HENDERSON HATFIELD
A PROFESSIONAL CORPORATION

2022 NEW EMPLOYMENT LAWS *and* ANNUAL REMINDERS

The following is a brief summary of some of the noteworthy new California laws enacted in 2021 which impact the day-to-day operations and policies of California employers. Unless otherwise indicated, all new legislation is effective *January 1, 2022*. There were also a number of cases decided in 2021 which provide guidance and set new standards governing the employment relationship. The information contained in this document is current through *December 15, 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

Annual Adjustments

Minimum Wage

- Employers with 26+ employees – $15 per hour.
- Employers with 25 or fewer employees – $14 per hour.
- Local Rules – 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 – Exempt employees must be paid a minimum annual salary of $62,400.
- Employers with 25 or fewer employees – Exempt employees must be paid a minimum annual salary of $58,240.
- Reminder – Employees must satisfy both the minimum salary requirements and the duties test.

Ag Overtime – Moving Toward the 8 Hour Standard

# of EEs	Date	*Daily* OT at 1.5x RRP	*Daily* OT at 2x RRP	*Weekly* OT at 1.5x RRP	7th Day OT
>25	1/1/19	All time worked over 9.5 hours in a workday		All time worked over 55 in a workweek	1.5 x RRP for *first* 8 hours worked 2x RRP for all hours worked *over* 8
25 or -	1/1/22				
>25	1/1/20	All time worked over 9 hours in a workday		All time worked over 50 in a workweek	
25 or -	1/1/23				
>25	1/1/21	All time worked over 8.5 hours in a workday		All time worked over 45 in a workweek	
25 or -	1/1/24				
>25	1/1/22	All time worked over 8 hours in a workday	All time worked over 12 hours in a workday	All time worked over 40 in a workweek	
25 or -	1/1/25				

	Computer Software Employee Salary Requirement (CA) • Minimum Hourly Rate – $50 per hour • Minimum Salary – $8,679.16 per month / $104,149.81 per year **Licensed Physician and Surgeon Salary Requirement (CA)** • Minimum Hourly Rate – $90.07 per hour **401K, 403(b) and 457 Plan Contributions** • Maximum Salary Deferral – $20,500 per year • Maximum "Catch Up" Contributions – $6,500 per year for employees over the age of 50
Ferra v. Loews Hollywood Hotel, LLC	**Regular Rate of Pay Required for Meal and Rest Period Premiums** • Existing Law – When an employer fails to provide employees with legally compliant (timely and complete) meal and rest periods, the employee is entitled to a meal or rest period premium for each day that the non-compliant meal and/or rest period occurred. • New Rate – When an employer fails to provide an employee with legally compliant (timely and complete) meal and rest periods, the employee is entitled to meal and/or rest period premiums in the amount of 1 hour of pay at the employee's Regular Rate of Pay (not base hourly rate). • Retroactive – The California Supreme Court's decision is retroactive, which means employees can seek to recover the difference in the rate paid for meal and rest period premiums going back 4 years. • Option – Employers who pay employees any compensation other than a base hourly rate that must be included in the Regular Rate of Pay calculation must determine whether they want to audit the meal and rest period premiums paid over the last 4 years and whether they want to compensate employees for any underpayment.
Donohue v AMN Services, LLC	**Rounding of Meal Periods Prohibited** • California Supreme Court held that employers are not permitted to round the amount of time an employee spends on meal periods.
Trescott v. Federal Motor Carrier Safety Admin.	**California's Meal and Rest Period Rules Do Not Apply to Truck Drivers Covered by FMCSA's Hours of Service Regulations** • 12/21/18 – Federal Motor Carrier Safety Administration ("FMCSA") issued a Determination of Preemption finding California's meal and rest period rules are preempted under Federal law (49 U.S.C. §31141) as applied to property-carrying commercial motor vehicle drivers covered by the FMCSA's Hours of Service Regulations. • International Brotherhood of Teamsters, et.al. filed a petition for review of the FMCSA's determination with the Ninth Circuit Court of Appeals in *International Brotherhood of Teamsters, et.al. v. Federal Motor Carrier Safety Administration,* Case Nos. 18-73488, 19-70323, 19-70329, 19-70413. • 1/15/21 – The Ninth Circuit Court of Appeals denied the petition, siding with the FMCSA's preemption determination. • 10/4/21 – United States Supreme Court denied certiorari in *Trescott v. Federal Motor Carrier Safety Administration,* 2021 WL 4507755.
General Atomics v. Green	**Wage Statements Can Show Overtime Premium at 0.5x the Regular Rate of Pay for Employees Earning Multiple Rates of Pay** • Employee who was paid multiple hourly rates during a single pay period, which triggered the blended rate calculation for the employee's overtime hours, alleged the wage statements violated Labor Code §226. California's Fourth District Court of Appeal found in favor of the employer. • Wage statements for employees who are paid multiple hourly rates during a single pay period must clearly identify each base hourly rate and the number of hours worked by the employee at each base hourly rate, as well as the overtime premium (0.5x the Regular Rate of Pay or 1x the Regular Rate of Pay for the double time premium) and number of overtime hours worked.

Santos v. United Parcel Service, Inc.	**Wage Statement Showing Meal Period Premiums** • Class action alleged UPS' wage statements were unlawfully ambiguous because the meal period premiums were shown in a lump dollar sum and did not show the hours or number of premiums that were paid, nor the rate paid for each premium. • California's District Court for the Northern District found in favor of UPS reiterating the common-sense "simple math" standard used for evaluating whether wage statements comply with Labor Code §226, finding that it was sufficient for UPS' wage statements to include the employee's hourly rate of pay and gross lump sum figure for the meal period premiums because the employees could simply divide the lump sum with their hourly rate of pay to arrive at the number of meal period premiums they were receiving. • Although this is an employer-friendly holding, we recommend wage statements clearly display all required information and not rely on employees performing on simple math, especially when the employee's Regular Rate of Pay is not the same as the employee's base hourly rate.
Magadia v. Wal-Mart Associates, Inc.	**Employee Lacks Standing to Pursue PAGA Claim When He Suffered No Violation and 9th Circuit Confirms Wage Statement Requirements for Overtime Adjustments for Bonuses** • *9th Circuit* (not California) held that the Plaintiff lacked standing to maintain a meal period premium PAGA Claim because he did not suffer a violation. This holding conflicts with California state court cases finding a PAGA plaintiff can pursue PAGA claims not only for Labor Code violations suffered by the plaintiff, but also for other violations suffered by other aggrieved employees. • The Court also held that an employer who issues an overtime adjustment payment for a bonus earned over multiple pay periods (e.g., at the end of a season, quarterly, annually, etc.) need not display the hourly rate of pay or the number of overtime hours.
Wesson v. Staples the Office Superstore, LLC	**Unmanageable PAGA Claims Can Be Limited or Stricken** • California Second District Court of Appeals held judges have inherent authority to limit and even strike unmanageable PAGA claims because courts have authority to ensure PAGA claims can be fairly and efficiently tried. Manageability decisions will be made based on each cases unique circumstances. • This case involved a claim that certain employees were not properly classified as exempt from overtime requirements. Staples argued that its affirmative defense that the employees were appropriately classified would require individualized proof such that the claim could not be fairly and efficiently litigated as a representative action.
SB 639	**Elimination of Subminimum Wage Certificate Program for Individuals with Disabilities** • Amends Labor Code §1191 and 1191.5 • Existing Law – California employers are permitted to obtain a special license authorizing the payment of less than minimum wage to an employee who is mentally or physically disabled, or both, for up to 1 year, subject to renewal. • Phase Out of Subminimum Wage – No new special licenses will be issued after 1/1/22 and the entire program will be phased out by 1/1/25. Existing license holders may only renew their licenses if they meet requisite benchmarks.
AB 1003	**Wage Theft Constitutes "Grand Theft"** • Adds Penal Code §487m • Wage Theft = Grand Theft – The intentional theft of wages, including gratuities, benefits and other compensation, by an employer in an amount greater than $950 from any 1 employee, or $2,350 in the aggregate from 2 or more employees, in any consecutive 12 month period is punishable as grand theft. • Theft of Wages – Defined as the intentional deprivation of wages, gratuities, benefits or other compensation, by unlawful means, with the knowledge that the wages, etc. is due to the employee under the law. • Employee – Defined to include not only employees, but also independent contractors. • Employer – Defined to include not only employers, but also the hiring entity of an independent contractor. • Punishment – Grand theft is punishable either as a misdemeanor by imprisonment in County jail for up to 1 year, or as a felony by imprisonment in County jail for 16 months up to 3 years. • Reminder – Generally, a party cannot condition settlement of a civil matter on an agreement to drop criminal charges.

2. WORKING TERMS AND CONDITIONS

SB 657

Electronic Distribution of Required Notices

- Adds Labor Code §1207
- Existing Law – Employers are required to post a number of notices in the workplace to inform employees of their rights under various Federal and State laws.
- Electronic Distribution *Also* Permitted – In any instance where an employer is required to physically post information, the employer may *also* distribute that information to employees via email *in addition to physically displaying* the required posting.

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 (2020)

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 are 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 1506

AB 1561

Independent Contractors – Exemption from ABC Test

- Amends Labor Code §§2777, 2781, 2782 and 2783
- Existing Law – The test for determining whether an individual providing services for a business qualifies as an Independent Contractor has been evolving since the California Supreme Court's 2018 *Dynamex* decision mandated use of the ABC Test instead of the *Borello* Factors.
  - 2020 – AB 5 added the ABC Test to the Labor Code, but created many exceptions.
  - 2021 – AB 2257 created additional exceptions and modifications to the ABC Test.
  - 2022 – AB 1506 and 1561 make additional changes to the exemptions for newspaper distributors and carriers, licensed manicurists, data aggregators, construction industry subcontractors, construction trucking services, insurance claims adjustors and insurance third-party administrators.
- 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, 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.
	• *Borello* Test – 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.

Vazquez v. Jan-Pro Franchising Int'l, Inc.	**ABC Test for Independent Contractors is Retroactive** • The ABC Test was created by the California Supreme Court in its 2018 decision in *Dynamex Ops. W. Inc. v Superior Court*. In *Vasquez*, the Court held that *Dynamex* is retroactive because it did not change settled law.

Medina v. Equilon Enterprises, LLC	**Joint Employer Liability** • Medina sued its employer Equilon Enterprises, LLC and Shell Oil Company alleging violations of the Labor Code and asserting that Shell is a joint employer based on the level of control Shell exercised over the operations of its gas stations. • California Fourth District Court of Appeal found that Shell was a joint employer with its subsidiary Equilon because Shell exercised near-complete control over Equilon's finances, day-to-day operations, facilities and practices such that it could have stopped employees from working in their stations through a variety of means. The Court also found that if the putative joint employer exercises enough control over the other entity to indirectly dictate the wages, hours or working conditions of the employee, that is a sufficient showing of joint employment. • Shell entered into non-negotiable form agreements with its multi-site operators, including Equilon, which require each station to pay monthly rent and have its employees perform all work at the station, gave Shell the right to terminate the contract with notice, to add or withdraw stations from an operator's cluster at any time, for any reason, to access the operator's bank accounts to withdraw fuel revenue from the account and to deposit revenue from convenience store sales and car washes. Additionally, Shell's employees told Medina that they had the power to fire him or to have him fired.

AB 1281 (2018)
 	
Prop 24 Effective 1/1/23
	California Consumer Privacy Act of 2018 ("CCPA") and California Privacy Rights Act of 2020 ("CPRA")
	• CCPA – 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 *1 of the following 3 criteria*:
	  • 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.
	• CPRA – 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 business 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

3. SAFETY

SB 606	**Cal/OSHA's Citation Authority For 2 New Categories of Violations**
	• Amends Labor Code §§6713,6323, 6324, 6429 and 6602 and adds Labor Code § 6317.8 and 6317.9
	• Existing Law – Cal/OSHA has the authority to, among others, issue citations for violations of safety standards, rules, orders and regulations and to require abatement of the violation within a reasonable period of time.
	• Enterprise-Wide Violations – There is a rebuttable presumption that a violation is enterprise-wide for an employer with multiple worksites if: (1) the employer has a written policy or procedure that violates OSHA rules or the law; *or* (2) OSHA has evidence of a pattern or practice of the same violation or violations committed by that employer involving more than 1 of the employer's worksites.
	  • An offending policy or procedure shall not form the basis of an enterprise-wide citation if it violates an emergency regulation adopted or amended within the last 30 days.
	  • To overcome the rebuttable presumption, the employer will need to show that its other worksites, facilities, etc. have different, compliant written policies and procedures.
	  • If an enterprise-wide violation is found, Cal/OSHA may issue citations and remedial orders on an enterprise-wide basis for all worksites, facilities, etc.
	• Egregious Violations – If Cal/OSHA believes an employer has *willfully and egregiously* violated a safety standard, rule, order or regulation, a *citation shall be issued* for *each violation and each instance of an employee exposed to that violation will result in a separate violation* for purposes of issuing fines and penalties. A violation will be deemed egregious if *any* of the following 7 conditions are found to have occurred *within the 5 years preceding a citation* for an egregious violation:
	  • 1 – Employer intentionally, through conscious voluntary action or inaction, made no reasonable effort to eliminate the known violation.

	• 2 – The violations resulted in worker fatalities, a worksite catastrophe, or a large number of injuries or illnesses. • Catastrophe = inpatient hospitalization, regardless of duration, of 3 or more employees resulting from an injury, illness, or exposure caused by a workplace hazard or condition. • 3 – The violations resulted in persistently high rates of worker injuries or illnesses. • 4 – Employer has an extensive history of prior violations of the law. • 5 – Employer has intentionally disregarded their health and safety responsibilities. • 6 – Employer's conduct, taken as a whole, amounts to clear bad faith in the performance of their duties under the law. • 7 – Employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that may be in place. • Subpoenas for Investigations – In the investigation of an employer's policies and practices, or those of a related employer entity, Cal/OSHA has the authority to issue a subpoena if the employer or related employer entity fails to provide the requested information and to enforce the subpoena if the requested information is not provided within a reasonable period of time. • Injunction Authority – Cal/OSHA is authorized to seek a temporary restraining order and an injunction restraining certain uses or operations.

4. COVID-19

Definitions	• Close Contact – 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.
	• COVID-19 Case – A person who has a positive COVID-19 Test, has a positive COVID-19 diagnosis from a licensed health care provider, 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 in the determination of a Local health department or per inclusion in the COVID-19 statistics of a County.
	• Exposed Group – All employees at a work location, working area, or a common area at work, where an employee COVID-19 Case was present at any time during the High-Risk Exposure Period, including, but not limited to: bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas.
	  • If the COVID-19 Case was part of a distinct group of employees who are not present at the Workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the Exposed Group.
	  • If the COVID-19 Case visited a work location, working area, or a common area at work for less than 15 minutes during the High-Risk Exposure Period, and all persons were wearing Face Coverings at the time the COVID-19 Case was present, and other people at the work location, working area, or common area are not part of the Exposed Group.
	  • A place where persons momentarily pass through while everyone is wearing face coverings, without congregating, is not a work location, working area, or a common area at work.
	• Face Covering – A surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least 2 layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.
	• Fully Vaccinated – The *employer has documented* that the person received, at least 14 days prior, either the second dose in a 2-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine.
	  • Vaccines must be FDA approved, have an emergency use authorization from the FDA, or, for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization ("WHO").
	• 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.

	• Infectious Period – The time a Qualifying Individual is infectious, as defined by the State Department of Public Health (currently defined the same as the High-Risk Exposure Period).
	• Qualifying Individual – Any person who has any of the following:
	  • A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.
	  • 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, in the determination of a County public health department or per inclusion in the COVID-19 statistics of a County.
	• Respirator – A respiratory protection device approved by the National Institute for Occupational Safety and Health ("NIOSH") to protect the wearer from particulate matter, such as an N95 filtering facepiece respirator.
	• Worksite – The building, store, facility, agricultural field or other location where a worker worked during the Infectious Period.
	  • Worksite does not include buildings, floors or other locations of the employer that a Qualified Individual did not enter, locations where the worker worked by themselves without exposure to other employees, or to a worker's personal residence or alternative work location chosen by the worker when working remotely.
	  • In a multi-worksite environment, the employer need only notify employees who were at the same Worksite as the Qualified Individual.

Vaccination and Face Covering Issues	• Mandatory Vaccination Policies – This is the most complicated subject we have come across in dealing with COVID-19. There are far too many considerations to summarize here. We highly recommend you speak with your employment law counsel before implementing a mandatory vaccination policy.
	• Documenting Employee Vaccination Status – Is permitted and encouraged so employers know how to apply the requirements of the Cal/OSHA COVID-19 Prevention Emergency Temporary Standard (discussed below), which has different standards for fully vaccinated employees. Keep in mind that employees have the right to decline to state whether they are vaccinated or not. Options for documenting vaccination status include:
	  • Vaccination *Self-Attestation* by the employee
	  • Vaccination *Verification* by the employer examining the employee's proof of vaccination or by making a copy of the proof of vaccination.
	• Making Accommodations for Medical Conditions and Religious Beliefs, Observances and Practices – Employers need to understand their options and obligations for responding to employees who claim they cannot wear face coverings or cannot be vaccinated (if applicable) as a result of a medical condition or sincerely held religious belief, observance or practice. These are complicated issues and require careful consideration for each individual circumstances. The following is a general summary of some key issues employers need to understand:
	  • *For the alleged medical condition* – Employers need to request that the employee provide documentation from his/her health care provider confirming the need for an accommodation. While employers cannot ask "what" the medical condition is, employers need documentation confirming that the employee does in fact have a medical condition and the type of accommodation that is needed (e.g. no face covering at all or the employee can only wear the face covering for a specified period of time and then needs a break, the employee cannot be vaccinated for a specified period of time, or indefinitely, etc.).
	  • *For the alleged religious exemption* – The employee must provide the employer with information establishing that his/her sincerely held religious belief, observance or practice prohibits him/her from wearing a face covering or being vaccinated. You should ask for proof that the sincerely held religious belief, observance or practice prohibits face coverings or vaccination. What makes religious accommodations tricky for employers is the fact that the law indicates an employee's belief or practice can be "religious" even if it is not followed by others in the same religious sect, denomination, or congregation, or even if the employee is unaffiliated with a formal religious organization. Again, there is a lot to understand when it comes to making religious accommodations, which should be discussed with employment law counsel.
	  • *Interactive Process and Reasonable Accommodation Considerations* – The law requires employers to engage in the interactive process with employees to determine whether the employer can provide reasonable accommodations necessitated by an employee's medical condition or sincerely held

	religious belief, observance or practice, without creating an undue hardship on the company's operation or risk of injury to the employee or other employees. • A reasonable accommodation is one that will still allow the employee to continue to perform the essential functions of his/her position. Examples include, but are not limited to: job restructuring, job reassignment, changing the location of where the employee works so s/he is not within 6 feet of other employees, having the employee wear a face shield instead of a face mask, other modification of work practices or procedures, or allowing an employee to take unpaid leave for the duration of time in which the employee cannot remain at the workplace. • Remember that following safety standards imposed by the State can be an essential function of an employee's position. • Each interactive process must be carefully conducted to ensure the employer complies with all aspects of the various laws that may apply. • Resources • *EEOC's Guidance re COVID-19, the ADA, the Rehabilitation Act and other EEO Laws* - https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws • *EEOC's Compliance Manual on Religious Discrimination* - https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination • *EEOC's Guidance for Small Employers and the Reasonable Accommodation Process* - https://www.eeoc.gov/laws/guidance/small-employers-and-reasonable-accommodation • *DFEH Reasonable Accommodation Resources* - https://www.dfeh.ca.gov/accommodation/
Cal/OSHA COVID-19 Prevention Emergency Temporary Standard ETS Updated 7/17/21 FAQs updated 10/27/21	**COVID-19 Prevention Program, Training, Workplace Modifications, Responding to COVID-19 in the Workplace and Record Keeping Requirements -** *Reminders* • 8 Cal. Code Regs. §§3205, 3205.1, 3205.2, 3205.3 and 3205.4 • Current Expiration – 1/14/22 • Standards Board Meeting To Consider Readoption – 12/16/21 • 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) • COVID-19 Prevention Program ("CPP") – Cal/OSHA has created a model Program, which is available on the website, but should be used as a starting point and you must make all necessary modifications to address your operations and the specific circumstances at your worksite(s). The CPP must either be a stand-alone policy or incorporated into your IIPP (which should be updated to include an Infection Prevention section). • Train Employees – The ETS contains a list of specific topics employers must include in their employee training. • Enforce face covering requirements – Employers must provide face coverings or respirators for their unvaccinated employees and ensure that they are worn by employees in compliance with the State's guidelines and Cal/OSHA's Regs. Employers must also provide face coverings to employees upon request, regardless of their vaccination status. • Exceptions – When an employee is alone in a room or vehicle, while eating or drinking provided employees are 6 feet apart or outside, employees wearing respirators, employees who cannot wear face coverings due to a medical or mental health condition or disability or who are hearing-impaired or communicating with a hearing-impaired person, or when an employee performs specific tasks which cannot be performed with a face covering. • 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. • Consider implementing physical distancing of employees – Although physical distancing is no longer required under the ETS, it is highly recommended to avoid employees being Exposed to COVID-19 through Close Contact. Options for physical distancing include, but are not limited to: permitting teleworking, making physical changes to the configuration of workspaces, staggering schedules, modifying meal and rest period times, etc.

- Implement engineering and administrative controls and provide PPE – The ETS and FAQs specify the requirements employers must implement.
- Investigate and respond to a COVID-19 Case in the Workplace – Employers must follow the requirements set forth in the ETS for investigating and responding to a COVID-19 Case in the Workplace, including:
  - Determining when the COVID-19 Case was last in the Workplace, and, if possible the date of testing and onset of symptoms (if any).
  - Determining which employees may have been exposed to COVID-19 through a Close Contact.
  - Notifying employees, in writing, of potential exposures within 1 business day (and notifying any other employer who has potentially exposed employees in the Workplace). *See AB 654 below for details regarding the notification obligation.*
  - Make COVID-19 testing available to potentially exposed employees with a Close Contact at no cost and during working hours, with the exception of asymptomatic employees who were fully vaccinated before the Close Contact and—for a limited period—employees who recently recovered from COVID-19 and have not developed COVID-19 Symptoms since returning to work.
  - Exclude COVID-19 Cases and exposed employees from the Workplace until they are no longer an infection risk. Exposed employees who are fully vaccinated or who recently recovered from COVID-19 and have no symptoms do not need to be excluded.
  - Investigate the exposure, whether workplace conditions could have contributed to the risk of exposure, and what corrections would reduce exposure.
- Determine if there is an "Outbreak" or "Major Outbreak" and respond accordingly, as described in the ETS
  - *Outbreak* – 3 or more COVID-19 cases in an Exposed Group within a 14-day period.
  - *Major Outbreak* - 20 or more COVID-19 Cases in an Exposed Group within a 30-day period.
- 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.
- Exclude COVID-19 Cases and employees with a COVID-19 Exposure from the Workplace and provide exclusion pay and benefits until the criteria for returning is satisfied – The ETS 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.
  - *Exclusion Pay* – An employee who was excluded from work because of a Workplace COVID-19 Exposure should receive exclusion pay for the duration of time in which the employee is excluded if: (1) the employee was not assigned to telework during that time; and (2) the employee did not receive Disability Payments or Workers' Compensation Temporary Disability Payments during the exclusion period.
    - *Exception to Payment Obligation* – Employers need not maintain the exposed employee's earnings and benefits if the excluded employee is unable to work because of reasons other than Exposure to COVID-19 at work (e.g., a non-work exposure, business closure, caring for a family member, disability, vacation, etc.). Such employees may be eligible for other leave, including sick leave, or other benefits such as Disability Insurance, Paid Family Leave, or Unemployment Insurance Benefits.
    - *California Paid Sick Leave Reminder* – Employees *cannot* be required to use the paid sick leave employers are required to provide pursuant to Labor Code §246.
  - *Exclusion Timeframe* – The timeframe that an employee needs to be excluded depends on a variety of factors, including whether they test positive, develop symptoms, are Fully Vaccinated and/or have recently been infected with COVID-19, and/or work in health care settings. Currently, the California Department of Public Health is aligned with the CDC's guidance regarding how long employees need to be excluded from the workplace, which provide that employees can return to work as follows:
    - *Close Contact Exposure to a COVID-19 Case*
      - *Unvaccinated Employees* – Provided the unvaccinated employee does not develop Symptoms, the employee may return: (1) after 7 days from the date of the last COVID-19 Exposure if a diagnostic specimen for a COVID-19 Test is collected on or after day 5 and the employee tests negative, or (2) 10 days from the date of last exposure without testing.
      - *Fully Vaccinated employees and employees who tested positive for COVID-19 within the last 3 months* – Fully vaccinated employees and those who tested positive for COVID-19 within

	the last 3 months do not have to be excluded from the workplace, unless they develop Symptoms. • *COVID-19 Cases* • *For employees who develop COVID-19 symptoms* – 10 days after Symptoms first appeared provided that 24 hours have passed with no fever (without the use of fever reducing medications) and Symptoms have improved. • *For employees who test positive but do not develop COVID-19 Symptoms* – 10 days after the specimen for the employee's first positive test for COVID-19 was collected. • *Negative test cannot be required to end the exclusion requirement* – 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. • Recordkeeping and Recording – The ETS requires employees to satisfy the following reporting and recordkeeping requirements: • Following State and Local health department reporting requirements. • Reporting serious occupational illnesses to Cal/OSHA, consistent with existing regulations. • Maintaining records required by 8 Cal. Code Regs §3203(b), which include inspection records, documentation of hazard corrections and training records (requirements vary by employer size). • Making the CPP available upon request to Cal/OSHA, employees and employees' authorized representatives. • Recording and tracking all COVID-19 Cases with the employee's name, contact information, occupation, location where the employee worked, the date of the last day at the Workplace, and the date of a positive COVID-19 test. The information must be provided to the Local health department, Cal/OSHA, the Department of Public Health and the National Institute for Occupational Safety and Health immediately upon request. Otherwise, medical information must be kept confidential unless disclosure is required or permitted by law. • Documenting that employees who do not wear face coverings indoors or in vehicles with others are fully vaccinated. • Resources • *Cal/OSHA ETS Website* - https://www.dir.ca.gov/dosh/coronavirus/ETS.html • *CDPH Isolation and Quarantine Requirements* - https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-on-Isolation-and-Quarantine-for-COVID-19-Contact-Tracing.aspx
AB 654 Effective 10/5/21	**Notice to Employees of COVID-19 Exposure** • Amends Labor Code §§6325 and 6409.6 • Existing Law – Requires employers, within 1 business day of learning of a potential exposure to COVID-19, to, among others, provide written notice to all employees on the Premises at the same Worksite that they may have been exposed to COVID-19. • Revised Notice Obligations • *Notice to Employees and Representatives* – When an employer or representative of the employer receives notice of potential exposure to COVID-19 in the workplace, the employer is required to provide the following notices *within 1 business day*: • *Recipients* – All employees and their exclusive representative, as well as the employers of subcontracted employees, who were on the Premises at the same Worksite as the Qualifying Individual within the Infectious Period that they have been exposed to COVID-19. • *Delivery Method* – Notice must be given in the manner the employer normally uses to communicate employment-related information (e.g., personal service, email or text message) • *Language* – Notice must be given in both English and the language understood by the majority of employees. • *Notice Contents* – Notice must explain: • COVID-19-related benefits to which the employee may be entitled under applicable Federal, State and/or Local laws, including, but not limited to, workers' compensation. • Options for exposed employees, including, COVID-19-related leave, company sick leave, state mandated leave, supplemental sick leave, or negotiated leave provisions.

	• Anti-retaliation and anti-discrimination protections of the employee. • Cleaning and disinfection plan that the employer is implementing per the guidelines of the Federal Centers for Disease Control and Prevention and the COVID-19 Prevention Program. • The same information as would be required in an incident report in a Cal/OSHA Form 300 Injury and Illness Log. • *Notice of Outbreak to Local Public Health Agency* • When an employer or representative of the employer receives notice that the number of COVID-19 cases that meet the definition of an Outbreak, the employer is required to provide notice, within *48 hours or 1 business day, whichever is later,* to the local public health agency with jurisdiction over the Worksite of the following information: • Names, number, occupation and Worksite of employee COVID-19 cases that meet the definition of an Outbreak. • Business address and NAICS code of the Worksite where the Qualifying Individuals work. • Any subsequent laboratory-confirmed COVID-19 cases at the Worksite. • *Exemption* – Among others, the following employers are exempt from COVID-19 outbreak reporting requirements: health facilities, various community clinics, adult day health centers, home health agencies, pediatric day health and respite care facilities, community care facilities, child day care facilities, and hospice. • Expiration – Notice provisions are scheduled to sunset on 1/1/23.
COVID-19 Supp'l Paid Sick Leave	• California's COVID-19 Supplemental Paid Sick Leave – The CSPSL mandated by Labor Code §248.2 *expired* 9/30/21. If any employee took leave for a qualifying reason between 1/1/21 – 9/30/21 and was not paid, or was required to use California Paid Sick Leave (Labor Code §246) or paid vacation time, employers should pay the employee for the unpaid time or restore the employee's accruals, as applicable, and document the correction. • Local Supplemental Paid Sick Leave / Vaccination Leave – A number of local jurisdictions imposed their own leave mandates. Employers whose employees work outside of San Joaquin or Stanislaus Counties, should confirm whether they have any additional payment obligations.

5. HARASSMENT, DISCRIMINATION, BULLYING AND RETALIATION

SB 807	**DFEH Proceedings and Record Retention Requirements** • Amends Government Code §§12930, 12946, 12960, 12961, 12962, 12963.5, 12965, 12981 and 12989.1 • Existing Law – California's Department of Fair Employment and Housing ("DFEH") enforces California's civil rights laws, including the Fair Employment and Housing Act ("FEHA"). • Employees who believe they have been subjected to unlawful practices (e.g., discrimination, harassment, retaliation, etc.) may file a complaint with the DFEH. • The DFEH is required to investigate complaints and to try to eliminate the unlawful practice through the use of conferences, conciliation, mediation and/or persuasion. • If the DFEH's efforts fail and the DFEH has required the parties to participate in a mandatory dispute resolution proceeding, FEHA authorizes a civil action to be brought in the name of the DFEH on behalf of the person claiming to be aggrieved within a specified amount of time. • New Standards – The following is a list of the new standards that apply to most employers. • *Time to File Complaint with DFEH for Equal Pay Violations* – The time for an individual to file a complaint with the DFEH alleging the employer paid employees less than the rate paid to employees of the opposite sex or of another race or ethnicity for substantially similar work is 2 years after the cause of action occurs (or 3 years if the violation is willful). • *Extended Time for DFEH to Investigate Class and Group Claims* – If a complaint is filed with the DFEH alleging class or group allegations, the DFEH now has *up to 2 years* after the complaint was filed to complete its investigation and issue a right-to-sue letter to the complainant. • *Tolling of Deadline for DFEH to File Civil Action* – The deadline for the DFEH to file a civil action of the person claiming to be aggrieved is tolled while mandatory or voluntary dispute resolution is pending.

	• *Retroactive Tolling of Deadline for Complainant to File Civil Action* – When an individual files a complaint with the DFEH for an alleged unlawful practice, the deadline for the individual to file his/her own civil action is tolled until either the DFEH files a civil action or 1 year after the DFEH issues written notice to the complainant that the DFEH has closed its investigation and elected not to file a civil action. • This tolling is applied retroactively, except to the extent a claim has already lapsed. • *Venue Selection Expanded* – Civil actions may now be filed in any of the following Counties: • Where the unlawful practices are alleged to have been committed. • Where records relevant to the alleged unlawful practices are maintained and administered. • Where the person claiming to be aggrieved would have worked or would have had access to public accommodation but for the alleged unlawful practices. • Where the defendant's residence or principal office is located. • If the civil action includes class or group allegations on behalf of the DFEH, in any County in the State. • *Record Retention Obligation Extended* – The timeframe required by FEHA for employers to retain personnel records is extended from 2 years to 4 years. Additionally, upon receiving notice that a complaint has been filed, the records must be maintained until the applicable statute of limitations has run, or until conclusion of the litigation (including appeals and related proceedings), whichever occurs later. • *Service Options* – Complaints required to be served by the DFEH or private counsel for the complainant may now serve the complaint that has been filed on the person, employer, labor organization or employment agency alleged to have committed the unlawful practice via: • Personal service • Certified mail with return receipt requested • E-mail • Leaving a copy of the complaint at the office or usual mailing address of the person being served, followed by mailing a copy to that place via first class mail • First class mail or airmail with 2 copies of a notice of acknowledgement of receipt, along with a prepaid postage envelope addressed to the sender, followed by execution and return of a written acknowledgement of receipt to the sender • Any means specified by the Code of Civil Procedure • Resources • *California Equal Pay Act and Fair Pay Act FAQs* - https://www.dir.ca.gov/dlse/california_equal_pay_act.htm
SB 826 (2018) **AB 979** (2020)	**Corporate Board Diversity Required -** *Reminder* • Publicly held domestic or foreign corporations whose principal executive office is located in California are required to have the following: • Females – Covered corporations are required 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 Communities – Covered 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.

	• Resources • *CA Secretary of State* - https://www.sos.ca.gov/business-programs/diversity-boards

6. LEAVES OF ABSENCE AND BENEFITS

AB 1033
 	
SB 1383
AB 1867
(2020)
	California Family Rights Act ("CFRA") Expanded to Employers with 5+ Employees – *Reminders and New Rules*
	• Amends Government Code §§12945.2 and 12945.21
	• New Rule – The 2021 change *adds "in-laws"* to the definition of "parent." All other information below went into effect in 2020 and is included here because many employers are still not complying with CFRA.
	• 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 a 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. The 2021 change *adds in-laws* to the definition of "parent"

- *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.
- <u>Benefits</u>
  - *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 from 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 – 2021 changes improve the program.
    - 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.
    - If an employee requests an immediate right to sue alleging a violation of CFRA by the employer, the DFEH is required to notify the employee in writing of the requirement to mediate prior to filing a civil action if mediation is requested by the employer or employee.
    - Employees must contact the DFEH's dispute resolution division prior to filing an action to indicate whether they are requesting mediation.
    - DFEH must initiate mediation within 60 days of receipt of a request to mediation by the employer or employee and must notify the employee of the right to request labor-related information and to help facilitate other reasonable requests for information.
    - The Mediation Pilot Program ends 1/1/24.
- A few more details
    - 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.

	• Resources: • *DFEH Family, Medical and PDL for Employees in California*: https://www.dfeh.ca.gov/family-medical-pregnancy-leave/

7. RESOLVING DISPUTES

SB 762	**Arbitration Fee Payment Obligations** • Adds Civil Code §1657.1 and Amends Code of Civil Procedure §§1281.97 and 1281.98 • Existing Law – Employers who have arbitration agreements with employees and do not pay the fees within 30 days of when they are due are deemed to be in breach of the agreement, in default of arbitration and waive the right to compel arbitration, in which case, the employee can compel the case to be removed from arbitration and decided in court. • New Invoice Requirement – Arbitration providers in employment arbitrations must provide an invoice to all parties to the arbitration for any fees and costs required before the arbitration can proceed, which makes it easier for the plaintiff's attorney to monitor whether the employer has timely paid the fees. Invoices issued to the parties must state the full amount owed and make payment due upon receipt, unless the arbitration agreement expressly provides for a different number of days within which the payment must be made. • Agreement Required for Extension – Any extension of time for the payment of fees and costs due during the pendency of the arbitration must be agreed upon by all parties to the arbitration.

SB 331	**Settlement, Separation/Severance and Nondisparagement Agreement Terms**
	• Amends Code of Civil Procedure §1001 and Government Code §12964.5
	• Existing Law
	  • With limited exceptions, employers are generally prohibited from including the following in settlement agreements: (1) provisions preventing the disclosure of factual information related to a lawsuit or administrative charge regarding, among others, acts of sexual assault, sexual harassment and discrimination based on sex (Code of Civil Procedure §1001); (2) "no rehire" provisions (Code of Civil Procedure §1002.5); and (3) provisions prohibiting the disclosure of information about unlawful acts in the workplace in exchange for a raise or bonus, or as a condition of employment or continued employment (Government Code §12964.5).
	  • Settlement and Separation/Severance Agreements with employees who are 40+ years old that contain a waiver of age discrimination claims must inform the employee of the right to consult with an attorney regarding the agreement and provide 21 days in which to consult with an attorney, if the employee chooses to do so.
	• Expansion of Restrictions
	  • *Settlement and Separation/Severance Agreements* may not prevent the disclosure of factual information related to a lawsuit or administrative charge regarding *discrimination, harassment or retaliation based on any category protected by FEHA*.
	  • *Separation/Severance Agreements* may not prevent the disclosure of information about *unlawful acts in the workplace*.
	  • *Separation/Severance Agreements* must *inform the employee of the right to consult with an attorney* regarding the agreement and *provide a reasonable period of time* (not less than 5 *business* days) in which to consult with an attorney, if the employee chooses to do so, regardless of the age of the employee. The employee may sign the Agreement prior to the end of the reasonable period of time as long as the employee's waiver is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, or threat to withdraw or alter the offer, or by providing different terms to employees who sign such an agreement prior to expiration of the reasonable period of time.
	  • An employer may not require, in exchange for a raise or bonus, or as a condition of employment or continued employment, that an employee be denied the right to disclose information about *unlawful acts in the workplace if the employee has reasonable cause to believe the acts are unlawful*.
	  • An employer may not require an employee to sign a *nondisparagement agreement* or other document that has the purpose or effect *denying the employee the right to disclose factual information about unlawful acts in the workplace*.

	• Exceptions and Reminders
	  • *Employers may include* provisions in settlement agreements that *preclude the disclosure of the amount paid* to settle the claim.
	  • *Employer may include a "no rehire" provision if* the employer has *made and documented a good faith determination*, before the employee filed a claim, that the 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*.
	  • An employer may include terms in agreements *protecting the employer's trade secrets, proprietary information or confidential information that does not involve unlawful acts in the workplace.*

AB 1578	**Virtual Administrative Hearings & Electronic Service** • Amends Government Code §11425.20, 11440.20 and 11440.30, among others • Existing Law – Administrative hearings are required to be open to public observation, unless an exception applies, and when hearings are conducted via telephone or other electronic means, certain conditions must be met, including that the public must have the opportunity to be physically present at the place where the presiding officer is conducting the hearing. Additionally, when a person is required to be served in conjunction with an administrative hearing, service must be effected via mail. • Virtual Participation Permitted – The requirement that administrative hearings be open to public observation can be satisfied if members of the public have the opportunity to be virtually present at the hearing and have the ability to observe the meeting via live audio or video feed, unless a party objects to the entire hearing being conducted by telephone or virtually. The presiding officer, in his/her discretion, may structure the hearing to address specific objections and require specified persons to be present in a physical location at all or part of the hearing. • Electronic Service Permitted – Documents and discovery are permitted to be delivered via electronic means.

8. INDUSTRY SPECIFIC LAWS

AB 73 Effective 9/27/21	**Agricultural Employers: Wildfire Smoke Training** • Amends Health & Safety Code §131021 and Adds Labor Code §§9110, *et seq.* • Existing Law – Requires the Department of Public Health to implement various programs throughout the State relating to public health and to establish guidelines for the procurement, management and distribution of PPE for health care workers and essential workers during a 90-day pandemic or other health emergency, and also requires the Office of Emergency Services, in coordination with other State agencies, to establish a PPE stockpile. • Wildfire Smoke Events – Are now considered health emergencies. • Ag Workers (Wage Orders 8, 13 and 14) – Are now included in the definition of essential workers. • Ag Worker Training – The Division of Occupational Safety and Health is required to review and update the contents of the protection from wildfire smoke training and post the materials on its website. Ag employers must train employees regarding the protection from wildfire smoke in a language and manner readily understandable by their employees, taking into account their ethnic and cultural backgrounds and education levels, including the use of pictograms, as necessary.
SB 93 Effective 4/16/21	**Hospitality Industry: Recall of Employees Laid-Off Due to COVID-19** • Adds Labor Code §2810.8 • Covered Enterprises – Hotels and private clubs with 50 or more rooms or suites, event centers with more than 50,000 square feet or 1,000 seats, airport hospitality operations, airport service providers, providers of janitorial, building maintenance or security services to office, retail or other commercial buildings. • Eligible Employees – Any employee who was employed by the employer for 6+ months in the 12 months preceding 1/1/20 and were separated from active service due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, reduction in force or other economic, non-disciplinary reason.

	• Recall Obligation – Employees who were laid-off must be offered positions for which they are qualified within 5 days of the positions becoming. The recall offer must be made in writing and delivered by hand or mailed to the employee's last known address and by text message and email. The available positions must be offered based on a preference system starting with the employee with the greatest length of service based on the employee's date of hire. The laid-off employee must accept or decline the offer within 5 business days (all days other than Saturday, Sunday or any official State holiday). • Qualified – An employee is qualified if s/he held the same or a similar position at the time of the employee's most recent layoff with the employer. • Required Notice – An employer who declines to recall a laid-off employee on the grounds of lack of qualification and instead hires someone other than a laid-off employee must provide the laid-off employee with written notice within 30 days that includes the specified reasons for the decision and information regarding those who were hired, including the length of service with the employer of those hired in lieu of that particular recall. • Record Keeping Obligation – Employers must keep records of specified information about regarding the recall offers for 3 years. • Interaction with Local Ordinances – Since this law does not preempt any California City or County ordinances, the law that is the most protective to the employees will govern. • Expires - 12/31/24

AB 701	**Warehouse Distribution Centers: Employee Production Quotas**
	• Amends Labor Code §138.7 and adds Labor Code §§2100, et seq.
	• Covered Employers – Warehouse distribution centers with 100+ employees (including workers provided by staffing agencies) at a single warehouse distribution center or 1,000+ employees at 1 or more warehouse distribution centers in California.
	  • Warehouse Distribution Center – An establishment as defined by any of the following North American Industry Classification System ("NAICS") Codes:
	  • 493110 – General Warehousing and Storage.
	  • 423 – Merchant Wholesalers, Durable Goods.
	  • 424 – Merchant Wholesalers, Nondurable Goods
	  • 454110 – Electronic Shopping and Mail-Order Houses.
	  • Exclusion – 493130 – Farm product warehousing and storage.
	• Covered Employees – Non-exempt employees who work at a warehouse distribution center.
	• Written Quota Description – Employers must provide a detailed written description of any quota, including the quantified number of tasks to be performed or materials to be produced or handled, the time period in which the tasks must be performed, and potential adverse employment actions for failure to meet the quota.
	  • Actions taken by an employee to comply with occupational health and safety laws in the Labor Code or division standards must be considered time on task and productive time for purposes of any quota or monitoring system. Examples of health and safety laws include those related to hand washing, sanitizing, health illness prevention, lockout/tag out, guarding of machines, PPE, ergonomics, etc.
	  • Employers cannot take adverse action against any employee for failure to meet any quota that has not been disclosed in writing to the employee as required by the law. The written description must be provided upon hire or by January 31, 2022.
	• Quota Definition – A work standard under which an employee is assigned or required to perform at a specified productivity speed, or perform a quantified number of tasks, or to handle or produce a quantified amount of material, within a defined time period and under which the employee may suffer an adverse employment action if they fail to complete the performance standard.
	• Limits on Quota Requirements – The quota cannot prevent employees from taking a meal or rest period or from using the bathroom facilities (including reasonable travel time to/from the facilities), and cannot infringe on California's occupational health and safety laws.
	• Employees' Right to Quota Information – Employees have the right to request a copy of any quota, as well as the most recent 90 days of the employee's own personal "work speed data." Former employees may only make 1 request for this information. Employers have 21 days to provide the requested information.
	• Rebuttable Presumption of Unlawful Retaliation – Arises if an employer in any manner discriminates, retaliates or takes any adverse action against any employee within 90 days of the employee's making the

	first request in a calendar year for information about quotas or work speed data, or the employee's making a quota-related complaint to the employer or to a government agency.
SB 727	**Construction Industry: Joint Liability for Penalties and Liquidated Damages** • Amends Labor Code §218.7 and adds Labor Code §218.8 • Existing Law – Direct contractors who enter into a contract for the erection, construction, alteration or repair of a building, structure or other private work, to assume and be liable for un paid wages, fringe or other benefit payment or contribution and interest (but not penalties or liquidated damages) owed to a wage claimant or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by or for the direct contractor for the wage claimant's performance of labor included in the subject of the original contract. • Additional Liability – For contracts entered into on or after 1/1/22, the direct contractor's liability extends to include penalties and liquidated damages where the direct contractor is aware of the subcontractor's failure to pay *or* the direct contractor fails to do any of the following: (1) monitor (by periodic review) the subcontractor's payroll records, (2) diligently take corrective action to remedy the subcontractor's failure to pay upon learning of the failure to pay, including retaining sufficient funds due to the subcontractor for work performed, or (3) obtain an affidavit signed under penalty of perjury from the subcontractor confirming the subcontractor has paid the wages, fringe and other benefit payments and contributions due to the employees or the labor trust fund for all work performed before the direct contractor makes the final payment to the subcontractor. • Exclusion – The additional liability does not apply to work performed by an employee of the State, a special district, City, County, or political subdivision of the State.
AB 1023	**Construction Industry: Submittal of Records to Labor Commissioner in Electronic Format** • Amends Labor Code §1771.4 • Existing Law – Contractors and subcontractors of Public Works Contractors are required to, among others, submit certain payroll records to the Labor Commissioner at least monthly. • Electronic Submittal Every 30 Days – The records are required to be submitted in electronic format on the Labor Commissioner's website at least once every 30 days while the work is being performed on the project and within 30 days after the final day the work is performed on the project. • Penalties – $100 per day that the contractor or subcontractor is in violation, up to $5,000 per project.
SB 646	**Janitorial Employees: Exemption to PAGA** • Adds Labor Code §2699.8 • Union Exemption – Janitorial employees are exempt from PAGA if they are represented by a labor organization that has represented the janitors before 1/1/21 and who are employed by a janitorial contractor who registered with the Labor Commissioner as a property service employer in 2020 with respect to work performed under a valid collective bargaining agreement in effect any time before 1/1/28 containing specified provisions, including a grievance and binding arbitration procedure to redress violations that authorizes the arbitrator to award otherwise available remedies. • Expiration of Exemption – The exemption expires when the collective bargaining agreement expires or 7/1/28, whichever is earlier, and this law will expire 7/1/28.
AB 1407	**Health Care: Implicit Bias Training for Nurses** • Amends Business & Professions Code §§2786 and 2811.5 and adds Health & Safety Code §123630.5 • During School – Nursing schools and nursing programs are required to include direct participation in 1 hour of implicit bias training as a requirement for graduation. • Continuing Education – Starting 1/1/23, nurses within the first 2 years of being licensed must complete 1 hour of direct participation in an implicit bias course. • Hospitals – Hospitals that hire and train new nursing program graduates must implement an evidence-based implicit bias program as part of the hospital's new graduate training program.
AB 1084	**Retail Department Stores: Gender Neutral Section or Area** • Adds Civil Code §§55.7 and 55.8 • Gender Neutral Section or Area – Retail Department Stores with a total of 500+ employees in California across all California retail department stores that sell childcare items or toys are required to maintain a

	gender neutral section or area in which a reasonable selection of the items and toys for children that it sells shall be displayed, regardless of whether they have traditionally been marketed for either girls or boys.
	• Definitions
	  • Children – persons 12 years of age or less.
	  • Childcare Item – Any product designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething.

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

Audit for Wage and Hour Compliance	• Continuous Obligation – Audit now and periodically throughout the year.
	• Timecards
	  • Required Contents – All timecards for non-exempt employees must accurately reflect the employee's start time and stop time for the day, as well as the start and stop time of meal periods.
	  • Add Rest Period Confirmation – Although rest periods are not required to be documented on timecards, employees often claim they were not able to take rest periods. Your timecard should contain a place for employees to confirm that they took all required rest periods (e.g., check a box, include time rest periods were taken, use certification).
	  • Certification – All timecards should contain certification language explaining the employees' requirements to clock in and out for each work period and for all meal periods, notify the employer if any time entry is inaccurate or if any meal or rest period was not taken in a timely and compliant manner, and to have employees confirm the accuracy of the timecard entries, that all meal and rest periods were taken in a timely and compliant manner, that they understand the obligation to notify the employer if any changes need to be made to the timecard entries.
	• Defining the Workday – Your workday is a 24 hour period. You may need to define more than 1 workday if you have employees who work shifts that cross over the midnight hour.
	• Defining the Workweek – The 7 day period that constitutes your workweek must be defined so you can ensure you satisfy your weekly and 7th day overtime requirements.
	• Rounding – If you round an employee's worktime, rather than paying for every minute worked, you must audit the timecards to ensure that the rounding policy favors the employee more often than the employer or is neutral.
	• Equal Pay Rights – Pay disparity cannot be based on sex, race or ethnicity. Employees who perform substantially similar work under similar working conditions (regardless of the location), when viewed as a composite of skill, effort and responsibility, must be paid the same wage rate, unless the employer demonstrates:
	  • Wage differential is based on 1 or more of the following: seniority system, merit system, system that measures earnings by quantity or quality of production, a bona fide factor other than sex/race/ethnicity (as applicable), such as education, training, or experience, that is not based on or derived from a sex/race/ethnicity-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity.
	  • Each factor relied upon is applied reasonably.
	  • The factor(s) relied upon account for the entire wage differential.
	  • Prior salary is not used to justify any disparity in compensation.
	• Bonuses – Examine your bonus structure to ensure that you have clearly and appropriately delineated whether the bonus is discretionary or non-discretionary.
	• Overtime – Under California law, employers must pay daily, weekly and 7th day overtime, with limited exceptions (e.g. truck drivers who satisfy the exemption criteria).
	  • Regular Rate of Pay Computations – Verify that employees are paid their Regular Rate of Pay for overtime, meal and rest period premiums and paid sick leave. The Regular Rate of Pay computation can be complicated depending on the types of compensation you pay employees, whether you give bonuses, and various other factors.

	• Meal Periods
	  • Ensure meal periods are taken at the appropriate time (before the end of the 5th hour and 10th hour worked), that they are taken for a minimum of 30 minutes, and that they are duty-free.
	  • 1st meal period waivers (for employees who do not work more than 6 hours in the workday) and 2nd meal period waivers (for employees who work more than 10 hours but less than 12 hours in the workday) should be in writing.
	• Rest Periods – Ensure rest periods are taken at the appropriate time (middle of the work shift), that they are taken for a minimum of 10 minutes, and that they are duty-free.
	• Exemption from Mandatory Day Requirement – With limited exceptions, employees cannot be required to work all 7 days in the workweek. Employees who do work 7 days in the workweek should execute a written Exemption Form.
	• Wage Statements – Ensure every wage statement includes 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, commissions and any other compensation paid to employees. Wage statements for piece rate employees must also separately identify payments for rest and recovery periods and other non-productive time.

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, IIPP, HIPP, Fire Prevention Plan, Emergency Action Plan, COVID-19 Prevention Program, 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.
	  • Require employees to immediately notify the employer if any correction is needed to any timecard or paycheck.

Provide Training and Discipline for Policy Violations	• Ensure the person / people responsible for wage and hour compliance understand all requirements and immediately addresses any 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.

Review Ind. Contractor Agreements	• Review the relationship with every person or entity that you consider an independent contractor and who you issue a 1099 to ensure that they satisfy the relevant criteria for being an Independent Contractor.
	  • ABC Test vs. *Borello* Factors – ABC Test applies to all relationships wherein a person provides services to your business, unless an exemption applies. If an exemption applies, the relationship must be analyzed using the *Borello* Factors.
	  • Exemptions – Every exemption requires the relationship to satisfy specific criteria.
	• All independent contractor relationships are required to have a contract defining the terms of the relationship and containing specific provisions, which vary based on the applicable exemption relied upon to support classifying the relationship as that of independent contractor and client.

Post of Notices and Wage Orders	• 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

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

EEO-1 and DFEH Reporting	• Filing Requirements – On or before March 31 each year, private employers with 100+ employees are required to file an annual Employer Information Report (EEO-1) with the EEOC under Federal law and submit a Pay Data Report to the DFEH.
	• 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. • 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/
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