

EmployersLawyer

Confidential California Employer Update

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www.employerslawyer.com

EmployersLawyer

Speakers



Jennifer Shaw, Founder



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Confidential California Employer Update

What is EmployersLawyer?

- Us!
- New California-focused non-traditional law firm built for HR
- 24-7-365 guidance on real workplace issues
- No hourly rates or retainers
- Cost effective, monthly flat rates every employer can afford—starting at \$100 per month!
- Stay tuned for more information at the end of the webinar

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The Usual Disclaimers

- Please do not consider this session to be legal advice; it is not attorney-client privileged (even if we are your attorneys!), but you are receiving extremely valuable information
- We can't cover every possible development, so we are focusing on the ones that impact California employers the most

Federal Developments

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A Potpourri ...

- DOL
- ICE
- OFCCP
- OSHA
- NLRB
- EEOC
- More coming in March's "California Compliance Monthly" webinar!

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U.S. Supreme Court [Ames v. Ohio Department of Youth Services]

- A heterosexual white woman alleged she was passed over for a promotion and later removed from her position, both of which were filled by gay employees; she sued under Title VII, claiming the decisions were based on her sexual orientation
- So-called “reverse discrimination” case
- The Sixth Circuit Court of Appeals applied a heightened “background circumstances” test
- The U.S. Supreme Court reversed, confirming that Title VII applies equally, with no heightened proof standard

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Post-Ames Developments

- 6th Circuit reinstated sex bias case filed by male General Motors employee
- EEOC investigating the impact of Nike's diversity efforts on white employees
- **Lesson learned:** Adopt a new risk analysis!

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Federal Tax Exemptions

- Qualified tips
- Weekly overtime
- Only in effect 2025-2028
- No penalties for 2025

New California Laws

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California's New Minimum Wage

- The minimum wage for employers of any size is \$16.90 an hour
- The minimum annual salary for “white collar” exempt employees is \$70,304 (\$5,858.67 per month)
- Computer professional exemption
 - \$58.85/hr.
 - \$10,214.44/month
 - \$122,573.13/yr.
- Licensed physicians and surgeons: \$107.17/hr.

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Pay Data Reporting Requirements [SB 464]

- 100+ employees
- New data fields (NOT mandatory for 2026)
 - Classification
 - Employment type
 - Weeks worked
- Penalties
- More job categories coming in 2027
- **Lesson learned:** Follow the rules!

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Equal Pay Act [SB 642]

- Pre-2026
 - 15+ employees = provide pay scales to applicants and employees
- New
 - “Pay scale” = good-faith estimate of range (i.e., not “min. wage to \$1M”)
 - “Another” sex, not “opposite” sex
 - Increased time to file and longer “recovery period”
- **Lesson learned:** Self-audits are critical

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Limitations on “Stay-or-Pay” Contracts [AB 692]

- Employers generally cannot require repayment of bonuses, training or education costs as a condition of employment
- Applies to onboarding, orientation, mandatory programs, certifications, and required instruction
- Prohibited at hire, during employment, and upon separation

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Exceptions to AB 692

- Loan repayment assistance/forgiveness programs
- Tuition repayment if:
 - Credential transferrable and not required for current role
 - Terms clearly defined
 - Prorated schedule
 - Limited repayment conditions (e.g., “misconduct”)
- Apprenticeships
- Work-related housing

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Exceptions to AB 692 (cont.)

- Sign on/retention bonuses if:
 - Separate written agreement
 - At least five days to consult counsel
 - Payment prorated > two years without interest
 - Deferral permitted
 - Repayment only for voluntarily quit and “misconduct”
- **Lesson learned:** Either follow the rules or work around them by changing your programs

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Training [SB 303] [SB 513]

- Employee's good faith statements during “bias mitigation training” not actionable
- Include “education and training records” in personnel files
 - Employee's name
 - Trainer
 - Date, duration, “core competencies,” and skills covered
 - Certification earned, if any
- **Lesson learned:** You must stay on top of changing requirements

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Updates to Paid Family Leave Program [SB 590]

- 7/1/28: PFL available for “designated person”
- PFL is not a leave entitlement—only wage replacement
- **Lesson learned:** Utilization will continue increasing

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Use of “Automated Decision-Making Tools” [2 CCR § 11008]

- May result in discrimination
- “Anti-bias testing” and “meaningful human involvement” are required
- Four-year retention period
- Executive Order No. 14365 (*Ensuring a National Policy Framework for Artificial Intelligence*) will drive challenges to the California regulations
- **Lesson learned:** HR will never be truly “automated”

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CalWARN [SB 617]

- New CalWARN notice requirements
- Must include:
 - Statement regarding coordination of reemployment services
 - Local Workforce Development Board's phone + email
 - Description of Rapid Response services
 - Description of CalFresh program + helpline + website
 - Employer's phone + email
- **Lesson learned:** The details matter!

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“Know Your Rights Act” Notice [SB 294]

- Due by 2/1/26
- Provide to new employees and then annually
- Can use Labor Commissioner’s template, but ours is better!
- Notify your employees that they may designate an emergency contact if they are detained or arrested
- **Lesson learned:** California always finds a way!

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Paid Sick Leave

- New poster available on DIR's website
- May be used for:
 - Employee's own diagnosis, care, or treatment of an existing health condition
 - Preventive care
 - Family member's diagnosis, care, treatment, or preventive care
 - Matters related to domestic violence, sexual assault, or stalking
 - Jury duty/court appearances
- **Lesson learned:** Paid sick leave isn't just about being sick!

California Court Decisions and Trends

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Explosion in Wage-Hour Cases

- Most frequently filed cases in California = biggest employers' risk
- Common employer mistakes
 - Meal/rest breaks
 - Overtime
 - Off-the-clock
 - Exempt/non-exempt misclassification
- PAGA filings surging, even with arbitration agreements

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Arbitration Agreement Trends

- Pros
 - Faster resolution than court
 - More predictable outcomes (no jury)
 - Confidential process
 - Streamlined discovery and procedure

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Arbitration Agreement Trends (cont.)

■ Cons

- Strict enforceability and fairness rules
- PAGA claims largely stay in court
- Employer pays, limited appeal rights, and may generate more claims
- May negatively affect employee morale and trust

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Arbitration Agreements [Fuentes v. Empire Nissan, CA Sup. Ct.]

- Arbitration agreement signed by dealership employee may be unenforceable because of tiny font, dense formatting, and poor layout
- Arbitration agreements must be clear, legible, and understandable to employees—a lack of readability undermines “mutual assent”
- Employers bear the burden of presenting agreements in a usable, employee-friendly format
- **Lesson learned:** Employees must be able to read what they sign!

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Failure to Take Action [Carranza v. City of Los Angeles, CA Ct. App]

- A female LAFD captain alleged years of sexually explicit comments and degrading treatment by male colleagues and supervisors, with inadequate response after she complained
- Court upheld a \$4M verdict for sexual harassment and retaliation due to LAFD's failure to take appropriate action after receiving the complaint
- **Lesson learned:** The duties to investigate/remediate misconduct are mandatory

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Mishandling Internal Complaints [Kruitbosch v. Bakersfield Recovery Services, CA Ct. App.]

- Off-duty, off-site harassment by a coworker is not automatically covered by FEHA—the key question is whether the conduct is work-related
- Purely personal misconduct outside work (such as explicit texts and visits to an employee's home) did not trigger employer liability
- An employer's response can independently create liability; mocking a complaint and refusing to act may itself create a hostile work environment
- **Lesson learned:** You may escape liability for the conduct—but not for ignoring it, dismissing it, or making the complainant the punchline

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Beware of Polygraph Testing [McDoniel v. Kavry Management, LLC]

- Employee terminated after failing a polygraph relating to theft
- The court allowed the employee to claim wrongful termination because Labor Code section 432.2 prohibits polygraph testing
- **Lesson learned:** Act on reasonable judgment rather than trying to “prove” misconduct

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Slagel v. Liberty Mutual Insurance Co. [L.A. County Jury Verdict]

- Employee claimed she was pushed out after decades of strong performance due to age bias, criticized and sidelined in favor of younger employees, and then terminated after complaining
- Liberty claimed she violated company policy with an important client
- The court upheld \$103M verdict based in part on the statistics presented regarding the declining numbers of “older” workers
- **Lessons learned:** Disparate impact + bad stats = massive exposure, even without a “smoking gun”; don’t overlook workforce demographics

**And, in Honor of St. Valentine's
Day...**

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Love at Work

- In the news
 - The Coldplay incident
 - Former U.S. Senator Krysten Sinema
 - Secretary of Labor Lori Chavez-DeRemer (oh, the irony!)
- **Lessons learned:**
 - Consider prohibiting relationships between management and subordinates or requiring mandatory disclosure
 - If you require mandatory disclosure, then “love contracts” may be an important tool to reduce potential liability

A Little More About EmployersLawyer

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Why Did We Create EmployersLawyer?

- California employment law is complex
- All employers need accessible and affordable resources, especially small and mid-size organizations
- To harness technology to make better workplace decisions
- To provide a smarter way to stay ahead and out of court
- We care about California!

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Why EmployersLawyer Works

- Built by California employment lawyers who actually defend and advise employers
- Focused on the judgment calls that get HR in trouble
- Designed to catch issues early, when fixing them is still possible
- We provide resources to reduce your potential damages when mistakes occur and problems arise

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The Scoop...

- Three membership plans: Core, Premium, and Signature; designed for your needs, and at a price everyone can afford!
- Virtual legal assistant—ELLA
- “Live” monthly compliance webinar
- Semi-weekly “live” Office Hours
- An energized community of HR professionals
- Greater access to us, depending on the membership level you choose
- And much more!

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Join Us!

- Join today at www.employerslawyer.com and don't pay anything until March 1 (you can cancel anytime)
- Email questions to info@employerslawyer.com (Jen or Joe will respond)
- We always want your feedback!

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Thank You!

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