Good Day Everybody:

This is the document that accompanies the seminar I presented on how to save $100,000. If you read this document in full and have all of your managers do so, you will avoid many problems that can easily cost you a lot of money. Why? Most people don't know the law, violate it, and then all it takes is one employee who is upset. This can take the form of a lawsuit (which can easily cost $100,000 to defend plus the cost of the settlement) or a case filed with the Labor Board. A Labor Board issue can trigger an EDD audit for the past three years. That can lead to an IRS audit. That can lead to an issue with Workers' Compensation, which, in San Diego can lead to criminal penalties a year later. Which would you choose, a lawsuit or a Labor Board report? Correct. None of the above.

I have included the laws here for you and bolded the areas I did not want the speed readers to miss. It may not be the most fun to read the law, but it is interesting, and it applies to you, so it is very important to you if you conduct business in California. The law is written in a manner that makes it easy to understand, so credit to the drafters. I have added my commentary in blue.

As to the pictures, I added them to dress this up and make it more appealing for you. If you wonder why the pictures of couples….it's to remind you of what I spoke about. Your team is made of people. In this industry people are often treated like a disposable commodity. They are people with families, health issues, financial issues, school issues, they may be raising a child alone. They are going through life daily, missing a loved one or caring for a parent. Treat them as you would a manager. Provide them the dignity they deserve. If they deal with the public, their job is harder than yours. Regardless of all of their struggles, they have to come to work like it's a happy day when the reverse can be true. They do it because they are loyal to the position and want to help 'you' succeed. Treat them like that and you may find you will never have to call an employment in your life!

Last but not least, read the emails from the CHLA. They are well-written and so useful, they are the foundation for many of you and will make a difference in your success or failure.

Good Luck Everybody

Stefano Riznyk

SR/ma

LABOR LAW 101:
Keep a copy in your safe so you can always find it ☺

This is a new change you should really be aware of

AB 1003 (Penal Code 478m)
Wage theft is grand theft as January 1st of 2022

Existing law regulates the payment of wages and benefits in the state. Existing law makes violation of specified wage and gratuity provisions a misdemeanor and provides for civil penalties and remedies for the recovery of wages.

Existing law defines the crime of grand theft as theft committed when the money, labor, or real or personal property taken is of a value exceeding $950. Under existing law, grand theft is generally punishable either as a misdemeanor by imprisonment in a county jail for up to 1 year or as a felony by imprisonment in county jail for 16 months or 2 or 3 years.

This bill would make the intentional theft of wages, including gratuities, in an amount greater than $950 from any one employee, or $2,350 in the aggregate from 2 or more employees, by an employer in any consecutive 12-month period punishable as grand theft. The bill would specifically authorize wages, gratuities, benefits, or other compensation that are the subject of a prosecution under these provisions to be recovered as restitution in accordance with existing provisions of law. This bill would specify that, for the purposes of these provisions, independent contractors are included within the meaning of employee and hiring entities of independent contractors are included within the meaning of employer. By increasing the penalty for a crime and by creating a new crime, this bill would impose a state-mandated local program.

AB 685: Imminent hazard to employees:
exposure notification & serious violations

Section 6325 of the Labor Code, as amended by Section 2 of Chapter 84 of the Statutes of 2020, is amended to read:

(a) When, in the opinion of the division, a place of employment, machine, device, apparatus, or equipment or any part thereof is in a dangerous condition, is not properly guarded or is dangerously placed so as to constitute an imminent hazard to employees, entry therein, or the use thereof, as the case may be, shall be prohibited by the division, and a conspicuous notice to that effect shall be attached thereto. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit any entry in or use of a place of employment, machine, device, apparatus, or equipment, or any part thereof, which is outside such area of imminent hazard. Such notice shall not be removed except by an authorized representative of the division, nor until the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(b) When, in the opinion of the division, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) so as to constitute an imminent hazard to employees, the performance of such operation or process, or entry into such place of employment, as the case may be, may be prohibited by the division, and a notice thereof shall be provided to the employer and posted in a conspicuous place at the place of employment. Such prohibition of use shall be limited to the immediate area in which the imminent hazard exists, and the division shall not prohibit the performance of any operation or process, entry into or use of a place of employment, or any part thereof, which is not exposing employees to, or is outside such area of imminent hazard. In addition, this prohibition shall be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power, renewable natural gas, or water. This notice shall not be removed except by an authorized representative of the division, nor until the place of employment, operation, or process is made safe and the required safeguards or safety appliances or devices are provided. This subdivision shall not prevent the entry or use with the division's knowledge and permission for the sole purpose of eliminating the dangerous conditions.

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

Section 6409.6 of the Labor Code is amended to read:

(a) If an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer shall take all of the following actions within one business day of the notice of potential exposure:

(1) Provide a written notice to all employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the qualifying individual within the infectious period that they may have been exposed to COVID-19 in a manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text

message if it can reasonably be anticipated to be received by the employee within one business day of sending and shall be in both English and the language understood by the majority of the employees.

(2) Provide a written notice to the exclusive representative, if any, of qualifying individuals and employees who had close contact with the qualifying individuals under paragraph (1).

(3) Provide all employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, with information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state, or local laws, including, but not limited to, workers' compensation, and options for exposed employees, including COVID-19-related leave, company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation and antidiscrimination protections of the employee.

(4) Notify all employees who were on the premises at the same worksite as the qualifying individual within the infectious period, and the employers of subcontracted employees who were on the premises at the same worksite as the qualifying individual within the infectious period and the exclusive representative, if any, of the 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 per the Cal-OSHA COVID-19 Emergency Temporary Standards.

(b) If an employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak, as defined by the State Department of Public Health, within 48 hours or one business day, whichever is later, the employer shall notify the local public health agency in the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who meet the definition in subdivision (d) of a qualifying individual. An employer shall also report the business address and NAICS code of the worksite where the qualifying individuals work. An employer that has an outbreak subject to this section shall continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.
(c) The notice required pursuant to paragraph (2) of subdivision (a) shall contain the same information as would be required in an incident report in a Cal/OSHA Form 300 injury and illness log unless the information is inapplicable or unknown to the employer. This requirement shall apply regardless of whether the employer is required to maintain a Cal/OSHA Form 300 injury and illness log. Notifications required by this section shall not impact any determination of whether or not the illness is work related.

(d) For purposes of this section, the following definitions apply:

(1) "Close contact" means being within six 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 as defined by this section. This definition applies regardless of the use of face coverings.
(2) "COVID-19" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
(3) "High-risk exposure period" means either of the following time periods:

(A) For persons who develop COVID-19 symptoms, from 2 days before they first develop symptoms until 10 days after the symptoms first appeared, and until 24 hours have passed with no fever, without the use of fever-reducing medications and symptoms have improved.

(B) For persons who test positive who never develop COVID-19 symptoms, from 2 days before until 10 days after the specimen for their first positive test for COVID-19 was collected.
(4) "Infectious period" means the time a qualifying individual is infectious, as defined by the State Department of Public Health.
(5) "Notice of potential exposure" means any of the following:

(A) Notification to the employer or representative from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite.
(B) Notification to the employer or representative from an employee, or their emergency contact, that the employee is a qualifying individual.
(C) Notification through the testing protocol of the employer that the employee is a qualifying individual.
(D) Notification to an employer or representative from a subcontracted employer that a qualifying individual was on the worksite of the employer receiving notification.
(6) "Qualifying individual" means any person who has any of the following:
(A) A laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health.
(B) A positive COVID-19 diagnosis from a licensed health care provider.
(C) A COVID-19-related order to isolate provided by a public health official.
(D) 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.

This COVID-19 imminent hazard provision would be repealed on January 1, 2023.

Requires a public or private employer or representative of the employer that receives a notice of potential exposure to COVID-19 to provide specified notifications to its employees within **one business day of the notice** of potential exposure.

[There are two exceptions: (1) health facilities, as defined in Section 1250 of the Health and Safety Code and (2) employees whose regular duties include COVID-19 testing or screening, or who provide patient care to individuals who are known or suspected to have COVID-19.]

Requires the employer to provide notice to **all employees**, and the **employers of subcontracted employees**, or exclusive representative of notified employees who were on the premises at the same worksite as an individual that tests positive for COVID-19, within the infectious period that they may have been exposed to COVID-19.

The employer must provide those employees and any exclusive representative with information regarding COVID-19-related benefits and options.

Requires an employer to notify all employees, the employers of subcontracted employees, and any exclusive representative on the **disinfection and safety plan** that the employer plans to implement and complete per the guidelines of the federal Centers for Disease Control. **Require an employer to maintain records of notifications for at least 3 years.**

AB 685 authorizes Cal/OSHA to cite or fine employers for serious violations related to COVID-19 without having to provide the requisite 15-days' notice and authorizes Cal/OSHA to cite or fine employers for violations of AB 685 worker notification provisions detailed above. Since there are *statutes of limitations for appealing a citation*, it is advisable to retain counsel in the event a contractor receives such a citation.

Requires an employer, if the employer or representative of the employer is notified of the number of cases that meet the definition of a COVID-19 outbreak (three or more employee COVID-19 cases in an "exposed group" within a 14-day period or identified as an outbreak by a local health department. Major outbreak - 20 or more employee COVID-19 cases in an "exposed group" within a 30-day period) within 48 hours, to report information to the local public health agency in the jurisdiction of the worksite. Requires an employer that has an outbreak to continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite. Health facilities are exempt from this reporting requirement.

SB 657 (Email)

SECTION 1: You can now email anything you have to otherwise post (great for work at home situations)

Section 1207 is added to the Labor Code, to read:

In any instance in which an employer is required to physically post information, an employer may also distribute that information to employees by email with the document or documents attached. Email distribution pursuant to this section shall not alter the employer's obligation to physically display the required posting.

AB 1033 California Family Rights Act:

-Adds parent-in-law:
-Discusses small employer family leave mediation pilot program

Existing law, the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act, which is a part of FEHA, makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to **12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave**, as specified. Existing law defines family care and medical leave to include, among other things, leave to care for a parent.

This bill would additionally include leave to care for a **parent-in-law** within the definition of family care and medical leave and would make other conforming changes.

Existing law requires the department to create a small employer family leave mediation pilot program, for alleged violations of these family care and medical leave provisions, applicable to employers with between **5 and 19 employees**. **Existing law authorizes the employer or the employee to request that all parties participate in mediation through the department's dispute resolution division after the department issues a right-to-sue notice.**

Existing law requires the department to initiate the mediation promptly following a request, prohibits an employee from pursuing a civil action until the mediation is complete, and tolls the statute of limitations for the employee, including for all related claims not subject to mediation, from the date of receipt of a request to participate in the program until the mediation is complete. *Existing law repeals the pilot*

program on January 1, 2024.

This bill would recast those provisions to require the department, when an employee requests an immediate right to sue alleging a violation of the above-described family care and medical leave provisions by an employer, to notify the employee in writing of the requirement for mediation prior to filing a civil action, if mediation is requested by the employer or employee. The bill would also require the employee to contact the department's dispute resolution division, in the manner specified by the department, prior to filing an action and to indicate whether they are requesting mediation.

Minimum Wage $15.00/hour Phase in from 2017-2023
(Senate Bill 3)

The new minimum wage is $15.00 an hour. The increase in minimum wage is different for large employers (26 or more employees) and small employers (25 or fewer employees).

Starting January 1, 2022 the minimum wage is $15.00 an hour for **large** employers (more than 26 employees) and $14.00 an hour for **small** employers (25 employees or less).

If a local entity (city or county) has adopted a higher minimum wage, employees must be paid the local wage where it is higher than the state or federal minimum wage rates.

Labor Code section 1182.12 defines "employer" as: "any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person [and] includes the state, political subdivisions of the state, and municipalities."

Any individual performing any kind of compensable work for the employer who is not a bona fide independent contractor would be considered and counted as an employee, including salaried executives, part-time workers, minors, and new hires.

This means that as of Jan. 1st, 2022, exempt employees in California must be paid a minimum of $62,400 annually if the employer has 26 or more employees; and $58,240 annually for employers of 25 or fewer employees.

Additionally, "Learners" – those working in occupations in which they have no previous similar or related experience – may be paid at 85 percent of minimum wage during the first 160 hours of employment. Employers will have the burden to establish the "Learner" status of the employee.

Misclassification
(Employee or Independent Contractor?)

Please really know this area as this gets so many employers into trouble…

Misclassification of workers occurs when an employer improperly classifies their employees as independent contractors so that they do not have to pay payroll taxes, minimum wage or overtime, or comply with other wage and hour law requirements such as providing meal periods and rest breaks. Misclassification, or labeling a worker as an independent contractor when they should be an employee, undermines businesses who play by the rules and basic worker protections like minimum wage, paid sick days, and the safety of workplaces. Additionally, the misclassified worker has no workers' compensation coverage if injured on the job, no right to family leave, no unemployment insurance, no legal right to organize or join a union, and no protection against employer retaliation. This is a form of fraud.

Misclassification Explained:

In addition to penalties that may be assessed for wage violations associated with a worker being misclassified as an independent contractor, there are civil penalties for willful misclassification. Under Labor Code section 226.8, which prohibits the willful misclassification of individuals as independent contractors, there are civil penalties of between $5,000 and $25,000 per violation. Willful misclassification is defined as voluntarily and knowingly misclassifying an employee as an independent contractor.

Workers who face discrimination or retaliation in any manner whatsoever — for example, if the employer fires a worker because they complain about being classified as an independent contractor or not being paid overtime, or because the worker filed a claim or told the employer that they intend to file a claim with the Labor Commissioner — can file a discrimination/retaliation complaint with the Labor Commissioner's Office. However, it is important to note that the Labor Commissioner does not have jurisdiction over most workers who are in fact independent contractors. The worker can also file a lawsuit in court against the employer instead of filing a complaint first with the Labor Commissioner's Office.

This is where it gets expensive for you. Most employment lawyers handle Plaintiff's work (ie the person complaining, usually the employee) on a contingency basis, meaning no recovery no fee. If someone files a lawsuit against you, you can easily spend $50,000 defending it, and if you do not settle, that could move up to $200,000 or even more. The first piece of advice I would offer is to find an insurance policy that covers 'defense costs'. Some of my clients have policies that share both defense costs and settlement costs. What this means is that if you have a $50k policy, you can settle it for $50k, but if you spend $25k on lawyer costs, then you only have $25k left for settlement.

If you do not have such a policy, you will be responsible for the costs of defense. If someone files in federal court, as we have an ENE in California, the costs will mount to about $65k in the first three months or so. It is better to resolve this issue by knowing the laws in the first place.

If the EDD finds that workers are misclassified as independent contractor(s) when they should be classified as employee(s), employers face significant risks related to failing to comply with their obligations under the Unemployment Insurance Code. These risks include under-paying their taxes and having to pay their employees' share of payroll taxes, both of which may result in incurring penalties and interest.

Workers may be considered employees and have protections under California law, even if they are determined not to be employees under federal law. This is because the tests used to determine employee status under California law differ from the tests used under federal law, such as the federal Fair Labor Standards Act (FLSA).

Please note: This is where you can really get into troubles. If an employee goes to the Labor Board against you, they may notify the EDD, which will seek a 3-year audit of you. They may report you to the IRS, another audit. Any branch may report you for a Workers' Comp violation and in San Diego that carries criminal sanctions a year later. Get the message?

The ABC Test (Assembly Bill 5)
[re: is the person an employee]

Signed into law in September 2019, AB 5 addresses employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the "ABC test" to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission (IWC) wage orders.

Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:

- The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- The worker performs work that is outside the usual course of the hiring entity's business; **and**
- The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

My explanation on this: Think of it this way. If you hire someone to remodel your kitchen, and assuming you know nothing of that type of construction, that person is more like an independent contractor (however you are not 'employing' the person, you are hiring a company, it is just for the sake of illustration. You tell them what you want, but you don't tell them to use your tools, how to conduct the construction, or specific methods to use. You are just concerned with the outcome. Like surgeons, they know what to do, you don't instruct a surgeon on how to conduct surgery; same concept.

An employee is someone you have control over or dictate how to work for you. Our law firm is on one side of the pendulum in that we provide all the equipment, tell them to dress professionally, and overlook all of their work product and make recommendations. If we hire a lawyer even for a day, we place her or him on payroll. This is a true employee.

In-between, there is a large continuum. Let's say we hire someone for social media work. If that person works out of our office with our computers (even with a cloud-based program)

they are an employee. It is hard to convince an officer why you have them in your office even if you try to convince them you don't guide the person. Do you tell them how to dress in your establishment? Bingo, that's all it takes, you took control.

What if I hired that social media person to work from his or her home? If I am the only client they have, they are most likely an employee, even if you tell them very little. If they have a lot of clients, preferably a company structure of some sort, they are getting closer to being an IC as long as you do not dictate to them how to do their job. Realistically, very few people are true IC and they won't overcome the law easily…do you get the message? To break the ice with auditors I tell them that even my mailman is on my payroll because I tell him where to place the mail (with no options for him to decide elsewhere)…

California Supreme Court's explanation of how to apply the ABC test.
Part A: Is the worker free from the control and direction of the hiring entity in the performance of the work, both under the contract for the performance of the work and in fact?

- The hiring entity must establish that the worker is free of such control to satisfy part A of the ABC test. (Dynamex, 4 Cal.5th at 958.)
- A worker who is subject, either as a matter of contractual right or in actual practice, to the type and degree of control a business typically exercises over employees would be considered an employee.
- Depending on the nature of the work and overall arrangement between the parties, a business ***need not control the precise manner or details*** of the work in order to be found to have maintained the necessary control that an employer ordinarily possesses over its employees.

PART B: Does the worker perform work that is outside the usual course of the hiring entity's business

- The hiring entity must establish that the worker performs work that is **outside the usual course of its business** in order to satisfy part B of the ABC test. (Dynamex, 4 Cal.5th at 959.)
- Contracted workers who provide services in a role comparable to that of an existing employee will likely be viewed as working in the usual course of the hiring entity's business. (Id.)

- Examples where services are not part of the hiring entity's usual course of business:
    - When a retail store hires an outside plumber to repair a leak in a bathroom on its premises.
    - When a retail store hires an outside electrician to install a new electrical line. (Id.)
- Examples where services are part of the hiring entity's usual course of business:
    - When a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company.
    - When a bakery hires cake decorators to work on a regular basis on its custom-designed cakes.

PART C: Is the worker customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity?

- The hiring entity must prove that the worker is customarily and currently engaged in an independently established trade, occupation, or business. (Dynamex, 4 Cal.5th at 963.) **[that is a what we call a citation. It allows you to find the case. Not all cases are on the Internet, this one is. Many cases can be found on a legal database lawyers use called Westlaw, or even on Lexis, a competitor. These are very expensive for the general public FYI but something most lawyers cannot live without. We include some citations here so you can find these cases to read them as this is important information if you run a business.]**

- The hiring entity cannot unilaterally determine a worker's status simply by assigning the worker the label "independent contractor" or by requiring the worker, as a condition of hiring, to enter into a contract that designates the worker an independent contractor. (Dynamex, 4 Cal.5th at 962.) [**at 962 means the page number that aspect is shown on**]
- Part C requires that the independent business operation actually be in existence at the time the work is performed. The fact that it could come into existence in the future is not sufficient. (See Garcia v. Border Transportation Group, LLC (2018) 28 Cal.App.5th 558, 574.)
- An individual who independently has made the decision to go into business generally takes the usual steps to establish and promote that independent business. Examples of this include:
    - Incorporation, licensure, advertisements;

- Routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. (Dynamex, 4 Cal.5th at 962.)

- If an individual's work relies on a single employer, Part C is not met. For example, Part C was not satisfied where a taxi driver was required to hold a municipal permit that may only be used while that driver is employed by a specific taxi company. (See Garcia, 28 Cal.App.5th at 575.) **[This is what I referred to earlier when someone working for you from their location has only you as a client].**

Labor Code 2783

Dynamex Provisions do not apply to these areas

Dynamex is the case that changed a lot and will affect you, please review these sections if you are not sure. Borello is another such case and the two work together.

Section 2775 and the holding in Dynamex do not apply to the following occupations as defined in the paragraphs below, and instead, the determination of employee or independent contractor status for individuals in those occupations shall be governed by Borello:

(a) A person or organization that is licensed by the Department of Insurance pursuant to Chapter 5 (commencing with Section 1621), Chapter 6 (commencing with Section 1760), or Chapter 8 (commencing with Section 1831) of Part 2 of Division 1 of the Insurance Code or a person who provides underwriting inspections, premium audits, risk management, or loss control work for the insurance and financial service industries.

(b) A physician and surgeon, dentist, podiatrist, psychologist, or veterinarian licensed by the State of California pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, performing professional or medical services provided to or by a health care entity, including an entity organized as a sole proprietorship, partnership, or professional corporation as defined in Section 13401 of the Corporations Code. Nothing in this subdivision shall circumvent, undermine, or restrict the rights under federal law to organize and collectively bargain.

(c) An individual who holds an active license from the State of California and is practicing one of the following recognized professions: lawyer, architect, landscape architect, engineer, private investigator, or accountant.

(d) A securities broker-dealer or investment adviser or their agents and representatives that are either of the following:
(1) Registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority.

(2) Licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.
(e) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.
(f) A manufactured housing salesperson, subject to all obligations under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, including all regulations promulgated by the Department of Housing and Community Development relating to manufactured home salespersons and all other obligations of manufactured housing salespersons to members of the public.
(g) A commercial fisher working on an American vessel.

Overtime

In California, the general overtime provisions are that a nonexempt employee 18 years of age or older, or any minor employee 16 or 17 years of age who is not required by law to attend school and is not otherwise prohibited by law from engaging in the subject work, shall not be employed more than eight hours in any workday or more than 40 hours in any workweek unless he or she receives one and one-half times his or her regular rate of pay for all hours worked over eight hours in any workday and over 40 hours in the workweek (or double time as specified below). Eight hours of labor constitutes a day's work, and employment beyond eight hours in any workday or more than six days in any workweek requires the employee to be compensated for the overtime at not less than:

1. One and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours up to and including 12 hours in any workday, and for the first eight hours worked on the seventh consecutive day of work in a workweek; and
2. Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

There are, however, a number of exemptions from the overtime law. An "exemption" means that the overtime law does not apply to a particular classification of employees. There are also a number of exceptions to the general overtime law stated above. An "exception" means that overtime is paid to a certain classification of employees on a basis that differs from that stated above. In other words, an exception is a special rule.

Hours to be used in computing the regular rate of pay may not exceed the legal maximum regular hours which, in most cases, is 8 hours per workday, 40 hours per workweek. This maximum may also be affected by the number of days one works in a workweek. It is important to determine what maximum is legal in each case. The alternate method of scheduling and computing overtime under most Industrial Welfare Commission Wage Orders, based on an alternative

workweek schedule of four 10-hour days or three 12-hour days does not affect the regular rate of pay, which in this case also would be computed on the basis of 40 hours per workweek.

California law requires that employers pay overtime, whether authorized or not, at the rate of one and one-half times the employee's regular rate of pay for all hours worked in excess of eight up to and including 12 hours in any workday, and for the first eight hours of work on the seventh consecutive day of work in a workweek, and double the employee's regular rate of pay for all hours worked in excess of 12 in any workday and for all hours worked in excess of eight on the seventh consecutive day of work in a workweek.

An employer can discipline an employee if he or she violates the employer's policy of working overtime without the required authorization. However, California's wage and hour laws require that the employee be compensated for any hours he or she is "suffered **or permitted to work**, whether or not required to do so." California case law holds that "suffer or permit" means work the employer knew or should have known about. **Thus, an employee cannot deliberately prevent the employer from obtaining knowledge of the unauthorized overtime** worked, and come back later to claim recovery but at the same time, an employer has the duty to keep accurate time records and must pay for work that the employer allows to be performed and to which the employer benefits.

A salaried employee must be paid overtime unless they meet the test for exempt status as defined by federal and state laws, or unless they are specifically exempted from overtime by the provisions of the California Labor Code or one of the Industrial Welfare Commission Wage Orders regulating wages, hours and working conditions.

This is another area that can get you into a lot of trouble. A lot of people classify their employees salaried when they shouldn't be. Read the requirements very carefully. If it qualifies, read the part about the person having to be paid 2x the minimum wage, for example. There are many requirements and so few of the people we deal with as defendants have ever bothered to read these. Employment law is one area where what you don't know can cost you dearly.

Meal Periods

In California, an employer may not employ an employee for a work period of more than **five hours per day** without providing the employee with a meal period of not less than thirty minutes, **except that if the total work period per day of the employee is no more than six hours**, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Labor Code Section 512. *There is an exception for employees in the motion picture industry, however, as they may work no longer than six hours without a meal period of not less than 30 minutes,* nor more than one hour. And a subsequent meal period must be called not later than six hours after the termination of the preceding meal period. IWC Order 12-2001, Section 11(A)

Unless the employee is relieved of all duty during his or her thirty minute meal period, the meal period shall be considered an "on duty" meal period that is counted as hours worked which must

be compensated at the employee's regular rate of pay. **An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the employer and employee an on-the-job paid meal period is agreed to.** *The written agreement must state that the employee may, in writing, revoke the agreement at any time.* IWC Orders 1 -15, Section 11, Order 16, Section 10. The test of whether the nature of the work prevents an employee from being relieved of all duty is an objective one. **An employer and employee may not agree to an on-duty meal period unless, based on objective criteria, any employee would be prevented from being relieved of all duty based on the necessary job duties**. Some examples of jobs that fit this category are a sole worker in a coffee kiosk, a sole worker in an all-night convenience store, and a security guard stationed alone at a remote site.

If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period.

If an employer fails to provide an employee a meal period in accordance with an applicable IWC Order, the employer must pay one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. IWC Orders and Labor Code Section 226.7 This additional hour is not counted as hours worked for purposes of overtime calculations.

AB 51 Employment discrimination: enforcement Important for those with Arbitration Agreements in their employment contracts

This bill would prohibit a person from requiring any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment **as a condition of employment**, continued employment, or the receipt of any employment-related benefit. **The bill would also prohibit an employer from threatening, retaliating or discriminating against, or terminating any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of specific statutes governing employment.** The bill would establish a specific exemption from those prohibitions. Because a violation of these prohibitions would be a crime, the bill would impose a state-mandated local program.

FEHA makes specified employment and housing practices unlawful and provides procedures for enforcement by the Department of Fair Employment and Housing. FEHA authorizes a person alleging a violation of specified provisions of the act relating to employment discrimination to submit a verified complaint to the Department of Fair Employment and Housing, and requires the department to take actions to investigate and conciliate that complaint. FEHA authorizes the department to bring a civil action on behalf of the person who submitted the complaint upon the failure to eliminate an unlawful practice under these provisions. FEHA requires the department to issue a right-to-sue notice to a person who submitted the complaint if certain conditions occur, and FEHA requires a person who has been issued a right-to-sue notice to bring an action within one year from when the department issued that notice.

This bill would additionally make violations of the prohibitions described above, relating to the waiver of rights, forums, or procedures, unlawful employment practices under FEHA.

This bill has been heavily litigated. At the end of the day, you can have an arbitration agreement but anything related to FEHA must have an agreement that they employee volunteers to agree with the arbitration as to FEHA claims and the arbitration of claims cannot be a condition of their employment. Employees who prevail in an AB 51 action may be entitled to attorneys' fees, this is dangerous.

On September 15th, 2021 the 9th circuit Court of Appeals held that arbitration agreements in California that cover FEHA and/or Labor Code claims have to be entered into consensually by the parties and not as a mandatory condition of employment that the employee is not free to accept. This is still being litigated so contact your employment lawyer in order to ascertain its current status. FEHA protects employees from discrimination, retaliation, and harassment in their employment situation.

Examples of what FEHA protects includes: race (includes hair styles), religion (dress/grooming methods), sex/gender (childbirth, pregnancy, breastfeeding, medical conditions related to this area), gender (identity & expression), sexual orientation, medical conditions (cancer or history of, genetic characteristics), national origin (language use, possession of driver's license of persons who cannot prove they are present as authorized under federal law), disability (mental, physical, HIV/AIDS, cancer-related), requests for family care leave, requests for pregnancy disability leave, and age discrimination (if the employee is over 40).

The good news is that as long as your arbitration is covered by the FAA (Federal Arbitration Act) you won't be facing criminal sanctions because of the litigation of this code section.

Instead, reading AB 51's prohibition narrowly, the court explained that the law merely requires employers to ensure that any arbitration agreements entered into with California employees that cover FEHA and/or Labor Code claims are entered into consensually by the parties, not as a mandatory condition of employment that an applicant or employee must accept.

Labor Code 6429
Get to know the OSHA requirements for your industry

(a) (1) Any employer who willfully or repeatedly violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, or any employer who commits an enterprise-wide violation as specified in Section 6317, may be assessed a civil penalty of not more than one hundred twenty-four thousand seven hundred nine dollars ($124,709) for each violation, but in no case less than eight thousand nine hundred eight dollars ($8,908) for each willful violation.

SB 606 (2022)

This bill would require the division to issue a citation for an egregious violation, as defined, for each willful and egregious violation determined by the division, as provided. The bill, except as specified, would require each instance of an employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties.

SB 331 Non-Disparagement and Sexual assault and other issues

SECTION 1.
Section 1001 of the Code of Civil Procedure is amended to read:

(a) Notwithstanding any other law, a provision within a **settlement agreement** that prevents or restricts the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:
(1) An act of sexual assault that is not governed by subdivision (a) of Section 1002.
(2) An act of sexual harassment, as defined in Section 51.9 of the Civil Code.
(3) An act of workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or an act of retaliation against a person for reporting or opposing harassment or discrimination, as described in subdivisions (a), (h), (i), (j), and (k) of Section 12940 of the Government Code.

(4) An act of harassment or discrimination, or an act of retaliation against a person for reporting harassment or discrimination by the owner of a housing accommodation, as described in Section 12955 of the Government Code.
(b) Notwithstanding any other law, in a civil matter described in paragraphs (1) to (4), inclusive, of subdivision (a), a court shall not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subdivision (a).
(c) Notwithstanding subdivisions (a) and (b), a provision that shields the identity of the claimant and all facts that could lead to the discovery of the claimant's identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant. This subdivision does not apply if a government agency or public official is a party to the settlement agreement.
(d) Except as authorized by subdivision (c), a provision within a settlement agreement that prevents or restricts the disclosure of factual information related to the claim described in subdivision (a) that is entered into on or after January 1, 2019, is void as a matter of law and against public policy.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in settlement of a claim.
(f) In determining the factual foundation of a cause of action for civil damages under subdivision (a), a court may consider the pleadings and other papers in the record, or any other findings of the court.
(g) The amendments made to subparagraphs (3) and (4) of subdivision (a) by Senate Bill 331 of the 2021–22 Regular Session apply only to agreements entered into on or after January 1, 2022. All other amendments made to this section by Senate Bill 331 of the 2021-22 Regular Session shall not be construed as substantive changes, but instead as merely clarifying existing law.

SEC. 2.

Section 12964.5 of the Government Code is amended to read:

12964.5.

(a) (1) It is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to do either of the following:
(A) (i) For an employer to require an employee to sign a release of a claim or right under this part.
(ii) As used in this subparagraph, "release of a claim or right" includes requiring an individual to execute a statement that the individual does not possess any claim or injury against the employer or other covered entity, and includes the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity.
(B) (i) For an employer to require an employee to sign a nondisparagement agreement or other document to the extent it has the purpose or effect of denying the employee the right to disclose information about unlawful acts in the workplace.
(ii) A nondisparagement or other contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace shall include, in substantial form, the following language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."
(2) Any agreement or document in violation of this subdivision is contrary to public policy and shall be unenforceable.
(b) (1) (A) It is an unlawful employment practice for an employer or former employer to include in any agreement related to an employee's separation from employment any provision that prohibits the disclosure of information about unlawful acts in the workplace.
(B) A nondisparagement or other contractual provision that restricts an employee's ability to disclose

information related to conditions in the workplace shall include, in substantial form, the following language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."

(2) Any provision in violation of paragraph (1) is against public policy and shall be unenforceable.

(3) This subdivision does not prohibit the inclusion of a general release or waiver of all claims in an agreement related to an employee's separation from employment, provided that the release or waiver is otherwise lawful and valid.

(4) An employer offering an employee or former employee an agreement related to that employee's separation from employment as provided in this subdivision shall notify the employee that the employee has a right to consult an attorney regarding the agreement and shall provide the employee with a reasonable time period of not less than five business days in which to do so. An employee may sign such an agreement prior to the end of the reasonable time period as long as the employee's decision to accept such shortening of time is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, or a threat to withdraw or alter the offer prior to the expiration of the reasonable time period, or by providing different terms to employees who sign such an agreement prior to the expiration of such time period.

(c) As used in this section, "information about unlawful acts in the workplace" includes, but is not limited to, information pertaining to harassment or discrimination or any other conduct that the employee has reasonable cause to believe is unlawful.

(d) (1) This section does not apply to a negotiated settlement agreement to resolve an underlying claim under this part that has been filed by an employee in court, before an administrative agency, in an alternative dispute resolution forum, or through an employer's internal complaint process.

(2) As used in this section, "negotiated" means that the agreement is voluntary, deliberate, and informed, the agreement provides consideration of value to the employee, and that the employee is given notice and an opportunity to retain an attorney or is represented by an attorney.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in a severance agreement.

(f) This section does not prohibit an employer from protecting the employer's trade secrets, proprietary information, or confidential information that does not involve unlawful acts in the workplace.

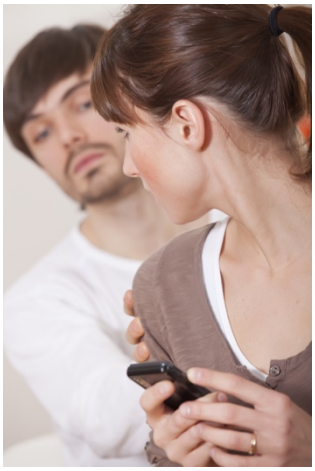
You should also be familiar with

SEC. 2. (RELEASES IN YOUR EXIT CONTRACTS)

Section 12964.5 of the Government Code is amended to read:

(a) (1) It is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to do either of the following:

(A) (i) For an employer to **require an employee to sign a release of a claim or right under this part**.
(ii) As used in this subparagraph, "release of a claim or right" includes requiring an individual to execute a statement that the individual **does not possess any claim or injury against the employer or other covered entity, and includes the release of a right to file and pursue a civil action or complaint with, or otherwise notify, a state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity.**



(B) (i) For an employer to require an employee to sign a **nondisparagement** agreement or other document to the extent it has the purpose or effect of **denying the employee the right to disclose information about unlawful acts in the workplace.**
(ii) A nondisparagement or other contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace **shall include, in substantial form, the following language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you have reason to believe is unlawful."**
(2) Any agreement or document in violation of this subdivision is contrary to public policy and shall be unenforceable.

(b) (1) (A) **It is an unlawful employment practice for an employer or former employer to include in any agreement related to an employee's separation from employment any provision that prohibits the disclosure of information about unlawful acts in the workplace.**

(3) This subdivision does not prohibit the inclusion of a general release or waiver of all claims in an agreement related to an employee's separation from employment, provided that the release or waiver is otherwise lawful and valid.

(4) An employer offering an employee or former employee an agreement related to that employee's separation from employment as provided in this subdivision shall notify the employee that the employee has a right to consult an attorney regarding the agreement and shall provide the employee with a reasonable time period **of not less than five business days in which to do so**. **An employee may sign such an agreement prior to the end of the reasonable time period as long as the employee's decision to accept such shortening of time is knowing and voluntary and is not induced by the employer through fraud, misrepresentation, or a threat to withdraw or alter the offer prior to the expiration of the reasonable time period, or by providing different terms to employees who sign such an agreement prior to the expiration of such time period.**

(c) As used in this section, "information about unlawful acts in the workplace" includes, but is not limited to, information pertaining to harassment or discrimination **or any other conduct that the employee has reasonable cause** to believe is unlawful.

(d) (1) **This section does not apply to a negotiated settlement agreement to resolve an underlying claim under this part that has been filed by an employee in court, before an administrative agency, in an alternative dispute resolution forum, or through an employer's internal complaint process.**
(2) As used in this section, "negotiated" means that the agreement is voluntary, deliberate, and informed, the agreement **provides consideration of value to the employee**, and that the employee is given notice and an opportunity to retain an attorney or is represented by an attorney.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in a severance agreement.

(f) This section does not prohibit an employer from protecting the employer's trade secrets, proprietary information, or confidential information that does not involve unlawful acts in the workplace.

SB 762 (New Invoicing Requirements for Employment Arbitration Providers):

Under the previous California law, for employers with mandatory arbitration agreements, if an employer does not timely pay arbitration fees within 30 days of the due date, the employer waives the right to stay in arbitration, and the employee can proceed in court. This bill will now require the arbitration provider to invoice fees/costs to all parties, and to make the invoice due upon receipt unless the arbitration agreement provides otherwise.

SB 331 (New Restrictions on Employee Nondisclosure/Nondisparagement Clauses): California law previously prohibited covered employee settlement agreements from preventing the disclosure of factual information regarding various sexual harassment claims and allegations. This bill expands this prohibition to extend to all discrimination and harassment (not just sexual harassment). Further, for covered severance, separation and nondisparagement agreements that restrict an employee's ability to disclose information related to workplace conditions, the bill now requires the agreement to state, in substantial form, the following language: "Nothing in this agreement prevents you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct

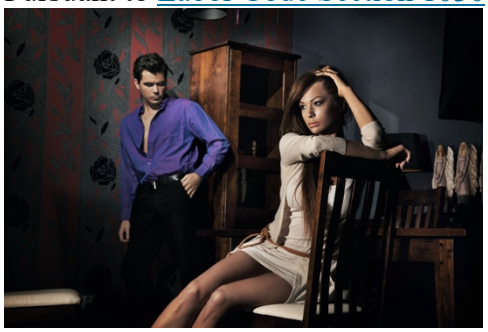
that you have reason to believe is unlawful." In addition, employees regardless of age must be given not less than five business days to consider signing an agreement, but may sign the agreement in less time provided it is knowing and voluntary and not induced by fraud, misrepresentation or coercion.

Rest Periods/Lactation Accommodation

(This is important for at-home employees as a result of Covid [i.e. not working in office])

In California, the Industrial Welfare Commission Wage Orders require that employers must authorize and permit nonexempt employees to take a rest period that must, insofar as practicable, be taken in the middle of each work period. The rest period is based on the total hours worked daily and must be at the minimum rate of a net ten consecutive minutes for each four-hour work period, or major fraction thereof. The Division of Labor Standards Enforcement (DLSE) considers anything more than two hours to be a "major fraction" of four." A rest period is not required for employees whose total daily work time is less than three and one-half hours. The rest period is counted as time worked and therefore, the employer must pay for such periods.

Pursuant to Labor Code Section 1030 every employer, including the state and any political



subdivision, must provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time the employee has a need to express milk. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission need not be paid. Pursuant to Labor Code Section 1033, the denial of a break or adequate space to express milk may result in the recovery of one hour of pay at the employee's regular rate of pay for *each violation* by filing a wage claim under Labor Code section 226.7. Additionally, an employee may report a violation of the lactation accommodations laws with the Labor Commissioner's Bureau of Field Enforcement (BOFE), and after an inspection or investigation, BOFE may issue a citation for one hundred dollars ($100) for *each day* an employee is denied reasonable break time or adequate space to express milk.

If an employer fails to provide an employee a rest period in accordance with an applicable IWC Order, the employer shall pay the employee one additional hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. Labor Code Section 226.7 Thus, if an employer does not provide all of the rest periods required in a workday, the employee is entitled to one additional hour of pay for that workday, not one additional hour of pay for each rest period that was not provided during that workday.

The rest period is defined as a "net" ten minutes, which means that the rest period begins when the employee reaches an area away from the work area that is appropriate for rest. Employers are required to provide suitable resting facilities that shall be available for employees during working hours in an area separate from the toilet rooms.

the court in *Augustus* also held that on-call rest periods are prohibited. . "[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods." *Augustus v. ABM Security Services, Inc.,* (2016) 5 Cal.5th 257, 269. This court's determination is unique to rest period on-call time and does not apply to other types of on-call issues such as on-call shifts or on-call meal periods, which are subject to different requirements and considerations.

The 10-minute rest period is not designed to be exclusively for use of toilet facilities as evidenced by the fact that the Industrial Welfare Commission requires suitable resting facilities be in an area "separate from toilet rooms." The intent of the Industrial Welfare Commission regarding rest periods is clear: the rest period is not to be confused with or limited to breaks taken by employees to use toilet facilities.

Recall Rights (SB 93) (COVID-19)

This section applies to employers who run hotels, event centers, private clubs, an airport hospitality operation, are airport service providers or that provide building services to office, retail and other commercial buildings.

SB93 is very different in that it does not provide a right of action out of the DLSE (Division of Labor Standards Enforcement). An employee may file a civil action but not directly in court for the recall law (this is a big cost-saving to an employer)

Existing law establishes the Displaced Janitor Opportunity Act, which requires contractors and subcontractors, as defined, that are awarded contracts or subcontracts to provide janitorial or building maintenance services at a particular jobsite or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor and offered continued employment if their performance during that 60-day period is satisfactory. Existing law authorizes an employee who was not retained, or the employee's agent, to bring an enforcement action in a court of competent jurisdiction, as specified. Existing law charges the

Labor Commissioner, as Chief of the Division of Labor Standards Enforcement, with enforcing these provisions.
Existing law defines "awarding authority" to mean any person that awards or otherwise enters into contracts for janitorial or building maintenance services performed within the State of California, including any subcontracts for janitorial or building maintenance services.

This bill would rename the act the **Displaced Janitor and Hotel Worker Opportunity Act** and would extend the provisions of the act to hotel workers. The bill would redefine "awarding authority" under the act to include any person that awards or otherwise enters into contracts for hotel services, which include guest service, as defined, food and beverage service, or cleaning service, performed within the state, as specified. The bill would also redefine "employee" to include a person employed as a service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the state under a contract to provide janitorial or building maintenance services or hotel services.

Employees of hospitality and service industry employers (hotels and private clubs with 50 or more guest rooms, public and private event centers, airport hospitality operations and service providers) who were laid off for COVID-19 related reasons must be notified of job openings for the same or similar positions as the ones they last held. They must be offered available jobs, with priority based on length of service, before new employees can be hired.

Effective April 16, 2021, Labor Code section 2810.8 provides recall rights for qualified employees of covered employers who were employed for six months or longer during the twelve months before January 1, 2020, worked at least two hours per week, and most recently separated from employment because of any non-disciplinary reason related to the COVID pandemic, including lack of business, a government shut-down order, or public health directive. Recall rights end on December 31, 2024.

From January 1, 2021 to September 30, 2021, California required employers with 26 or more employees to provide their workers up to 80 hours of supplemental paid sick leave (SPSL) for COVID-19 related reasons. After September 30, workers who were not paid the SPSL they were entitled to when they were unable to work in 2021 due to COVID-19 can still request pay from their employer or file a claim with the Labor Commissioner.
Exclusion pay is still required under the COVID-19 Emergency Standards for workers who have to quarantine due to a COVID-19 workplace exposure.

Labor Code section 2810.8 provides recall rights for employees in the hospitality industry and in building services who were separated from employment as a result of the COVID pandemic.

Any employer of a covered enterprise must comply with the recall provisions regardless of the number of its employees.

1. How does the recall of laid-off employees happen?

Within five days of a job opening, an employer must offer the available position(s) to laid-off employees who held the same or similar position before the lay-off. ***An employee is allowed five business days to accept an offer, if the employee wants to be rehired***. An employer may make a single offer to the employee with the most seniority or the employer may make multiple contingent offers to a group of employees all of whom are qualified for a position. If multiple laid-off employees accept the same offer, the job(s) must be given to the employee(s) with greatest seniority (based on hire date). If no laid-off employee(s) accepts the job offer(s), the employer may hire anyone else including a new employee to fill the position.

2. How is seniority measured for determining recall rights?

Seniority is based on total length of service with the employer, not on the basis of job seniority. "Length of service" means the total of all periods of time during which an employee has been in active service with the employer, based on the employee's date of hire, including periods of time when the employee was on leave or on vacation.

How must an employer alert an employee of a job offer?

An employer must notify laid-off workers in person or by U.S. Mail, and send a notification by electronic mail and text, if the employer has the employee's email address and mobile phone no.

3. How will an employee learn of a job offer if his/her contact information has changed?

Employers will utilize the residential address, email address, and cell phone numbers on file to notify employees of recall offers. ***Laid-off employees should update employers with all current contact information*** to facilitate the employer contacting them and to avoid missing a recall opportunity.

4. How should an employee notify an employer that he/she accepts a recall offer?

An acceptance must be delivered to the employer within 5 business days. (Saturdays, Sundays, and CA state holidays are not counted.) Preferably the employee should keep a written copy of

his/her acceptance. The best way to keep an accurate record is to respond to the employer's email and retain a copy of the return email.

5. If an employee turns down a job, does the employer have to offer the employee subsequent jobs that are to be filled?

Yes. As each new position(s) becomes available, the employer must notify and offer the job(s) to all qualified laid-off employees who worked at the same or a similar position, including laid-off employees who have previously declined an offer to be re-hired for a prior position.

An employer does not have to recall a non-qualified employee, but the employer must provide the laid-off employee a written notice within 30 days of the date that the employer fills the job with a less senior employee which includes the length of service with the employer of those hired in lieu of that recall, along with all reasons for the decision. An employee will generally be deemed qualified for a position if the employee held the same or similar position at the enterprise at the time of the employee's most recent layoff with the employer. If an employee is not offered recall because of qualifications and it is later determined that he/she was in fact qualified, the employee may be awarded liquidated damages from the time the job was filled by a less senior person.

An employer must keep records for at least three years from the date of a lay-off notice: including the laid-off employee's full name, job classification, date of hire, last known address of residence, email address, telephone number, a copy of the lay-off notice, and copies of all communication between employer and employee concerning employment offers.

A laid-off employee who is not offered an available position for which the employee is qualified in accordance with their seniority may report the violation to the State Labor Commissioner for investigation by the Bureau of Field Enforcement. If the Labor Commissioner determines that an employee's recall rights have been violated the Labor Commissioner may issue a civil penalty citation or file a lawsuit. Civil penalties of $100 per employee may be imposed on the employer for each employee whose rights are violated and the employee can be awarded compensatory liquidated damages of $500 for each day until the violation is cured. Interest will be awarded on all amounts due in accordance with California Civil Code section 3289(b). A court may issue an injunction to enforce recall rights.

Does Labor Code section 2810.8 bar retaliation for asserting rights under Labor Code section 2810.8?

Yes. An employer may not refuse to hire, reduce compensation or take any adverse action against an employee. Additionally, an employer may not deny recall rights to an employee for exercising other rights provided by the Labor Code. An employee who asserts that he/she has been retaliated against should file a retaliation claim with the Labor Commissioner. If retaliation is proven, an employee is entitled to the larger of section 2810.8 liquidated damages or back pay, front pay, the value of benefits and can be ordered reinstated. An employee who suffers retaliation may also be awarded statutory penalties of $10,000 pursuant to Labor Code section 98.6(b)(3). An individual's right to sue for wrongful termination is not limited by Labor Code section 2810.8.

What entities can be held responsible for violations of Labor Code section 2810.8?

Liability for recall violations extends to any employer of a covered enterprise ***and includes a corporate officer or executive,*** *who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, owns or operates an enterprise and employs or exercises control over the wages, hours, or working conditions of any employee.* The definition of "employer" includes a "successor employer" where ownership has changed after a lay-off but the enterprise conducts the same or similar operations as before the COVID pandemic; where the form of the employer has changed during or after the pandemic; where the employer's assets were acquired by another entity conducting the same or similar operations using substantially the same assets; or when an employer relocates operations.