, within 5 days following approval of the application, if the employer submitted the application online.
	• Resources
	  • *EDD's Work Sharing Program:* https://www.edd.ca.gov/unemployment/Work_Sharing_Program.htm

McPherson v EF Intercultural Foundation, Inc. (2020) 47 Cal.App.5th 243	**Unlimited PTO / Vacation Plans**
	• An unlimited time off policy may not trigger a payout obligation at the end of employment if the Company does all of the following:
	  • Has a written policy that clearly provides that the employee's ability to take paid time off is part of the Company's flexible work schedule program and is not an additional wage for services performed.
	  • Clearly communicates the rights and obligations of the employer and employee and consequences of failing to schedule time off.
	  • Allows sufficient opportunity for employees to take time off or work fewer hours in lieu of taking time off.
	  • Administers the program fairly so it does not become a use it or lose it policy, or otherwise result in inequities among the employees.

4. WORKING TERMS AND CONDITIONS

SB 1234 (2016)	**Mandatory Retirement Plan Options for Employees**
	• Amends, repeals and adds 20 sections of the Government Code and Welfare and Institutions Code.
	• Access to CalSavers Retirement Savings Program - Private sector employers with 5+ employees who do not offer an employer-sponsored retirement plan are required to either offer an employer-sponsored retirement plan or provide employees with access to CalSavers Retirement Savings Program by the following deadlines:
	  | # of Employees | Deadline |
	  | 100+ | 9/30/2020 (extended from 6/30/20 due to COVID) |
	  | 50 – 99 | 6/30/2021 |
	  | 5 - 49 | 6/30/2022 |
	• Number of employees - Determined based on the average number of employees as reported to the EDD for the quarter ending on the most recent December 31 and the previous 3 quarters.
	• Employer Participation - Employers facilitate the program by submitting employee contributions via payroll deductions. There are no fees to employers and no fiduciary responsibility.
	• Employee Participation Optional - Employees decide whether to participate and can opt out at any time.
	• Resources
	  • *CalSavers*: https://www.calsavers.com/

SB 275	**PPE for Health Care Employees** • Adds Labor Code §6403.1 and Health & Safety Code §131021 • Requirement to Provide and Stockpile PPE – Starting 1/1/23, or 1 year after adoption of specified regulations, whichever is later, Health Care Employers to maintain an inventory of new, unexpired PPE for use in the event of a declared state of emergency, sufficient to last at least 45 days of surge consumption. Exemptions may apply as a result of supply chain limitations or other reasons beyond the employer's control. • *Health Care Employers* – Clinics, health facilities and home health agencies. • Regulations – The Department of Industrial Relations will adopt regulations in the future.
AB 2537	**PPE for Acute Care Hospital** • Adds Labor Code §6403.3 • Requirement to Provide and Monitor Use of PPE - Acute care hospitals must supply PPE to employees who provide direct patient care and ensure that the employees use PPE. • PPE Supply Mandate - Starting 4/1/21, acute care hospitals must maintain a 3 month supply of PPE, with limited exceptions, and provide OSHA with an inventory of the PPE upon request**.**

AB 1281
 	
Prop 24
Effective 1/1/23
	California Consumer Privacy Act of 2018 ("CCPA") 2 Year Extension for Human Resources Data Exemption and New Requirements Imposed by the California Privacy Rights Act of 2020 ("CPRA")
	• Amends Civil Code §1798.256
	• <u>CCPA</u> – The CCPA grants a consumer various rights with regard to personal information that is held by the business including the right to request a business to disclose specific pieces of personal information it has collected and to have information held by that business deleted. These rights could arguably allow employees and job applicants, upon request, to have information from their personnel files deleted.
	  • *Covered Businesses* – The CCPA applies to for-profit entities who do business in California and collect personal information from consumers, including employees, if they satisfy <u>*1* of the following 3 criteria</u>:
	  • Have annual gross revenues over $25 million; or
	  • Buy, receive for commercial purposes, sell or share for commercial purposes, the personal information of 50,000 or more consumers, households or devices; or
	  • Derive at least 50% of annual revenues from selling consumers' personal information.
	  • *Human Resource Data Exemption through 1/1/22* – The CCPA exempts HR Data from all but 2 provisions through 1/1/22:
	  • *Notice of Collection* – Covered businesses must provide job applicants and employees with written notice of the categories of information collected and the purposes for which the information is used. The required notice must be provided at or before the time that the personal information is collected.
	  • *Personal Information* – Broadly defined as "any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information." It does not include public information available from government records.
	  • *Security Measures* – Covered businesses must ensure that reasonable security measures are implemented to safeguard the information of job applicants and employees. In the event of a covered data breach, the aggrieved employee may recover statutory damages.
	• <u>CPRA</u> – The CPRA creates comprehensive data protection rules which become effective 1/1/23.
	  • *1 Year Look Back* – The CPRA has a 1 year look back period, which means it applies to information collected on and after 1/1/22.
	  • *Notice At Collection* – In addition to providing employees with the information required by the CCPA, the Notice at Collection will also require the disclosure of how the employer shares personal information, handles sensitive personal information and retains personal information, a retention period for each category of personal information and sensitive personal information or the criteria for determining the retention period if setting a specific period is not possible.
	  • *Sensitive Personal Information* – Includes all of the following:
	  • Personal information that reveals an employee's social security, driver's license, state identification card or passport number, account log-in, financial account, debit card, or credit card number in combination with any required security or access code, password, or credentials allowing access to an account, precise geolocation, racial or ethnic origin, religious or philosophical beliefs, union membership, contents of mail, email and text messages, unless the business is the intended recipient of the communication, and genetic data.
	  • The processing of biometric information for the purpose of uniquely identifying an employee.
	  • Personal information collected and analyzed concerning an employee's health.
	  • Personal information collected and analyzed concerning an employee's sex life or sexual orientation.
	  • *Privacy Policy* – The business must create a privacy policy describing how the busines handles personal information and the rights of California residents, which must be posted on its website.

	• *Data Rights* - Under the CCPA, employees have the right to know how a covered business handles their personal information, the right to request that the business delete their personal information and the right to opt out of sales of their personal information. The CPRA adds the rights to correct personal information, to limit the use and disclosure of sensitive personal information and to opt out of the sharing of personal information for certain types of behavioral advertising. • *Limit on Retention* – Businesses will be prohibited from retaining personal information or sensitive personal information for longer than reasonably necessary for the disclosed purpose for which the information was collected. • *Vendor Contracts* – If the business contracts with a vendor to handle the personal information of the business, the contract must contain various provisions required by the CPRA. • *Data Security* – The list of the types of data breaches for which an employee can recover statutory damages increased. • Resources • *California Attorney General FAQs*: https://oag.ca.gov/privacy/ccpa
AB 1963	**Mandated Child Abuse Reporting for Human Resource Professionals** • Amends Penal Code §11165.7 • Existing Law - The Child Abuse and Neglect Reporting Act, requires a mandated reporter to report whenever they, in their professional capacity or within the scope of their employment, have knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. • Additional Reporting and Training Requirements – Human resource employees who work for businesses with 5+ employees that employ minors are added to the list of mandated reporters and must be given mandatory reporting training. Supervisors are added to the list of mandated reporters of sexual abuse. • *HR Professional* – Employee designated by the employer to accept any complaints of discrimination, harassment, bulling, retaliation, etc. • *Supervisor* – An adult person whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace. • *Training* – Employers are required to provide their employees who are mandated reporters with training in child abuse and neglect identification and reporting. The training requirement may be met by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services. • Resources • *DSS Mandated Reporter Training Information*: https://www.cdss.ca.gov/inforesources/ocap/mrt • *Training Courses*: https://www.mandatedreporterca.com/
Technolite, Inc. v Emcod, Drucker, Nirenberg & Fronle (2020) 44 Cal.App.5th 462	**Non-Competition Clauses in Employment Agreements** • Business & Professions Code §16600 invalidates non-competition provisions to the extent they apply after the end of the employment relationship. • Non-compete provisions are enforceable during the employment relationship. • While employed, employees may seek other employment and even make some preparations to compete, so long as they do so on their own time, with their own resources, and do not use the employer's time, facility or proprietary secrets to build a competing business. • While employed, employees have a duty of loyalty to the employer and cannot disparage the employer or solicit customers away from the employer.

5. HARASSMENT, DISCRIMINATION, BULLYING AND RETALIATION

AB 1947	**Statute of Limitations Extended for Filing Claims of Discrimination or Retaliation with DLSE/Labor Commissioner and Authorizes Award of Attorneys' Fees to Prevailing Plaintiff** • Amends Labor Code §§98.7 and 1102.5 • Extended SOL - Employees who believe they have been discharged or otherwise discriminated against in violation of any law enforced by the DLSE may file a claim for discrimination or retaliation with the DLSE/Labor Commissioner within 1 year (previously 6 months) of occurrence of the alleged violation. • Plaintiff's Attorneys' Fees in Whistleblower Cases – The court is now authorized to award reasonable attorneys' fees to a plaintiff (employee) who brings a successful whistle blower action.

AB 979	**Corporate Board Diversity Required**
	• Amends Corporations Code §301.3 and adds §§301.4 and 2115.6
	• Existing Law – Publicly held domestic or foreign corporations whose principal executive office is located in California are required to have to have a minimum number of females as Directors on their Boards as follows:
	  • *All Corporations* - 1 by the close of the 2019 calendar year.
	  • *Corporations with 5 Directors* - 2 by the close of the 2021 calendar year.
	  • *Corporation with 6+ Directors* - 3 by the close of the 2021 calendar year.
	• Underrepresented Community Addition – Those same corporations are required to appoint a minimum number of members of underrepresented communities to their Board of Directors as follows:
	  • *All Corporations* - 1 by the close of the 2021 calendar year.
	  • *Corporations with 4-8 Directors* - 2 by the close of the 2022 calendar year.
	  • *Corporation with 9+ Directors* - 3 by the close of the 2022 calendar year.
	• Definitions
	  • *Female* – An individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.
	  • *Director from an underrepresented community* – An individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender.

DFEH Discrim. Regulations	**Age, Disability and Religious Discrimination Protection Expanded**
	• Pre-Employment Inquiries - 2 Cal. Code Regs. §11016 was amended to limit pre-employment inquiries regarding availability for work as follows:
	  • *Availability for Work* - Pre-employment inquiries and requests for information regarding an applicant's availability for work on certain days and times shall not be used to ascertain the applicant's religious creed, disability or medical condition. Such inquiries and requests must clearly communicate that an employee need not disclose any scheduling restrictions based on legally protected grounds, in language such as: "Other than time off for reasons related to your religion, a disability, or a medical condition, are there any days or times when you are unavailable to work?" or "Other than time off for reasons related to your religion, a disability, or a medical condition, are you available to work the proposed schedule?"
	  • *Online Applications* - The use of online application technology that limits or screens out applicants based on their schedule may have a disparate impact on applicants based on their religious creed, disability, or medical condition. Such a practice is unlawful unless job-related and consistent with business necessity and the online application technology includes a mechanism for the applicant to request an accommodation.
	• Age Discrimination - 2 Cal. Code Regs. §11076, 11078 and 11079 were amended to protect employees age 40 and over from discrimination as follows:
	  • *Age Discrimination* - Discrimination on the basis of age may be established by showing that a job applicant's or employee's age of 40 or older was considered in the denial of employment or an employment benefit.

	• *Presumption of Discrimination* - There is a presumption of discrimination whenever a facially neutral practice has an adverse impact on an applicant(s) or employee(s) age 40 or older, unless the practice is job-related and consistent with business necessity as defined in section 11010(b). • *Layoffs and Salary Reductions* - In the context of layoffs or salary reduction efforts that have an adverse impact on an employee(s) age 40 or older, an employer's preference to retain a lower paid worker(s), alone, is insufficient to negate the presumption. The practice may still be impermissible, even where it is job-related and consistent with business necessity, where it is shown that an alternative practice could accomplish the business purpose equally well with a lesser discriminatory impact. • *Recruitment* - Generally, during recruitment it is unlawful for employers to refuse to consider applicants because they are age 40 and older. Examples of unlawful requirements include: a maximum experience limitation; a requirement that candidates be "digital natives" (individuals who grew up using technology from an early age); or a requirement that candidates maintain a college-affiliated email address. • *Advertisements* - Unless age is a bona fide occupational qualification for the position at issue, advertisements for employment that a reasonable person would interpret as deterring or limiting employment of people age 40 and older are unlawful. (See section 11010(a) for the definition of bona fide occupational qualification.) Where there is no bona fide occupational qualification, examples of prohibited advertisements include those that designate a preferred applicant age range or that include terms such as young, college student, recent college graduate, boy, girl, or other terms that imply a preference for employees under the age of 40. • *Online Applications* - The use of online job applications are prohibited to the extent that they require entry of age in order to access or complete an application, or the use of drop-down menus that contain age-based cut-off dates or utilize automated selection criteria or algorithms that have the effect of screening out applicants age 40 and older. Use of online application technology that limits or screens out older applicants is discriminatory unless age is a bona fide occupational qualification.

Rizo v Jim Yovino, Fresno County Super-intendent of Schools (2020) 950 F.3d 1217	**Equal Pay Act**
	• Federal Equal Pay Act (29 U.S.C. §206(d)) prohibits employers from paying employees of the opposite sex less for equal work which require equal skill, effort and responsibility, and which are performed under similar working conditions. 4 exceptions which allow unequal pay include:
	  • *Seniority System*
	  • *Merit System*
	  • *System Which Measures Earnings by Quality or Quantity of Production*
	  • *A Differential Based on Any Other Factor Other than Sex* – This case confirmed that the "other factor" must be job-related and cannot be limited to the employee's prior rate of pay.
	• Reminder - California's Equal Pay Act (Labor Code § 432.3 and 1197.5) prohibits employers from paying its employees less than employees of the opposite sex or of a different race or ethnicity for substantially similar work when viewed as a composite of skill, effort and responsibility, and performed under similar working conditions.
	  • *Substantially Similar Work* - Work that is mostly similar in skill, effort, responsibility and performed under similar working conditions.
	  • *Skill* - The experience, ability, education and training required to perform the job.
	  • *Effort* - The amount of physical or mental exertion needed to perform the job.
	  • *Responsibility* - The degree of accountability or duties required in performing the job.
	  • *Working Conditions* - The physical surroundings (temperature, fumes, ventilation) and hazards.
	• Resources
	  • *DLSE FAQs*: https://www.dir.ca.gov/dlse/california_equal_pay_act.htm

6. RESOLVING DISPUTES

SB 1384	**Labor Commissioner Representation of Claimants Who Cannot Afford Counsel in Arbitration Matters**
	• Amends Labor Code §98.4
	• Representation Right – The Labor Commissioner is already authorized to represent claimants who cannot afford counsel in hearings when an employer is appealing an award of the Labor Commissioner and when the claimant is attempting to uphold the award and not objecting to any part of the award. The Labor Commissioner is now authorized to represent claimants as follows:
	  • *Arbitration Hearings* – In court ordered arbitration hearings if the Commissioner has determined that the claim has merits after conducting an informal investigation.
	  • *Arbitration Enforcement* – In proceedings to determine whether arbitration agreements are enforceable.
	• Petition to Compel Arbitration Service Requirement – When a claim is pending before the Labor Commissioner and a Petition to Compel Arbitration is filed, the Petition must be served on the labor Commissioner.

AB 2143	**"No Rehire" Provision in Settlement Agreements**
	• Amends Code of Civil Procedure §1002.5
	• Existing Law – Employers are prohibited from including a "no rehire" provision in an agreement settling an employment dispute if the employee has filed a claim, with limited exceptions.
	• New Requirements
	  • *Filing "a claim*" - Includes a claim filed with the DFEH or another administrative agency, an alternative dispute resolution form, civil lawsuit, demand for arbitration and a claim filed through the employer's internal complaint process.
	  • *Scope of Prohibition* – The no rehire prohibition applies to the employer and any parent company, subsidiary, division, affiliate or contractor of the employer.
	  • *Good Faith Standard* - For the prohibition to apply, the employee must have filed the claim in good faith.
	  • *Date of Agreements* – The prohibition applies to agreements entered into on or after 1/1/20, which are declared void as a matter of law if they violate the prohibition.
	• Exceptions & Reminder
	  • *Employers may include no rehire provisions under the following circumstances*:
	  • Pre-claim settlement or severance agreements
	  • The employer has *made and documented* a good *faith determination*, before the aggrieved employee filed a claim, that the aggrieved employee engaged in sexual harassment, sexual assault or any criminal conduct.
	  • *Employers may refuse to rehire a person if there is a legitimate, non-discriminatory reason for not rehiring the person*.

7. REMINDERS AND TIPS FOR AUDITING AND/OR MODIFYING POLICIES, PROCEDURES AND OPERATIONS

Policy Review	• Review all written and unwritten policies and documents, including, but not limited to, employment applications, job descriptions, on-boarding procedures and packets, employee handbooks, salary/pay scales, template for conditional offer of employment letters, and background investigation procedures to ensure they are compliant.
	  • Define your workweek and workday.
	  • Ensure your meal and rest period policy requires employees to take timely and duty-free meal and rest periods for the required time frames.
	  • Remove inquiries regarding, or references to: criminal history, salary history, gender and age.
	  • Ensure your salary / pay scales are non-discriminatory.
	  • Make all policies gender neutral.
	  • Define who is responsible for conducting workplace investigations.

Provide Training and Discipline for Policy Violations	• Provide training regarding the prevention of harassment, discrimination, bullying/abusive conduct and retaliation for all employees within the required timeframes.
	• Train supervisors, managers and HR employees on all new legal requirements.
	  • Rules regarding pre-employment activities, such as interviews, background checks, etc.
	  • Being proactive, actively monitoring employee conduct, and properly responding to complaints.
	  • Always remember that the company is deemed to know what the managers/supervisors know.
	• Train all employees on all of your policies.
	  • Do not assume they will read and remember every word of your employee handbook.
	  • Reinforce the requirements of your policies throughout the year verbally and in writing.
	• Discipline employees and supervisors who violate your policies.

Postings, Wage Orders and Wage Statements	• Review all posters to ensure you have the most current information.
	  • California: http://www.dir.ca.gov/wpnodb.html
	  • Federal: https://webapps.dol.gov/elaws/posters.htm
	• Ensure you have posted the correct California Industrial Welfare Commission Wage Order. The Wage Orders can be found at: https://www.dir.ca.gov/iwc/wageorderindustries.htm
	• Review wage statements to ensure they include all required information set forth in Labor Code §226 as well as: payments for meal and rest premiums, on-call pay, split shift premiums, reporting time pay, commission. Wage statements for piece rate employees must also separately identify payments for rest and recovery periods and other non-productive time.

Employee Handbook	• Employee handbooks should be reviewed annually to ensure that they accurately reflect the current state of the law and your operations. • In addition, information about various laws must be included in employee handbooks, including, but not limited to, information about Pregnancy Disability Leave and FMLA/CFRA leave rights.
Job Descrip'ns	• Job descriptions are essential for many aspects of the employment relationship, including, but not limited to, recruiting, conducting effective performance evaluations and evaluating company options when an employee is injured. • Employers are well advised to review and make all appropriate changes to the job descriptions for each position on an annual (or more frequent) basis to ensure that the descriptions are thorough and accurate based upon the current needs of the operation and revisions to the law.
Translate Docs and Training	• If your employees speak any language other than English, you should (and may be required in some circumstances) to provide forms, notices and training to your employees in the language(s) spoken by your employees.

Cal/OSHA Log of Work-Related Illnesses & Injuries	• Cal/OSHA requires employers to complete, post and retain a log and summary of work-related injuries and illnesses.
	  • The Form 300A Summary must be posted from February 1 – April 30 each year.
	• The forms and instructions provided by Cal/OSHA can be found at:
	  https://www.dir.ca.gov/dosh/calosha-updates/log300-reporting.html
	  https://www.dir.ca.gov/dosh/dosh_publications/RecKeepOverview.pdf
	  https://www.dir.ca.gov/dosh/etools/recordkeeping/CAStandard/CalStandard.html

Form W-2 and Earned Income Tax Credit Notices	• Employers must provide employees with a Form W-2 by January 31. • Employers who are subject to and are required to provide unemployment insurance to their employees must notify their employees that they may be eligible for the Federal Earned Income Tax Credit, as well as the California Earned Income Tax Credit. • Notice must be given within *1 week before or after or at the same time* that the employer provides an annual wage summary (i.e. W-2) to the employee. • Additional information and the forms of the required notices can be viewed at:

	https://www.edd.ca.gov/Payroll_Taxes/Year-End_Notification_Requirements.htm