CALIFORNIA
EMPLOYMENT LAW GUIDE

Federal, state and local governments adopt labor and employment laws to protect the rights, health and compensation of workers.

As a general rule, federal laws supersede state and local laws. However, state and local laws can supplement or provide additional protections to employees and impose additional requirements that employers must follow. When a conflict exists between federal and local requirements, the U.S. Department of Labor instructs employers to follow the law that provides the highest protection or greater benefit to the employee.

This Employment Law Guide provides employers a reference of key state labor and employment laws. Employers can use the content in this guide to learn more about their obligations and liability under state law. When possible, this guide includes direct links to agency guidance and official posters, notices and forms.

Please note that this guide provides a high-level overview of labor and employment standards in the state. Additional requirements may apply or be adopted. Employers are encouraged to consult with knowledgeable legal professionals or to contact stage agencies for legal advice, authorized guidance and official interpretations of these or other employer requirements.

EMPLOYCO USA
The Power to Compete

TABLE OF CONTENTS

RETURN TO **TABLE OF CONTENTS**

RECRUITING AND HIRING

JOB APPLICATION AND INTERVIEW RULES

Both federal and state laws generally prohibit certain types of pre-employment discrimination. In California, the Fair Employment and Housing Act (FEHA) places limits on employers' job advertising, application procedures and pre-employment questioning and medical examinations.

Duty Not to Discriminate

All employers have a duty to conduct recruitment activities in a non-discriminatory manner. This duty applies not only to recruitment activities for paid employment, but also for activities to recruit unpaid interns and participants in other unpaid, limited-duration positions. The FEHA bars employers from discriminating on the basis of **race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military or veteran status.**

In general, employers are prohibited from conducting activities that:

- Restrict, exclude or classify individuals on the basis of a protected class;
- Express a preference for individuals on the basis of a protected class;
- Communicate or use advertising methods to communicate the availability of a job or employment benefit on the basis of a protected class.

Prohibited Inquiries

FEHA prohibits employers from making any inquiry, either verbally or through the use of an application, that is not job-related or that directly or indirectly discriminates on the basis of a class protected under FEHA.

Prohibited pre-employment inquiries include, but are not limited to, questions regarding an applicant's:

- Nationality, lineage, ancestry, national origin, descent or parentage (or that of the applicant's spouse, parent or relative);
- Race, color, complexion, color of eyes or hair, or sexual orientation;
- Religion or religious days observed;
- General health, medical condition or mental or physical disabilities;
- Pregnancy, childbirth or birth control;
- Sex, marital status or number or ages of children or dependents;
- Age, birthdate, date of attendance or completion of school or questions that tend to identify applicants over age 40;
- Arrest records (other than convictions that are not sealed, expunged, or statutorily eradicated); and
- Military service (other than relevant skills obtained).

Applications and Interviews

FEHA prohibits employers from requiring photographs as part of an application and from administering, separating or coding application forms in a manner that discriminates on the basis of any characteristic covered by FEHA. In particular, employers may not refuse to provide, accept or consider applications from only individuals of one sex, individuals with disabilities or individuals over the age of 40.

In addition, all personal interviews must be free of discrimination, and employers must make reasonable accommodations for the needs of persons with disabilities in interviewing situations.

Job Advertising

Under FEHA, employers may not print or circulate any publication or advertisement that expresses any limitation, specification or discrimination against members of any class protected by the FEHA.

Specific unlawful advertising practices include, but are not limited to:

- Creating separate listings of job openings under male and female classifications;
- Advertising a position or employment benefit in a manner the discourages applicants with disabilities from applying for the position; and
- Expressing a preference for individuals under age 40 or expressing a limitation against individuals over age 40.

Medical and Psychological Examinations

FEHA forbids employers from requiring a medical or psychological examination of any applicant. Inquiries regarding whether an applicant has a mental or physical disability or medical condition or regarding the nature and severity of a mental or physical disability or medical condition are also prohibited. However, employers may inquire into the ability of an applicant to perform **job-related functions**. The FEHA's prohibition on medical examinations does not include testing for illegal drug use.

Once an employment offer has been made to an applicant, but prior to the commencement of employment duties, employers may require a medical or psychological examination, provided that:

- The examination or inquiry is job-related and consistent with business necessity; and
- All entering employees in the same job classification are subject to the same examination or inquiry.

An employer may withdraw an offer of employment based on the results of a medical or psychological examination or inquiry only if it is determined that:

- The applicant is unable to perform the essential job duties with or without reasonable accommodation; or
- The applicant's performance of job duties would endanger the health or safety of the applicant or others.

Requiring applicants or employees who have reached the age of 40 to meet physical or medical examination standards that are higher than those standards applied to applicants or employees below that age is also unlawful.

Prohibited Waivers

California law prohibits employers from requiring, as a condition of employment, continued employment, or the receipt of any employment-related benefits, any job applicant or employee to waive any right, forum or procedure for a violation of the FEHA.

HIRING DECISIONS

As long as age is not a factor in the decision, employers are not barred from selecting an individual who is more qualified or experienced than other applicants. The FEHA allows employers to give candidates who have a record of seniority or prior service with that employer preference over a candidate who has no such record. However, where candidates have an equal record of seniority or time in prior service, employers may not discriminate in hiring on the basis of age.

SALARY HISTORIES

Since Jan. 1, 2018, all employers are prohibited from:

- Relying on an applicant's salary history to determine whether to offer employment or what salary to offer; and
- Seeking salary history information, including compensation and benefits, about an applicant.

In addition, employers must provide an applicant who requests it with a salary or hourly wage range for the position being considered. This obligation generally applies only if an applicant requests the pay scale after completing an initial interview for a position.

These restrictions and obligations do not apply to applicants who are current employees, and employers are not prohibited from asking applicants about their salary expectations for the positions they applied for. Also, if an applicant voluntarily, without prompting, provides salary history information to a prospective employer, that employer may rely on and consider that information when determining the salary offer for that applicant.

Pay Scale Disclosure Requirements - Effective Jan. 1, 2023

As of Jan. 1, 2023, Senate Bill 1162 amended the FEHA to require:

- All employers to provide the pay scale of an employee's position to the employee upon the employee's request and of a position being applied for by an applicant, upon the applicant's request; and
- Employers with 15 or more employees to include the pay scale for each position in any job posting for the position.

The California Labor Commissioner provides guidance, as summarized below, on these requirements in questions 27 through 34 of its Equal Pay Law FAQs.

Pay Scale

"Pay scale" means the salary or hourly wage range that the employer reasonably expects to pay for the position. If an employer intends to pay a set hourly amount or a set piece rate amount rather than a pay range, the employer may provide that set hourly rate or set piece rate. If a position's hourly or salary wage is based on a commission, then the commission range the employer reasonably expects to pay for the position must be provided.

Any compensation or tangible benefits, such as bonuses or tips, provided in addition to a salary or hourly wage do not have to–but may–be included.

Job Postings

To determine whether an employer has 15 or more employees and therefore must include pay scales in job postings, employers should follow the principles in the California Labor Commissioner's 2022 guidance related to COVID-19. Under that guidance:

- Employers must make a reasonable and good faith determination of its workforce size, recognizing that when there is an ambiguity, courts generally look for a reasonable interpretation that is most favorable to workers; and
- Any individual performing any kind of compensable work for an employer that is not a bona fide independent contractor is considered and counted as an employee. This includes salaried executives, part-time workers, minors and new hires.

The Labor Commissioner's FAQs also clarify that at least one of the employees must be currently located in California.

If an employer with 15 or more employees engages a third party to announce, post, publish or otherwise make known a job posting it must provide the pay scale to the third party and the third party must include it within the job posting. This means that the pay scale must be included within the job posting for any position that may ever be filled in California, either in-person or remotely.

Finally, employers may not link to the salary range in an electronic posting or include a QR code in a paper posting that will take an applicant to the salary information. The pay scale must be included within the actual posting.

BACKGROUND CHECKS – CRIMINAL HISTORY LAW

Several states have enacted laws, commonly known as "ban the box" laws, that limit employers' ability to seek and use information about job applicants' criminal histories. These provisions generally prohibit employers from automatically disqualifying applicants based on their criminal backgrounds.

California is among the states that have enacted a ban the box law. Under amendments that became effective as of Jan. 1, 2018, California's ban the box law applies to public and private employers with five or more employees in the state (with limited exceptions). Previously, the law only applied to state and local agencies. This Employment Law Summary provides a general overview of the amended law.

Prohibited Actions

California's ban the box law does not prohibit employers from conducting conviction history background checks on job applicants. However, the law does prohibit all subject employers from:

- Asking about an applicant's conviction history on an employment application;
- Asking about or considering an applicant's conviction history before making a conditional employment offer;
- Considering, distributing or disseminating certain information about an applicant while conducting a conviction history background check; and
- Interfering with, restraining or denying the exercise of, or the attempt to exercise, any right under the law.

Information about an applicant that an employer may not consider, distribute or disseminate while conducting a criminal history background check includes any:

- Arrests that did not result in a conviction (with limited exceptions);
- Referrals to or participation in pretrial or post-trial diversion programs;
- Convictions that have been sealed, dismissed, expunged or statutorily eradicated; and
- Effective Jan. 1, 2019, convictions for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.

Fair Chance Requirements

If an employer subject to California's ban the box law intends to deny employment to an applicant based on his or her conviction history (even if only in part), the employer must first perform an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job. For this assessment, the employer must consider:

- The nature and gravity of the offense or conduct;
- The amount of time since the offense or conduct and completion of the sentence; and
- The nature of the job held or sought.

If the employer makes a preliminary decision that the applicant's conviction history disqualifies him or her from employment, the employer must notify the applicant in writing. This notification does not have to justify or explain the reasoning behind the preliminary decision. However, the written notice must include:

- The disqualifying conviction upon which the employer based the preliminary decision;
- A copy of the conviction history report, if any; and
- An explanation of the applicant's right to respond before the decision becomes final and the deadline for his or her response.

As part of the explanation of an applicant's rights, the notice must also inform the applicant that his or her response may include:

- Evidence challenging the accuracy of the conviction history report; and
- Evidence of any rehabilitation or mitigating circumstances.

After providing its preliminary decision notice, the employer must give the applicant at least five business days to submit a written response. If the applicant submits a timely response indicating that he or she challenges the accuracy of the conviction and is taking specific steps to obtain supporting evidence, the employer must give him or her at least five additional business days to submit his or her complete response. During these time periods, the employer may not make any final decisions regarding the applicant's employment. Employers are also prohibited from making final decisions before they consider any evidence that an applicant submits within the applicable time periods.

If an employer's final decision is to deny employment, the employer must give written notice to the applicant. This notification must include information about:

- Any existing procedure the employer has for the applicant to challenge or request reconsideration of the decision; and
- The applicant's right to file a complaint with the California Department of Fair Employment and Housing.

Exceptions

The prohibitions and requirements under California's ban the box law do not apply for:

- Positions within a criminal justice agency;
- Farm labor contractor positions;
- Positions for which a state or local law requires a public agency to conduct conviction history background checks; or
- Employers that are subject to state, federal or local laws that require them to conduct background checks or to restrict employment based on criminal history.

SOCIAL MEDIA PRIVACY

Employers are prohibited from requiring or requesting that an employee or applicant do any of the following:

- Disclose a username or password for the purpose of accessing personal social media.
- Access personal social media in the presence of the employer.
- Divulge any personal social media, except in the limited circumstances explained below.

"Social Media" is defined as an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or internet web site profiles or locations.

The law does not affect an employer's existing rights and obligations to request that an employee divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding. The law also does not prohibit an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

IMMIGRATION AND EMPLOYMENT ELIGIBILITY VERIFICATION

California employers are generally required to:

- Provide a **notice** (English, Spanish) to each current employee of any inspections of federal Forms I-9 or other employment records conducted by an immigration agency **within 72 hours** of receiving notice of the inspection.
- Upon request, provide an affected employee a copy of the Notice of Inspection of Forms I-9 received from a federal agency.
- Provide to each affected employee a **copy of the immigration agency notice** that provides the inspection results **within 72 hours** of receipt. In addition, the employer must also provide to each affected employee **written notice** of the employer's and affected employee's obligations arising from the inspection results.

California employers are generally prohibited from:

- Requesting more or different documents than are required under federal law;
- Refusing to honor documents tendered that on their face reasonably appear to be genuine;
- Refusing to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work;
- Using the federal E-Verify system to check the employment authorization status of a person at a time or manner not required under federal law;
- Threatening to contact or contacting any government or police authority regarding an employee's immigration status; or
- Reverifying whether a current employee is authorized to work in the United States, if the reverification process violates federal law (United States Code, Title 8, Section 1324a(b)). However, employers are permitted to review an employee's work authorization if the employer finds out the employee is, or has become, unauthorized to be employed in the United States.

NEW HIRES

New Hire Forms

In addition to the forms required by federal law, California employers must provide the following forms to new hires:

- Form DE 4, Employee's Withholding Allowance Certificate
- Workers' Compensation Pamphlet (Spanish)
- Programs for the Unemployed (DE 2320) (Spanish)
- Disability Insurance Provisions (DE 2515) (Spanish)
- Paid Family Leave (DE 2511) (Spanish)
- Either the sexual harassment Poster (Spanish) or Fact Sheet (Spanish) - click here for additional languages.
- Wage Theft Prevention Act (DLSE-NTE) (Spanish)
- Notice of Rights of Victims of Domestic Violence, Sexual Assault, and Stalking (Spanish)

New Hire Reporting

California employers generally must report the following information for each newly hired employee **within 20 days** of the date of hire:

- Employee's name (first name, middle initial, last name), home address, Social Security number, and start-of-work date.
- Employer's business name and address, contact person and phone number, California employer payroll tax account number, Federal Employer Identification Number (FEIN), and Branch Code (if applicable).

Employers can most easily submit this information one of two ways:

- Online through California's e-Services for Business; or
- By faxing or mailing Form DE 34 to the California Employment Development Department.

RETURN TO **TABLE OF CONTENTS**

EMPLOYEE COMPENSATION AND WAGES

MINIMUM WAGE

Federal minimum wage law is governed by the Fair Labor Standards Act (FLSA). The current federal minimum wage rate is $7.25 per hour for nonexempt employees. California law complements federal law and, in some cases, prescribes more stringent or additional requirements that employers must follow. Whenever both state and federal laws apply, employers should comply with the law most favorable to their employees.

The Division of Labor Standards Enforcement (DLSE), part of the California Department of Industrial Relations, enforces and investigates minimum wage violation claims.

State Minimum Wage Rate

Under California law, "employee wages" include the entire amount of compensation employees receive for their labor or services. Wages may be fixed or based on time, task, piece, commission or other factors.

As of Jan. 1, 2023, California's minimum wage rate no longer depends on employer size and will be adjusted annually to account for the cost of inflation. The table below outlines recent minimum wage rates and their respective effective dates. Employers should note that California law allows the governor to temporarily suspend a rate increase if the state's economic condition does not support it.

Effective date	Jan. 1, 2023	Jan. 1, 2024
Minimum Wage Rate (per hour)	$15.50	$16

Tipped Employee Wages

California law does not allow employers to deduct any tip credits from their employees' wages or to pay tipped employees less than the state minimum wage rate. Tip payments include any tip, gratuity, money or other gift a patron gives an employee over and above the actual amount of the goods, food, drink, items or services the patron received from that business.

Meals and Lodging Credits

Employee wages may include a portion of the cost of employer-provided meals and lodging. Employees must voluntarily agree in writing to these meal and lodging credits. Employers should verify the maximum amount of meal and lodging credits they may use before applying them to employee wages.

In addition, special rules apply for sheepherders and employees of organized camps. Specifically:

- Sheepherder wages may not be offset by meal and lodging credits; and
- Organized camps may deduct the entire value of meals and lodging from the salary of a student-employee, camp counselor or program counselor.

Please refer to the California wage orders for more information on industry-specific meal and lodging credits.

Employees with Disabilities

California law no longer allows employers to pay wages below the state's minimum wage rate to employees with mental or physical disabilities. In addition, the state's Department of Industrial Relations stopped issuing new subminimum wage licenses on Jan. 1, 2022. However, employers with current licenses may be allowed to renew existing licenses under limited conditions.

Nevertheless, California will continue to allow nonprofit organizations, such as sheltered workshops and rehabilitation facilities, to pay subminimum wage rates to employees with disabilities without requiring individual licenses of these employees until Jan. 1, 2025.

The bill that repealed subminimum wages also requires the State Council on Developmental Disabilities, in consultation with stakeholders and relevant state agencies, to develop a multiyear phaseout plan so that subminimum wages for workers with disabilities cease by Jan. 1, 2025.

Students and Learners

California law allows employers operating an organized camp to pay their student-employees, camp counselors and program counselors as low as 85% of the state minimum wage rate. These employers may also deduct the entire value of meals and lodging they provide to these employees.

In addition, employers may obtain special DLSE licenses that allow them to pay their employees a wage as low as 85% of the state's minimum wage rate for each of their first 160 hours of employment in occupations in which they have no previous similar or related experience.

Other Subminimum Wage Rates

California law allows employers to pay wage rates below the minimum under certain circumstances. Specifically:

Employers operating an organized camp may pay their student-employees, camp counselors and program counselors as low as 85% of the state minimum wage rate. These employers may also deduct the entire value of meals and lodging they provide to these employees.

Employers may also obtain special DLSE licenses that allow them to pay as low as 85% of the state's minimum wage rate for each of their employees' first 160 hours of employment in occupations in which they have no previous similar or related experience.

Minimum Wage Rate Exemptions

California's minimum wage rate requirements do not apply to employees in certain occupations and industries. When claiming an exemption, employers should carefully review and apply all qualifications and requirements for that exemption. Notable exemptions apply to:

- Individuals who are closely related to their employer (parent, spouse or child);
- Outside sales personnel; and
- Individuals who qualify for an exemption under a California wage order.

Notice and Postings

Employers must post and maintain updated information on the state's minimum wage rate in their employees' workplaces. Employers may use the most current minimum wage poster to satisfy these requirements. Employers covered under one of California's industry-specific wage orders must also display a copy of the applicable wage order.

COMPENSABLE TIME

Generally, employers must pay their employees for every hour of compensable time. Compensable time usually includes every hour (or portion of an hour) an employee is required or allowed to be on duty. An employee is on-duty when the employer controls how he or she uses his or her time, including:

- Any time the employee is permitted or required to work;
- Any periods the employee must wait for an assignment; and
- Mandated recovery periods.

In certain circumstances, compensable time may include periods of time when an employee was not performing any activities but was still engaged to wait.

Compensable time does not include off-duty periods, where the employee is completely relieved from all work responsibilities or assignments and is free to pursue his or her own interests.

Security Screenings

With its decision in Frlekin v. Apple, Inc. (Frlekin) the California Supreme Court clarified that, under state law, compensable time includes the time an employee spends on the employer's premises waiting for, and undergoing, mandatory exit searches of bags, packages, or personal technology devices (such as iPhones) that are voluntarily brought to work purely for personal convenience.

In Frlekin, the plaintiffs sued their employer, Apple Inc. (Apple), for unpaid minimum and overtime wages for the time they spent waiting for and undergoing Apple's exit searches. Apple required its employees to clock out before submitting to thorough security screenings at the end of their work shift and leaving Apple's premises. The screenings could be lengthy and required employees to wait for extended periods of time.

Under California's Wage Order 7 (the controlling law in this case), "hours worked" is defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Emphasis added.)

The court in this case concluded that an employer is controlling an employee's time when it requires the employee to submit to an exit search before exiting the employer's premises. As a result, the court determined that the time employees spend undergoing exit searches is compensable as "hours worked" under California labor law.

Even though security screening cases are uncommon under federal law, this court decision seems to contradict the U.S. Supreme Court's decision in Integrity Staffing Solutions, Inc. v. Busk, holding that time spent awaiting bag checks was not compensable time under the Fair Labor Standards Act (FLSA). Employers will want to understand the difference between these two cases and determine whether state or federal law applies, based on their specific circumstances.

Finally, the California Supreme Court also indicated that the Frlekin decision applies retroactively, meaning that employers that adjust their security screening and other off-the-clock practices may also need to go back a few years to determine whether they are liable for unpaid wages to their employees.

Traveling Time

An employee's commute, or regular home-to-work travel time, is generally not compensable time. Home-to-work travel is a normal incident of employment, regardless of whether the employee works at a fixed location or at different job sites. This is the case even if employees commute in a vehicle that is owned, leased or subsidized by the employer and is used for ridesharing (as defined by the California Vehicle Code).

Workday and Workweek

A workweek in California is a fixed period of 168 hours, or seven consecutive 24-hour workdays.

The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. A workday is any consecutive 24-hour period commencing at the same time each calendar day. California recognizes the eight-hour workday as a full day's work.

Maximum Work Hours

For certain industries, state law regulates the maximum number of hours an employee can work per workday, per workweek or before a prolonged rest break becomes mandatory.

Maximum work hour restrictions apply for employees in the following industries:

- Trains and railroads (operators can work up to 12 hours per workday, while individuals who dispatch, report, transmit, receive or deliver orders affecting train movements can work up to nine hours in any 24-hour period);
- Underground mines, smelters and plants used for reducing or refining ores or metals (employees can work up to eight hours within any 24-hour period); and
- Pharmacies (employees, except registered pharmacists, cannot work more than an average of nine hours per day, 108 hours during two consecutive workweeks or 12 days in any two consecutive workweeks).

In general, employers that violate these industry-specific regulations are subject to a variety of penalties that include criminal charges, fines, imprisonment and administrative sanctions. However, some exceptions apply for certain exempted individuals, in cases where controlling bona fide collective bargaining agreements exist and during a state of emergency.

Making up Work Time

Under California law, employers can allow employees to make up any regularly scheduled hours that are missed because of personal obligations. Make-up work time requests and authorizations should be issued in writing. However, employers are prohibited from encouraging or soliciting an employee to request personal time off and then use make-up time within the same week to compensate for time lost.

Employers that allow make-up work time must include make-up hours when calculating an employee's compensable time for any particular workweek if make-up time causes the employee to work more than 11 hours during a workday or 40 hours during a workweek.

OVERTIME PAY

In California, the overtime wage rate depends on when the overtime work takes place, as described below. Because overtime calculations depend on the number of hours worked per day or per week, employers cannot average the hours an employee works during one day or one week with the hours the employee works on any other workday or workweek.

Overtime Pay Rate

The table below provides an overview of overtime pay rates in California.

Overtime Rate	Hours of Work
1.5 times the regular wage rate	• More than 40 during a workweek (45 for domestic work employee) • More than 8 during a workday (more than 9 for domestic work employee) • During the first 8 hours of the 7th workday
Twice the regular wage rate	• More than 12 during workday • More than 8 during 7th workday

Alternative Work Schedules

Employers and their employees can agree on an alternative work schedule that permits employees to work up to 10 hours during a workday without accruing overtime. However, overtime regulations still apply for any hours employees work over 40 during an alternative work schedule week.

Before adopting an alternative work schedule, employers must propose the alternative schedule to their employees. The proposal can consist of:

- A single work schedule for all affected employees; or
- Several work schedule options that each employee can choose from.

A proposal can only be approved if at least two-thirds of all affected employees vote to adopt it. The results of any election to adopt an alternative schedule must be reported to the DLSE within 30 days of when the results are final.

Under an alternative work schedule, employers must pay their employees overtime wages for certain hours worked outside of the alternative work schedule, as shown in the table below:

Hours Worked	Overtime Wage Rate
Over 8 hours, up to 12 hours, during a regularly scheduled workday	One and one-half the employee's regular rate
Over 12 hours during a regularly scheduled workday	Twice the employee's regular rate
Over 8 hours during any day beyond the employee's regularly scheduled workday	Twice the employee's regular rate

Employers may not reduce an employee's regular wage rate solely because an alternative work schedule has been adopted, repealed or nullified. Employers must also make reasonable efforts to find a work schedule that does not exceed eight hours in a workday to accommodate affected employees who are unable to work the alternative schedule hours (for example, because of the employee's religious beliefs or observances that conflict with the adopted alternative work schedule).

Calculating the Regular Rate of Pay

An employee's regular wage rate is the actual rate of pay he or she receives for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before they can determine applicable overtime wages. An employee's regular rate can vary from week to week and may be different from the employee's contractual rate of pay.

An employee's regular rate for a specific work period is calculated by dividing the employee's entire compensation for a workweek by the number of hours the employee worked during that period. An employee's entire compensation is all compensation paid to the employee. Generally, this includes the employee's hourly rate, shift differential, non-discretionary bonuses, production bonuses and commissions, and excludes reimbursements for business expenses, bona fide gifts, discretionary bonuses, employer-investment contributions and payment for non-working hours (for example, pay for vacation, sick leave or jury duty).

A workweek in California is a fixed period of 168 hours, or seven consecutive 24-hour workdays. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. To determine the number of hours an employee works during a workweek, the employer must consider any time during which the employee was subject to the employer's control. This includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;
- Cleaning or performing other "off the clock" duties; and
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

Overtime Exemptions

California also recognizes a fair number of exemptions to the state's overtime laws. The DIR has published the following chart as an overview of overtime wage exemptions under the state's Industrial Welfare Commission (IWC) wage orders.

q	Affected Employees	Exemption Under IWC Order
All orders, Section 1	Executive, administrative and professional employees	Sections 3 through 12 of the orders (3 through 11 for Order 16-2001) do not apply.
All orders, Section 1, except Orders 14 and 16	Employees in the computer software field who are paid on an hourly basis and meet all of the other requirements set forth in the Orders.	Exempt from orders (under "Professional" employee classification).
All orders, Section 1, except Orders 14 and 15	Employees directly employed by the state or any political subdivision thereof, including any city, county or special district.	Exempt from orders, except Sections 1, 2, 4, 10 and 20.
All orders by operation of law (see Labor Code Section 1171)	Outside salespersons	Exempt from orders
All orders, Section 1	Any individual who is the parent, spouse, child or legally adopted child of the employer.	Exempt from orders
All orders	Any individual participating in a national service program, such as AmeriCorps.	Exempt from orders
All orders, except Orders 11, 12, 15, and 16	Drivers whose hours are regulated by the U.S. Department of Transportation Code of Federal Regulation, Title 49, Sections 395.1 to 395.13, Hours of Service of Drivers	Exempt from overtime provisions
All orders, except Orders 11, 12, 15, and 16	Drivers whose hours are regulated by Title 13 of the California Code of Regulations, subchapter 6.5, section 1200 et seq.	Exempt from overtime provisions
All orders	Employees covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work and working conditions, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30% more than the state minimum wage.	Exempt from overtime provisions
Orders 4 and 7	Employees (except minors) whose earnings exceed one and one-half times the minimum wage and more than half their compensation represents commissions.	Exempt from overtime provisions
Order 5	Student nurses in a school accredited by the California Board of Registered Nursing or by the Board of Vocational Nurse and Psychiatric Technician Examiners.	Exempt from Order 5, except Sections 1, 2, 4, 10, and 20.
Order 9	Employees who have entered into a collective bargaining agreement under the Railway Labor Act.	Exempt from Order 9, except Sections 4, 10, 11, 12, 20, and 22
Order 9	Taxicab drivers	Exempt from overtime provisions
Order 9	Airline employees who work over 40 but not more than 60 hours during the workweek due to a temporary modification in their normal work schedule not required by the employer and arranged at the request of the employee	Exempt from overtime provisions
Order 10	Full-time carnival ride operators employed by a traveling carnival	Exempt from Order 10, except Sections 1, 2, 4, 10, and 20
Order 10	Crew members employed on a commercial fishing boat (Fish and Game Code Section 7920 et seq.)	Exempt from overtime provisions
Orders 10, 11, and 12	Professional actors	Exempt from orders, except Sections 1, 2, 4, 10, and 20
Order 10	Employees whose duties are exclusively those of a motion picture projectionist	Exempt from overtime provisions
Order 11	An announcer, news editor or chief engineer employed by a radio or television station in a city or town with a population of 25,000 or less	Exempt from overtime provisions
Order 14	Any employee who is engaged in work that is primarily intellectual, managerial or creative, and which requires exercise of discretion and independent judgment, and for which the remuneration is not less than two times the monthly state minimum wage for full-time employment. Note: This exemption in Wage Order 14 would have to be harmonized with Labor Code section 515(a) for overtime purposes.	Exempt from order
Order 15	Personal attendants not covered under the Domestic Worker Bill of Rights	Exempt from order, except Sections 1, 2, 4, 10, and 15
Order 15	Any person under the age of 18 who is employed as a babysitter for a minor child of the employer in the employer's home.	Exempt from order

Source: California Department of Industrial Relations

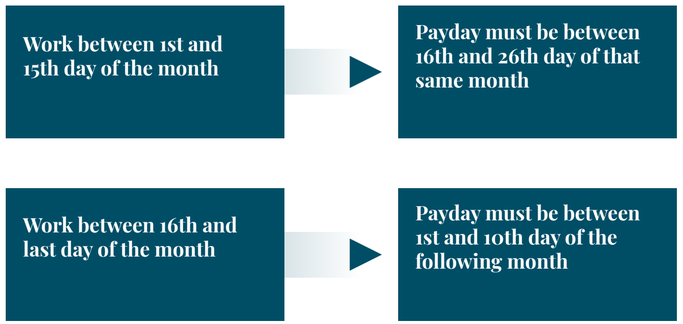
WAGE PAYMENT

California law requires employers to pay wages in lawful United States currency with cash, check, direct deposit (requires voluntary employee authorization), pay card (such as a pre-paid debit card) or any other means of payment that pose no cost to the employee. The Division of Labor Standards Enforcement (DLSE), part of the California Department of Industrial Relations, enforces wage payment standards throughout the state.

Frequency of Payment

California law requires employers to pay wages in lawful United States currency with cash, check, direct deposit (requires voluntary employee authorization), pay card (such as a pre-paid debit card) or any other means of payment that pose no cost to the employee.

Employers must pay employee wages at least twice per month, on established, regular paydays.



Employers are permitted to pay wages at earlier days or at more frequent intervals.

Exceptions

Frequency-of-payment regulations do not apply to all types of wages. For example, overtime wages must be paid by the following regular period's payday and wages paid due to layoff, temporary work, employee resignation and commissions may be paid at different times.

In addition, certain employees are exempt, including:

- Salaried executive, administrative and professional employees covered by the FLSA (may be paid once per month, on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time);
- Employees covered by a valid collective bargaining agreement;
- Employees paid on a weekly basis;
- Licensed vehicle dealer employees (may be paid once per month on a day designated in advance by their employers); and
- Domestic and agricultural employees (may be paid once per month on a previously determined payday, if they receive board and lodging from their employers; paydays may not be more than 31 days apart). "Agricultural employees" includes individuals who work with crops, vineyards, stock and poultry. However, those employed by farm labor contractors do not qualify for this exception. Farm labor contractors must pay wages at least once per week.

Regular Pay Day Notice

California law requires employers to post a notice, conspicuously and in a place where employees frequently pass by and can see it, indicating the date, time and place of payment (if applicable). Failure to post this notice will be considered prima facie evidence of a wage payment violation.

Payroll Deposit

Employers in the following industries are required to maintain a deposit in a bank or other financial institution of sufficient size and liquidity to cover all of their payroll obligations:

- Mining (except for petroleum, persons with a free and unencumbered title to the property and partners of a mining partnership);
- Logging (logging and sawmill operation contractors, except for persons with a free and unencumbered title to the property);
- Door-to-door selling or telephone solicitation; and
- Theatrical enterprises (except persons with a free and unencumbered title to the property on which the theatrical enterprise is produced). A theatrical enterprise is the production of any circus, vaudeville, carnival, revues, variety shows, musical comedies, operettas, opera, drama, theatrical, endurance contest, walkathon, marathon, derby or other entertainments, exhibitions or performances.

Employers subject to the payroll deposit requirement must display a notice that indicates the name and address of the bank or trust company that holds the payroll deposit. Failure to display this information in a conspicuous place will be considered prima facie evidence of a violation.

Reimbursements for Business Expenses

State law requires employers to reimburse their employees for all necessary expenditures or losses the employees incur as a direct consequence of the discharge of their duties, or when they follow employer instructions. This requirement applies even for unlawful acts, unless employees know the instructions are unlawful at the time they receive them.

Unpaid reimbursements are subject to accrued interest if the matter is resolved in a court of law. Interest will accrue from the date on which the expense was incurred.

Disputed wages

If a dispute over the amount of wages due to an employee arises, employers must pay any undisputed amount according to the requirements described above. An employee that accepts undisputed wages does not waive any right to pursue collecting the disputed portion.

If the DLSE determines any wages are owed to the employee, it will issue a notification to the employer. Employers must pay those wages within 10 days of receiving a notification. Employers that are able but willfully fail to pay these wages within the 10-day period may be required to pay three times the amount of any damages, in addition to any other applicable penalty.

WITHHOLDINGS AND DEDUCTIONS

Employers may not withhold an employee's wages (in whole or in part), unless the withholding or deduction is authorized (by law or by the employee) in writing.

Common deductions authorized by law include taxes, union dues, FICA contributions, garnishments and court-ordered deductions (such as child support). Common deductions authorized by employees include funds for employee participation in hospitalization and medical insurance plans, savings plans and deposits to financial institutions, stock purchases, charitable donations, retirement plans, supplemental retirement plans, loan payments, loan or wage advances, employer goods or services and employer equipment or property. These authorizations must be made through a valid and legal agreement.

Employers must record each withholding with accuracy. In general, wage deductions and withholdings cannot reduce an employee's gross wages below the minimum wage rate, unless authorized by law. Employers may not derive any financial gain from wage deductions.

Wage Assignments

A wage assignment occurs when an individual gives another party the right to collect his or her future wages. Wage assignments do not include deductions made at the employee's request for:

- Life, retirement, disability or unemployment insurance premiums;
- Taxes owed by the employee;
- Contributions to death, retirement, disability, unemployment or other benefit funds, plans or systems;
- Employer goods or services; or
- Charitable, educational, patriotic or similar purposes.

Valid wage assignments must be made in writing and signed by the wage earner, and must include written statements from the employee specifying:

- His or her marital status;
- Whether he or she is an adult; and
- That no other assignment exists in connection with the same transaction.

Assignments made by a married person must include either the spouse's written consent or a written statement that the spouses are legally separated or divorced and living separately. Assignments made by a minor must include a parent or guardian's written consent. A notarized copy of the assignment must be filed with the employer. Employers may rely on the employee's statements in the assignment without incurring any liability, and without having to verify whether they are true. When making a wage assignment, an employee may not:

- Assign more than 50% of his or her wages;
- Assign wages while an earnings withholding order is in force;
- Have more than one wage assignment in force; or
- Assign wages that they have not yet earned, unless the assignment is made to cover for life necessities (certain restrictions may apply).

Wage assignments may be revoked at any time.

Wage Statements

Employers must provide each employee with an itemized wage statement at the time wages are paid. The itemized wage statement must show:

- Gross wages earned;
- The employee's applicable wage rate (or rates);
- The number of hours the employee worked for each applicable rate;
- The total number of hours worked (unless the employee is salaried and is exempt from overtime wage payment provisions);
- The number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All withholdings and deductions for that pay period (must be printed in indelible ink);
- Net wages earned;
- The inclusive dates of the pay period;
- The employee's name and the last four digits of his or her Social Security (or other identification) number; and
- The employer's name and address.

Employers must keep copies of these records for at least three years, and must allow current and former employees to inspect or copy their own statements within 21 days of receiving a request. Employers may take reasonable steps to protect the identity of a current or former employee. Employees are responsible for the cost of copying their statements.

LAST PAYMENT OF WAGES

Unless a valid collective bargaining agreement applies, the table below outlines the requirements for paying an employee's last wages.

Discharge	At the time of discharge
Resignation*	• At least 72 hours' notice: at the time of resignation • No notice: no later than 72 hours after resignation *Does not include agreements to work for a definite term
Layoff	• Employment in oil drilling industry: no later than 24 hours after layoff (excluding weekends and holidays) • Employment in canning, curing or drying perishable fruit, fish or vegetables: no later than 72 hours after layoff
Any Reason	• Employment in motion picture production or broadcasting • By the next regular payday

When calculating an employee's last wages, employers must include any unused vacation time and other vested employment benefits. In general, an employee's last wages may be paid by mail, if the employee requests it and provides a mailing address. Payments that are mailed must be postmarked within the required payment period.

MEAL AND REST BREAKS

California law requires employers to provide rest and break periods in certain circumstances.

Day's Rest

Employers may not require employees to work more than six days per workweek if the employee's work schedule is for more than 30 hours per week or six hours per day. However, this restriction does not apply to agricultural occupations. The DLSE may also exempt any employer or employees from this restriction during times of emergency or hardship, including situations where work is performed to protect life or property from loss or destruction.

When an exception applies, employees may be entitled to receive the accumulated number of rest days they were unable to use during that time. Violations of this restriction constitute a misdemeanor.

Recovery Period

Unless an exemption applies, employers cannot require employees to work during a recovery period. A recovery period is a break provided to certain employees to prevent heat illness. The prohibition on employers applies to recovery periods mandated by law or required by:

- The Industrial Welfare Commission;
- The Occupational Safety and Health Standards Board; or
- The Division of Occupational Safety and Health.

Employers must count mandated recovery periods as compensable time and must compensate their employees accordingly. Employers that fail to provide a required recovery period to their employees must compensate their employees with an additional hour of work, at the employee's regular wage rate, for each workday when the recovery period is not provided. On July 15, 2021, the California Supreme Court ruled in Ferra v. Loews Hollywood Hotel, LLC that employers must use the regular rate of pay rather than the hourly wage rate when paying employees for noncompliant meal and rest periods.

Meal Breaks

Employers cannot allow their employees to work more than five hours without taking a 30-minute meal break. The meal break requirement can be waived by the employee's and the employer's mutual consent if the employee's shift lasts fewer than six hours. A second 30-minute meal period is required if the employee's shift is longer than 10 hours. The second meal period can also be waived by mutual consent if the employee's shift lasts fewer than 12 hours and the first meal period was not waived.

In certain industries, state law also dictates when employers must provide this meal break. For example, employers must provide a meal break between the third and fifth hour of the shift for employees that operate a sawmill, shake-mill, shinglemill, logging camp, planing mill, veneer mill, plywood plant or any other type of plant or mill which processes or manufactures any lumber, lumber products or allied wood products. Violations of this requirement constitute a misdemeanor, punishable by a fine of between $100 and $400.

Employers are generally not required to compensate their employees for this 30-minute break, unless it is impractical for the employees to take an uninterrupted meal break because of the nature of the business activity or other circumstances. In these cases, employees must also be allowed to consume a meal while "on the job." The DLSE may allow some exceptions to this rule if it determines that the exception will not jeopardize the health and welfare of the affected employees.

Meal break requirements do not apply to:

Wholesale Baking	Employee must be: • Subject to a California wage order; • Covered by a collective bargaining agreement that requires a 35-hour workweek of five 7-hour workdays; • Paid at least one and one-half their regular wage rate for any overtime hours worked; and • Allowed to take at least one 10-minute break every two hours.
Motion Picture or Broadcasting	Employee must be covered by a valid collective bargaining agreement that: • Provides for meal periods; and • Includes a monetary remedy if the employee is not allowed meal breaks.
Construction, Commercial Driving, Security Services and Electric, Gas or Local Publicly Owned Electric Utilities	Employee must be covered by a valid collective bargaining agreement that: • Specifies employee wages, work hours and working conditions; • Specifies employee meal periods; • Requires final and binding arbitration for disputes related to meal periods and overtime wage rates; and • Guarantees a regular hourly wage rate of at least 130% of the state minimum wage rate.

Nursing Mothers

California law requires employers to provide nursing mothers with reasonable time each day to express breast milk for her infant child. The break can run concurrently with any other break already provided to affected employees. Break times that do not run concurrently with a rest time required by a wage order must be unpaid.

Employers must make reasonable efforts to provide a location close to the employee's work area, other than a toilet stall, where the employee may take this break in privacy. This may include the employee's work area, if all the criteria are met.

The lactation room must:

- Be safe, clean and free of hazardous materials;
- Contain a surface for a breast pump and personal items;
- Contain a place to sit; and
- Have access to electricity or alternative devices (extension cords, charging stations) needed to operate breast pumps.

In addition, employers must:

- Provide lactating employees with access to a sink with running water and a suitable place for storing expressed milk, such as a refrigerator. Water and storage access must be in close proximity to the employee's workspace.
- Implement a lactation policy (with required specified information) and include it in their employee handbook or other set of policies made available to employees. The policy must be distributed to new employees upon hiring and when an employee asks about or requests parental leave.

Employers with fewer than 50 employees may qualify for an exemption from one of the requirements listed above if they can prove that providing the accommodation would cause the employer significant difficulty or expense in relation to the size, financial resources, nature or structure of the employers' business. Click here for more information about lactation accommodations.

Employers that fail to provide a break for nursing mothers are subject to a fine of $100 for each violation and a citation from the DIR.

MANDATED DISABILITY BENEFITS

California State Disability Insurance (SDI) is a partial wage-replacement insurance plan for California workers consisting of two programs: Disability Insurance and Paid Family Leave. The SDI programs are state mandated and funded through employee payroll deductions.

- The Disability Insurance (DI) Program provides short-term benefits (for a maximum of 52 weeks) to eligible employees unable to work due to a non-work-related illness or injury, or pregnancy or childbirth.
- The Paid Family Leave (PFL) Program provides up to six weeks (eight weeks, effective July 1, 2020) of partial pay within a 12-month period to employees who take time off to care for a seriously ill child, spouse, parent, parent-in-law, grandparent, grandchild, sibling, or registered domestic partner, or to bond with a new child.

Employer Requirements

California employers are required by law to:

- Withhold and remit SDI contributions;
- Inform their employees of SDI benefits; and
- Respond to the California Employment Development Department notice triggered when one of its employees files a claim.

Employers may obtain information regarding contribution rates, withholding schedules and meal and lodging values from the Employment Development Department website.

Posters and Notices: Employers are responsible for providing information on SDI to their employees by posting and providing the following:

- Notice to Employees: Unemployment Insurance/Disability Insurance/Paid Family Leave (DE 1857A)
- Disability Insurance Provisions (DE 2515)
- Paid Family Leave Benefits (DE 2511)

Voluntary Plans

California law allows an employer to apply to the California Employment Development Department (EDD) for approval of a private, Voluntary Plan for the payment of Disability Insurance and Paid Family Leave benefits in place of the mandatory State SDI coverage. Voluntary Plans must provide all the benefits of SDI, at least one benefit that is better than SDI, and it cannot cost employees more than SDI.

MANDATED RETIREMENT BENEFITS

CalSavers is a state-run retirement plan for private sector employees. Under state law, many California employers are, or will be, required to offer a retirement plan to their employees or provide their employees with access to CalSavers.

The effective date of the requirement depends on the size of the employer, as follows:

- Employers with 100 or more employees were required to either offer a retirement plan or provide their employees with access to CalSavers by Sept. 30, 2020 (extended from June 30, 2020, due to the COVID-19 outbreak).
- Employers with 50 or more employees are required to either offer a retirement plan or provide their employees with access to CalSavers by June 30, 2021.
- Employers with 5 or more employees are required to either offer a retirement plan or provide their employees with access to CalSavers by June 30, 2022.

The law specifies an employer's responsibilities as follows:

- Employers are responsible for adding employees to CalSavers and submitting employee contributions to CalSavers via post-tax payroll deductions.
- Employers are not required to pay fees to support CalSavers.
- Employers are note able to make contributions to their employees' CalSavers accounts.
- Employers do not have any fiduciary responsibility for their employees' CalSavers accounts.

RETURN TO **TABLE OF CONTENTS**

EMPLOYEE LEAVE

Employers may provide their employees with various types of paid or unpaid leave as part of their overall compensation packages. This may include vacation time, personal leave and sick leave.

Employers have some flexibility when it comes to establishing or negotiating employee leave policies. However, federal laws such as the Family and Medical Leave Act (FMLA) require covered employers to provide employees with job-protected leave in certain situations. California law also provides a number of leave entitlements to employees, as described below.

Finally, in response to the COVID-19 health emergency, California has enacted state and local laws (not addressed in this overview) requiring employers to provide leave to employees for reasons related to the coronavirus. Due to the rapid and numerous legislative changes adopted in response to this pandemic, COVID-19 leave laws and requirements will not be addressed in this document.

PAID SICK LEAVE

All employers must provide eligible employees with 24 hours (or three workdays) of paid sick leave per year. Employees may use this leave for preventive care for, or the diagnosis, care or treatment of, an existing health condition of the employee or a family member. Employers are also required to provide paid sick leave to employees who are victims of domestic violence, sexual assault or stalking.

To be eligible for paid sick leave, an employee must work in California for 30 or more days for the same employer within a year from the start of his or her employment. Eligible employees may use accrued sick days beginning on their 90th day of employment.

FAMILY AND MEDICAL LEAVE

In addition to leave requirements under the federal Family and Medical Leave Act, California has enacted its own law, the California Family Rights Act (CFRA), which requires employers in the state with five or more employees to provide eligible employees with unpaid family and medical leave.

Eligible Employees

To be eligible for family and medical leave under the CFRA, an employee must:

Have a total of at least 12 months of service with the employer;

Have worked at least 1,250 hours in the 12 months prior to leave; and

Be employed at a work site with five or more employees.

If an employee is not eligible for CFRA leave at the start of leave because he or she has not yet met the 12-months of service requirement, the employee may meet this requirement while on leave.

Amount of Leave

Under the CFRA, an eligible employee may take up to 12 weeks of unpaid leave in a 12-month period for:

- Birth of the employee's child.
- Placement of a child with the employee through adoption or foster care.
- The employee's own serious health condition.
- The serious health condition of the employee's child, parent, spouse or registered domestic partner, grandparents, grandchildren, siblings, or domestic partner's children or, effective Jan. 1, 2023, a designated person identified by an employee at the time they request leave. The designated person can be any individual related by blood, or whose association with the employee is the equivalent of a family relationship. Employers may limit employees to one designated person per 12-month period.
- A qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States.

In addition to the qualified leave outlined above, as of Jan. 1, 2023, CFRA entitles employees who have worked for their employer for at least 30 days to five days of bereavement leave upon the death of a family member, as follows:

- Leave must be completed within three months of the family member's death;
- Leave must be taken pursuant to any existing bereavement leave policy of the employer (so long as the employee is entitled to no less than a total of five days of bereavement leave);
- Bereavement leave may be unpaid in the absence of an existing policy, but employees are authorized to use other leave balances otherwise available, including accrued and available paid sick leave; and
- The days of bereavement leave do not need to be consecutive.

If requested by a covered employer, employees must provide documentation of the death of the family member within 30 days of the first day of leave. Documentation includes but is not limited to a death certificate, a published obituary, or written verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or governmental agency.

Because California has separate requirements for leave due to pregnancy- and childbirth-related medical conditions, CFRA leave may not be taken for disability resulting from these conditions. However, an eligible employee may take CFRA leave when her pregnancy disability leave ends.

In addition, CFRA leave is subject to the following limitations:

- Leave may be taken in one or more periods, but must run concurrently with FMLA leave if the employee is eligible for both FMLA and CFRA leave;
- Employers may limit leave increments to the shortest period of time that the employer's payroll system will allow; and
- Each leave period taken to care for a newborn child must be taken within one year of the birth and be at least two weeks in duration (employers may grant up to two requests for a shorter leave period).

Payment On Leave

Employers are not required to pay an employee during CFRA leave.

Other Types of Leave

Employees may use, and employers may require employees to use, accrued vacation leave or other accrued time off (paid or unpaid) for family and medical leave purposes. However, employers do not have to allow employees to use accrued paid sick leave if the employee is taking CFRA leave to care for the serious health condition of their child, parent, parent-in-law, spouse or registered domestic partner, grandparent, grandchild, sibling, domestic partner's children or designated person.

Employees may substitute leave taken pursuant to a short- or long-term disability leave plan (as determined by the terms and conditions of the employer's leave policy) for an otherwise unpaid portion of CFRA leave that is for the employee's own serious health condition. This paid leave runs concurrently with CFRA leave and may continue longer than the CFRA leave if permitted under the disability leave plan.

Coverage Continuation

During an employee's CFRA leave period, employers must continue providing group health plan coverage for the employee. The health coverage must be continued under the same conditions as those provided prior to leave. Employers are not required to pay for retirement benefits for the employee during a leave period.

Notice Requirements

An employee requesting CFRA leave must provide reasonable advance notice to his or her employer of the reason for the leave and the anticipated timing and duration of leave. Notice may be verbal, but must be sufficient to make the employer aware that the employee needs CFRA leave.

An employer may require at least 30 days' advance notice when the need for leave is foreseeable due to an expected birth, placement of a child for adoption or foster care or planned medical treatment for a serious health condition. If 30 days advance notice is not possible, notice must be given as soon as practicable.

An employer must respond to an employee's CFRA leave request no later than five business days after receiving the employee's request.

The employee must make reasonable efforts to schedule any planned medical treatment in a manner that minimizing disruption to the employer's business.

Certification Requirements

An employer may require certification from the employee's (or his or her family member's) health care provider for leave taken due to a serious health condition and recertification for leave that continues beyond the initial leave period. The certification must contain the date on which the condition began and the probable duration of the condition, as well as the following:

- For leave to care for another's serious health condition:
- An estimate of the amount of time that the health care provider believes the employee needs to care for the individual; and
- A statement that the condition warrants the employee providing that care.
- For leave to care for the employee's own serious health condition: a statement that, due to the condition, the employee is unable to perform the duties of his or her position.

An employer may also require certification to demonstrate an employee's fitness to return to work from CFRA leave, as long as the practice of requesting certification is uniformly applied. Regardless of the reason for leave, an employer may not contact a health care provider for any reason other than to authenticate a medical certification.

Reinstatement Rights

After an employee returns from CFRA leave, he or she must be restored to his or her previous position (or to a similar position with the same duties) at the same geographic location at which he or she worked prior to the leave. Employers must also pay employees returning from the leave the same amount they earned before the leave.

Employee Protections

Family and medical leave may not be considered a break in the employee's continuous service affecting the employee's rights to salary adjustments, benefits or seniority.

In addition, employers may not:

- Interfere with, restrain or deny an employee's exercise of or attempt to take leave; or
- Discharge, fine, suspend, expel, discipline or otherwise discriminate against an employee who takes leave or gives information relating to any person's right to leave.

An employer may not retroactively designate leave as CFRA leave after the employee has returned to work, except with appropriate notice to the employee and where the employer's failure to timely designate does not cause harm or injury to the employee.

Enforcement

Any violation of CFRA requirements is considered an unlawful employment practice.

If an employer violates the CFRA in any way, an affected employee may file a complaint with the Fair Employment and Housing Commission. The Commission may require the employer to:

- Hire, reinstate or upgrade the employee, with or without back pay;
- Pay damages for any injuries suffered, if the Commission files a civil action;
- Refrain from committing any further violations; or
- Pay a fine of up to $25,000 for any discrimination.

Employers may also be liable for any civil suit that an employee may file.

Posting and Employee Handbook Requirements

Under the CFRA, employers are responsible for informing employees of their right to request family and medical leave. Employers must notify each employee whether any paid or unpaid leave will be counted toward the employee's CFRA leave entitlement.

Employee Handbook

Employers must include a description of CFRA leave in any employee handbooks that the employers provide to their employees.

Required Poster

Employers are required to post a notice that explains the CFRA's provisions. The notice must be posted on the employer's premises, prominently, in conspicuous places where it can be readily seen by employees and applicants for employment. If 10 percent or more of the employer's workforce speaks another language as their primary language, the employer must provide the required notice in that language.

FAMILY SICK LEAVE

All employers that provide sick leave for employees must permit employees to use their accrued sick leave to care for an ill child, parent, spouse or domestic partner of the employee. Leave is limited each year by the amount of sick leave the employee would accrue in six months. Leave runs concurrently with leave under the California Family Rights Act and the FMLA.

The definition of "family member" includes a child, parent, spouse, domestic partner, stepparent, parent-in-law, grandparent, grandchild or sibling. An employee must be permitted to use family sick leave for the same purposes as required under the paid sick leave law, including for the preventive care of a family member.

PREGNANCY DISABILITY LEAVE

Employers with five or more employees must provide a reasonable period of leave of up to four months per pregnancy to female employees who are disabled by pregnancy, childbirth or a related medical condition.

Leave runs concurrently with FMLA leave and is unpaid. Notice and certification requirements apply.

Other job protections also apply to employees taking pregnancy disability leave.

ORGAN AND BONE MARROW DONOR LEAVE

In California, the Michelle Maykin Memorial Donation Protection Act (MDPA) requires certain employers to provide eligible employees with paid leave for organ or bone marrow donation. Amendments to the law require an additional 30 days of unpaid leave for eligible organ donors. The MDPA applies to employers in California that have 15 or more employees.

Eligible Employees

An employee is eligible for MDPA leave if he or she:

- Has been employed for at least 90 days before beginning leave; and
- Is donating an organ or bone marrow to another person.

Amount Of Leave

Eligible employees may take up to:

- 30 business days of paid leave, plus an additional 30 business days of unpaid leave, per year, to donate an organ; and
- 5 business days of paid leave per year to donate bone marrow.

Leave may be taken in one or more periods. The one-year period for calculating leave allowances begins on the date that the employee's leave begins.

Payment On Leave

Employers must pay an eligible employee his or her regular wages while he or she is out on the initial leave to donate an organ, or on leave to donate bone marrow.

Employers must also maintain and pay for the employee's coverage under a group health plan, for the full duration of the leave, in the same manner the coverage would have been maintained if the employee had been actively at work during the leave period.

Notice and Certification Requirements

To take organ or bone marrow donor leave, employees must provide his or her employer with written verification that:

- They are an organ or bone marrow donor; and
- There is a medical necessity for the donation.

Other Types of Leave

Organ and bone marrow donor leave may not run concurrently with leave under the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA). As long as it would not violate a collective bargaining agreement, an employer may require employees to take:

- Up to five days of accrued sick leave, paid time off or vacation leave for bone marrow donation; and
- Up to two weeks of accrued sick leave, paid time off or vacation leave for organ donation.

Employee Protections

Organ and bone marrow donor leave may not be considered a break in the employee's continuous service affecting the employee's rights to salary adjustments, benefits (such as sick leave, vacation, paid time off or annual leave) or seniority.

In addition, employers may not:

- Interfere with, restrain or deny an employee's exercise of or attempt to take leave; or
- Discharge, fine, suspend, expel, discipline or otherwise discriminate against an employee who takes leave or opposes an unlawful practice.

Reemployment Rights

Employees must be restored to their former position or a position with equivalent seniority status, employee benefits, pay and other terms and conditions when the employee returns from leave. An employer may refuse to restore the employee for reasons unrelated to the employee taking organ and bone marrow donor leave.

Enforcement

If a covered employer violates the MDPA in any way, the affected employee may bring a civil action against the employer. Courts may order an employer to cease activities that violate the law and any other appropriate relief.

JURY DUTY, WITNESS AND CRIME VICTIM LEAVE

All employers are prohibited from discharging or in any way discriminating against employees who take time off from work to serve on a jury, comply with a valid subpoena or attend judicial proceedings related to a felony crime. Leave is unpaid. Notice requirements apply.

VICTIM LEAVE

All employers must grant unpaid leave to employees:

- Who are victims of crime or abuse that caused physical injury or mental injury;
- Who are victims of crime or abuse that caused mental injury and the threat of physical injury;
- Who are victims of domestic violence, sexual assault, or stalking; or
- Whose immediate family member was killed in a crime.

The purpose of the leave is to obtain any relief (such as a restraining order) to help ensure the health, safety or welfare of either themselves or their children. Employee notice and certification requirements apply.

Employers with at least 25 employees must grant leave, up to the amount of FMLA leave available, to employees who are victims of domestic violence, sexual assault or stalking, or who are victims of crime or abuse that caused physical injury or mental injury and the threat of physical injury, or whose immediate family member was killed in a crime, so they can:

- Seek medical attention for related injuries;
- Obtain services from a domestic violence shelter, program or rape crisis center;
- Obtain psychological counseling; or
- Participate in safety planning and take other actions to increase their safety.

Employer notice requirements upon hire and upon request apply. Employee notice and certification requirements also apply.

Employers are not required to provide this leave over or in addition to FMLA leave but may require an employee to use vacation, personal leave or compensatory time off that is otherwise available to him or her, unless a collective bargaining agreement provides otherwise. These leave protections apply equally to men and women.

VOTING LEAVE

All employers must allow employees who do not have sufficient time outside of working hours to vote in a statewide election to, on an election day, take enough time off from work in order to vote. Employers must pay employees for up to two hours of leave for voting purposes. Notice requirements apply.

MILITARY AND MILITARY SPOUSE LEAVE

Many states have laws addressing employee leaves of absence for military service. When employees are engaged in U.S. military service, the state laws often provide greater protections than those provided under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), which requires all employers to provide job protections when employees are absent from work due to a period of service in the U.S. military. When employees are engaged in state military service (for example, during a declared emergency for tornados, floods or other disasters), USERRA does not apply and, instead, the state laws apply exclusively.

Leaves of Absence for Military Service Members

California law requires all employers to provide temporary unpaid leave to military service members for periods of military duty.

U.S. Reserve Members

Employees who are members of the U.S. Reserve Corps, National Guard or Naval Militia may take up to 17 days of unpaid leave per year for military duty for purposes of:

- Military training;
- Drills;
- Encampment;
- Naval cruises;
- Special exercises; or
- Similar military activity.

The period of leave includes time involved in going to and returning from military duty.

State Military Guard Members

Employees who are State Guard members may take up to 15 days of unpaid leave per year for military duty for purposes of:

- Training;
- Drills;
- Unit training assemblies; or
- Similar inactive duty training.

The period of leave includes time involved in going to and returning from military duty.

Leaves of Absence for Military Spouses

California law requires employers with 25 or more employees to provide up to 10 days of unpaid leave to certain spouses of military members during a qualified leave period. A "qualified leave period" is a period during which the military service member is on leave from deployment during a period of military conflict.

Eligible Employees

A spouse of a qualified military service member is eligible for a military leave of absence if he or she works for the employer for an average of 20 or more hours per week, and is not an independent contractor. A "qualified military service member" includes:

- A member of the U.S. Armed Forces who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the President of the United States;
- A member of the National Guard who has been deployed during a period of military conflict; or
- A member of the Reserves who has been deployed during a period of military conflict.

A "period of military conflict" means either a period of war declared by the U.S. Congress or a period of deployment for which a member of a reserve component is ordered to active duty.

Notice And Certification Requirements

A military spouse may take a military leave of absence if he or she takes all of the following steps:

- Notice—The employee must provide his or her employer with notice of his or her intention to take leave within two business days of receiving official notice that the military service member will be on leave from deployment.
- Certification—The employee must submit written documentation to his or her employer certifying that the military service member will be on leave from deployment during the time the leave is requested.

Employee Protections

An employer may not retaliate against an employee who is a military spouse for requesting or taking a military leave of absence. Prohibited retaliation includes, but is not limited to, affecting the employee's rights to employee benefits or any other type of leave available to him or her.

Reemployment Rights for California National Guard Members

In certain circumstances, California law provides reemployment rights to members of the California National Guard who leave work for state active military duty.

Eligible Employees

To be eligible for reemployment after a period of state active military duty, the employee must:

- Have left a position, other than a temporary position, in private employment for state active service;
- Receive a certificate of satisfactory service;
- Still be qualified to perform the duties of his or her former position; and
- Apply to be restored to his or her former full-time position within 40 days after release from service (if the employee's former position was part-time, he or she must apply to be restored within five days after release from service).

An employee who meets these requirements is considered to be on a leave of absence during the period of state active duty. When the employee returns to work, he or she must be restored to:

- The employee's former position; or
- A position of similar seniority, status and pay, without loss of any retirement or other benefits.

Period Of Reemployment

An employer may not discharge a California National Guard member who returns to work after serving on state active duty for one year after the date the member returns to work, except for cause.

Exceptions To Reemployment Requirement

An employer is not required to allow a National Guard member to return to work if he or she can show that circumstances have changed so that reemployment is impossible or unreasonable.

Continuation Benefits

Employers are prohibited from restricting or terminating any collateral benefit for employees by reason of an employee's temporary incapacitation as a result of duty in the California National Guard or Naval Militia. "Temporary incapacitation" means any period of incapacitation of 52 weeks or less. "Benefit" includes, but is not limited to, health care, life insurance, disability insurance and seniority status. Health care benefits may be continued at the employer's expense.

Compliance

Employees who are not reinstated after taking military leave may bring a civil action against the employer Remedies may include:

- Reinstatement to the employee's former position;
- Wages or benefits lost as a result of the employer's violation; and
- Attorney's fees and costs.

As of Jan. 1, 2016, California's law provides the same job protections above to a National Guard member of any state that is called to active duty by the Governor of the state where he or she serves in the National Guard.

Employee Protections for Military Members

Under California law, employers may not discriminate against any California or U.S. military member, including members of reserve components, because of their membership in the military. Prohibited forms of discrimination include, but are not limited to:

- Prejudice or injury to the member's employment, position or status; and
- Denial or disqualification for employment.

In addition, employers may not take any of the following discriminatory actions:

- Discharge, prejudice or otherwise harm a military member in his or her employment, position or status because of his or her performance of any military duty or training;
- Hinder or prevent a military member from performing any military service or duty; or
- Dissuade, prevent or stop any person from enlisting in the California National Guard or Naval Militia by threat or injury to the person with respect to his or her employment, position, trade or business.

Any employer who unlawfully discriminates against a California or U.S. military member may be charged with a misdemeanor and is liable to the employee for actual damages and reasonable attorney's fees.

SCHOOL ACTIVITY LEAVE

Employers with 25 or more employees must provide employees with up to 40 hours of unpaid leave per year to attend or otherwise be involved with their child's school or day care facility. Notice and certification requirements apply.

The school activity leave law specifically allows a parent to take this leave for the following child-related activities:

- To find, enroll or reenroll his or her child in a school or with a licensed childcare provider, or to participate in activities of the school or childcare provider, limited to eight hours per month; or
- To address a school emergency or childcare provider emergency (including a situation where a child cannot stay at school or with a childcare provider due to behavioral or discipline problems).

This law extends leave protections to nontraditional family relationships. The law defines a "parent" as a parent, guardian, stepparent, foster parent, or a grandparent of, or a person who stands in loco parentis to, a child.

Finally, all employers must permit employees to take time off from work to appear at their child's school after the child has been suspended. Notice requirements apply.

ALCOHOL OR DRUG REHABILITATION LEAVE

Employers with 25 or more employees must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, unless the accommodation would impose an undue hardship on the employer.

VOLUNTEER FIREFIGHTER, RESERVE POLICE AND EMERGENCY RESCUE PERSONNEL LEAVE

All employers must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to be absent from or late for work to perform emergency duty.

Employers with 50 or more employees must permit an employee who is a volunteer firefighter, reserve peace officer or emergency rescue personnel to take up to 14 days per year off from work to engage in fire, law enforcement or emergency rescue training.

CIVIL AIR PATROL LEAVE

Employers with more than 15 employees must provide employees who are Civil Air Patrol (CAP) members with leave to respond to an emergency operational mission of the California Wing of the CAP.

An employee is eligible for CAP leave if he or she:

- Has been employed for at least 90 days before beginning leave;
- Is a volunteer member of the California Wing of the CAP; and
- Is responding to an emergency operational mission of the California Wing of the CAP.

An employer may not require an employee to exhaust any other type of leave before providing CAP leave. Leave is unpaid. Notice and certification requirements apply.

SPECIAL CONSIDERATIONS FOR EMPLOYERS

California has a paid family leave insurance program that provides up to eight weeks of wage replacement benefits to eligible employees who take time off from work to care for a newborn, a newly adopted child or foster child, or a seriously ill family member. Under this program, employees may receive a percentage of their wages during their absence, up to a certain maximum per week. Workers are eligible for the program if they contribute to the State Disability Insurance (SDI) fund. The program is separate from the federal FMLA and California's family and medical leave laws, which govern the terms of employee family and medical leaves.

In addition, San Francisco enacted a Paid Parental Leave Ordinance, which requires employers in that city to provide "supplemental compensation" to employees who receive wage replacement under California's paid family leave insurance program. Employers subject to this ordinance must pay employees the difference between their normal gross weekly wage and the weekly amount they receive from the SDI, so that they receive 100 percent of their regular wages (rather than a lower percentage).

More information on SDI is available on the California Employment Development Department's website.

Employers should also be aware that many California localities have their own paid leave laws that apply to covered employers in addition to state leave laws.

RETURN TO **TABLE OF CONTENTS**

DISCRIMINATION

FAIR EMPLOYMENT

In addition to the workplace discrimination protections provided to employees under federal law, California law affords broad workplace discrimination protections under the state's Fair Employment and Housing Act (FEHA).

Covered Employers

The FEHA generally applies to all California employers with five or more employees. However, an exception to the five-employee minimum applies whenever harassment is at issue. The FEHA's prohibition against harassment applies to every entity that:

- Employs one or more people; or
- Receives the services of one or more independent contractors, unpaid interns or volunteers.

Exemptions

Religious employers and nonprofit organizations are generally exempt from the FEHA. Certain religious employers that operate health care facilities or educational institutions are only partially exempt.

Protected Traits

The FEHA protects individuals from employment discrimination and harassment based on their:

- Race (including hairstyles associated with race);
- Color;
- Religion;
- Sex (including pregnancy, childbirth and related medical conditions);
- Gender, gender identity, gender expression and sexual orientation (heterosexuality, homosexuality and bisexuality);
- Marital status;
- National origin and ancestry;
- Physical disability (including AIDS and HIV), mental disability and medical conditions;
- Genetic information;
- Age (40 or older); and
- Military or veteran status.

The FEHA also protects individuals who:

- Are perceived to be a member of a class protected by the FEHA; or
- Associate with members of a protected class.

For example, an employer may not discriminate against an individual because the employer perceives him or her to be a member of a certain religion even if he or she is not actually a member of that religion.

Prohibited Actions

Under the FEHA, employers may not take any of the following actions against an individual based on a protected trait:

- Refuse to hire or employ, discharge, or otherwise discriminate against the individual in compensation, terms, conditions or privileges of employment;
- Refuse to select then individual for or bar or discharge the individual from any apprenticeship training program, training program leading to employment, unpaid internship or other limited-duration program to provide unpaid work experience; and
- Print or circulate any publication or make any inquiry (either verbal or through the use of an application form) that expresses a limitation, specification or discrimination.

In addition, the FEHA prohibits employers from:

- Harassing or permitting their employees or agents to harass any person based on a protected trait; and
- Failing to take all reasonable steps necessary to prevent unlawful discrimination or harassment from occurring.

The FEHA's protections against harassment extend not only to employees and applicants, but also to unpaid interns, volunteers, independent contractors and any individuals providing services pursuant to a contract in an employer's workplace. An employer may be held liable for acts of sexual harassment against any of these individuals even if the person who commits the acts is not an employee or an agent of the employer.

Finally, the FEHA prohibits all employers from retaliating, discharging, expelling or otherwise discriminating against an individual because he or she:

- Opposes a practice that is forbidden under the FEHA; or
- Files a complaint, testifies or assists in any proceeding under the FEHA.

Reasonable Accommodation Requirements

The FEHA requires employers to provide reasonable accommodations for an employee or applicant's:

- Disability;
- Religious beliefs and practices; and
- Pregnancy, childbirth or related medical conditions.

Reasonable accommodations are changes made to a job or workplace that enable an employee or applicant to successfully perform the essential duties of a position or to enjoy the same employment rights and privileges as other employees.

An employer may be excused from the accommodation requirements if it can show that a requested accommodation would cause undue hardship on its business. The determination of whether undue hardship exists involves consideration of the following factors:

- The nature and net cost of the accommodation;
- The overall financial resources of the employer;
- The employer's type of operation; and
- The geographic separateness of facilities.

Notice Posting Requirement

The FEHA requires all employers to display a notice regarding the law's protections. The notice must be conspicuously posted in hiring offices, on employee bulletins boards, in employment agency waiting rooms and in other places where employees gather.

If more than ten percent of an employer's workforce at a particular facility or establishment does not speak English, the employer must post the notice in the appropriate language for these individuals.

SEXUAL HARASSMENT PREVENTION AND TRAINING

California workers are protected against workplace sexual harassment under both federal and state law. While Title VII of the federal Civil Rights Act applies to only to employers with 15 or more employees, California's prohibitions against sexual harassment in the workplace, under the California Fair Employment and Housing Act (FEHA), apply to all employers with one or more employees in the state.

The FEHA's protections extend to employees, job applicants, independent contractors, unpaid interns, volunteers and participants in other limited-duration training programs that provide unpaid work experience.

Definition Of Sexual Harassment

The FEHA defines "sexual harassment" as harassment that is based on sex or that is of a sexual nature. The term includes gender harassment and harassment based on pregnancy, childbirth or related medical conditions.

Regulations issued by the California Department of Fair Employment and Housing (DFEH), which enforces the FEHA, further define sexual harassment as unwanted sexual advances, or visual, verbal or physical conduct of a sexual nature. This definition encompasses a broad range of behaviors, including (but not limited to):

- Offering employment benefits in exchange for sexual favors;
- Making or threatening reprisals after a negative response to sexual advances;
- Leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters;
- Making or using derogatory comments, epithets, slurs or jokes;
- Graphic verbal commentaries about an individual's body;
- Using sexually degrading words used to describe an individual;
- Sending suggestive or obscene letters, notes or invitations; and
- Physical touching or assault, including impeding or blocking movements.

Employer Liability

The FEHA's anti-harassment provisions impose an affirmative duty on all employers in California, regardless of their size, to take all reasonable actions to prevent, stop and correct workplace harassment. Under the law, an employer may be held liable for:

- Any harassment committed by its supervisors or agents; and
- Any harassment that occurs in its workplace.

Both supervisory and nonsupervisory individuals may also be held personally liable if they harass employees or co-workers or if they assist other people in carrying out harassing actions. Even if an individual is personally liable, however, an employer may not avoid liability for workplace sexual harassment unless:

- The harasser is either not an employee or is a non-supervisory employee;
- The employer had no knowledge of the harassment;
- The employer had a harassment prevention program in place; and
- Once made aware of the harassment, the employer took immediate and appropriate corrective action to stop it.

Individuals who believe they have been sexually harassed may file a complaint with DFEH within three years of the alleged harassment. Once a complaint is filed, DFEH will investigate the complaint and attempt to resolve the dispute. If DFEH finds evidence of sexual harassment and settlement efforts fail, DFEH may file a formal accusation or lawsuit against the employer and harasser.

Employers found liable for sexual harassment may face a variety of penalties. Specifically, the DFEH may:

- Levy fines up to $150,000;
- Demand back pay be issued;
- Require the hiring, promotion or reinstatement of an employee or job applicant;
- Order changes in the policies or practices of the involved employer;
- Mandate additional sexual harassment training; and
- Impose other obligations.

In addition, civil courts may order unlimited monetary damages against an employer that is found liable for sexual harassment.

Employer Obligations

The FEHA requires every employer to develop and implement a written policy regarding workplace harassment, discrimination and retaliation.

An employer's policy should include, among other provisions, information about:

- The rights, and any obligations necessary to secure them, of a person who experiences or reports harassment;
- The employer's process for investigating harassment complaints; and
- Corrective actions the employer will take if harassment allegations are proven.

When an individual reports workplace sexual harassment, the employer must:

- Take appropriate action to stop the harassment and to ensure it will not continue;
- Communicate to the complainant that action has been taken to stop the harassment from recurring;
- Conduct a thorough, objective and complete investigation;
- Communicate the results of the investigation to the complainant, to the alleged harasser, and as appropriate, to all others directly concerned; and
- Take appropriate steps to remedy any damages resulting from the harassment.

Mandatory Training for All Employees – Effective Jan. 1, 2019

As of Jan. 1, 2019, every California employer with five or more employees must provide:

- Each supervisory employee with at least two hours of sexual harassment training; and
- Each non-supervisory employee with at least one hour of sexual harassment training.

Both types of training must be provided within six months of the date each employee assumes his or her position. Thereafter, each employee must receive the training again once every two years.

Exception For Seasonal Employees

Beginning Jan. 1, 2021, however, different requirements apply for seasonal employees, temporary employees and any employees who are hired to work for less than six months. For these employees, employers must provide the required training within 30 calendar days after the employees' hire dates or before the employees have worked 100 hours, whichever occurs first.

Exception For Employees Previously Trained

Under additional changes to the law that became effective Sept. 28, 2020, an employee does not have to receive the required training within the standard six-month period if:

- The employee received the required training within the prior two years from a current, prior, alternate or a joint employer; or
- The following two conditions are met:
- The employee rReceived a valid work permit from the California Labor Commissioner that required him or her to receive the required training within the prior two years; and
- The employer:
- Provides the employee with a copy of its anti-harassment policy within the standard six-month period;
- Requires him or her to read and acknowledge receipt of the policy; and
- Puts him or her on a two-year tracking schedule based on his or her last training.

An employer that uses this exception must be able to prove that an employee's prior training complied with all requirements under the law.

Training Program Presentation

The supervisory and non-supervisory employee training may be provided in conjunction with other training an employer provides, and employees may complete it either individually or as part of a group presentation. Employees may also complete the one- or two-hour training in shorter segments as long as the applicable total requirement is met.

The amendments to the FEHA that added these requirements, which were enacted on Sept. 30, 2018, direct the DFEH to develop two online training courses that employers may use to satisfy the training requirements. The DFEH offers a sample sexual harassment and abusive conduct prevention training (available by clicking the first link here), that employers may use in conjunction with an eligible trainer. Employers should also monitor the DFEH website for additional guidance.

Notice and Posting Requirements

The FEHA requires all employers to post the "Discrimination and Harassment in Employment are Prohibited by Law" poster in a prominent and accessible location in the workplace. This poster includes information on prohibited forms of workplace discrimination, including sexual harassment.

In addition, all employers must distribute a either a copy of the DFEH's fact sheet on sexual harassment or this DFEH poster on sexual harassment (both available in Spanish and other languages here) to all employees. These publications describe the forms of sexual harassment, its illegality, the internal and external complaint processes and the legal remedies under FEHA. Employers may elect to distribute their own information packets with equivalent information in place of distributing the fact sheet or poster. The law specifies that the information must be delivered "in a manner that ensures distribution to each employee, such as including it with an employee's pay."

EQUAL PAY

The federal Equal Pay Act (EPA) requires that men and women receive equal pay for equal work in the same establishment. In addition to the federal EPA, many states, including California, have enacted their own equal pay laws prohibiting wage discrimination based upon gender.

The California Equal Pay Law prohibits employers from discriminating on the basis of sex, race or ethnicity in the payment of wages. It also prohibits employers from seeking information about job applicants' past salaries and restricts how they may use any salary history information they obtain about an applicant.

Unequal Pay Prohibition

Subject to limited exceptions, employees of different genders, races or ethnicities are entitled to equal pay for substantially similar work. Substantially similar work is determined by evaluating the level of skill, effort, responsibility and performance under similar working conditions.

Exceptions

Employers may pay different wages for employees of the opposite sex or of different races or ethnicities when the wages are based on:

- A seniority system;
- A merit system;

- A system that measures earnings by quantity or quality of production; or
- A differential based on any bona fide factor other than sex, race or ethnicity.

A bona fide factor other than sex, race or ethnicity, such as education, training or experience, exists only when the employer demonstrates that the factor is:

- Not based on or derived from a sex-, race- or ethnicity-based differential in compensation;
- Job-related (with respect to the position in question); and
- Consistent with a business necessity.

"Business necessity" means an overriding legitimate business purpose. Business necessity does not exist when the employee can demonstrate that the employer could have implemented or used an existing alternative practice that would have avoided a wage differential while serving the same business purpose.

Amendments to the law that went into effect on Jan. 1, 2019, clarify that an employer may make a compensation decision based on a current employee's existing salary as long as any wage differential resulting from that decision is justified by one or more of the above factors. However, prior salary may not justify any disparity in compensation.

Recordkeeping and Reporting Requirements

Under the California Equal Pay Law, employers are required to maintain records of the wages and wage rates, job classification, and other terms and conditions of employment for all employees for a minimum of three years. State law also requires certain California employers to file an annual workforce pay data report with the state Department of Fair Employment and Housing (DFEH) every year. This requirement applies to employers that have 100 or more employees, any of whom are currently located in California. While the initial deadline for the state-mandated reports was March 31, Senate Bill 1162 changed this as of Jan. 1, 2023, so that the annual reports are now due on the second Wednesday of May every year.

Enforcement

The California Equal Pay Law is administered and enforced by the Division of Labor Standards Enforcement (DLSE) of the California Department of Industrial Relations.

Employees who believe their rights under the Equal Pay Law have been violated may file a complaint with the DLSE. Once a complaint has been filed, the DLSE will investigate the claim. If a claim is found to be valid, the DLSE reserves the right to initiate all necessary proceedings to collect any wages and damages due, including the right to bring a civil lawsuit on behalf of an employee.

Alternatively, employees may file their own lawsuits under the Equal Pay Act. If successful in a civil lawsuit, individuals may collect lost wages, damages in the amount equal to their lost wages, the costs of bringing the suit and reasonable attorney's fees. A civil action to recover wages and damages must be filed within two years of the alleged violation, except where the violation is willful, in which case the lawsuit must be filed within three years.

Prohibited Retaliation

The California Equal Pay Law prohibits employers from discharging, or, in any other manner, discriminating or retaliating against any employee that enforces this law. In addition, the Equal Pay Law protects an employee's right to:

- Disclose his or her own wages;
- Discuss the wages of other employees;
- Inquire about another employee's wages; or
- Help or encourage other employees to enforce their rights under the California Equal Pay Law.

However, nothing in California's Equal Pay Law creates an obligation to disclose wages.

Employees who have been discharged, discriminated or retaliated against because they sought to enforce their rights under the Equal Pay Law may sue their employers in civil court and obtain:

- Reinstatement;
- Reimbursement for lost wages and work benefits;
- Interest on lost wages and work benefits; and
- Any additional appropriate equitable relief.

Employees who wish to initiate a retaliation lawsuit under the California Equal Pay Law must file their claim within one year of when the discharge, discrimination or retaliation took place.

WORKPLACE VIOLENCE PREVENTION

Workplace violence is a serious safety and health issue. While no federal law specifically addresses violence in the workplace, several laws impose a duty on employers to maintain a safe workplace.

For example, the Occupational Safety and Health Act (OSH Act) imposes a general duty on all employers to provide employees with a workplace that is free from hazards. Federal civil rights laws also require employers to keep the workplace free from threats of violence, and state workers' compensation laws make employers responsible for certain injuries sustained in the workplace.

In California, the California Occupational Safety and Health Act (Cal/OSH Act) also places a duty on employers to provide employees with a safe workplace. In addition, the California Workplace Violence Safety Act (CWVS Act) allows employers to seek a temporary restraining order or injunction against anyone who poses a threat in the workplace.

EMPLOYERS' OBLIGATION TO PROVIDE A SAFE WORKPLACE

The COSH Act makes employers primarily responsible for the safety and health of their employees.

Under this law, employers must:

- Establish, implement and maintain an Injury and Illness Prevention Program, and periodically update it;
- Inspect the workplace to identify and correct unsafe and hazardous conditions;
- Make sure employees have and use safe tools and equipment, and properly maintain the tools and equipment;
- Use color codes, posters, labels or signs to warn employees of potential hazards; and
- Establish or update operating procedures and communicate them so that employees follow safety and health requirements.

California courts impose further obligations by requiring employers to hire and train their employees properly. An employer that does not adequately hire, train or supervise its employees may be sued in court and held liable for damages if it knew or should have known the employee would subject a coworker, customer or third party to an unreasonable risk of harm.

Required Workplace Posting

The COSH Act requires employers to hang a "Safety and Health Protection on the Job" poster in a prominent place where employees can see it in the workplace. The poster informs employees of their rights and responsibilities under the law. Employers must post at least one in each establishment. Employers must also take steps to ensure that the signs are readable and not altered or defaced.

A Spanish version of the Cal/OSHA required poster is also available. In addition, other approved safety posters may be found on the California Division of Occupational Safety and Health's website.

TEMPORARY RESTRAINING ORDERS OR INJUNCTIONS

The CWVSA allows an employer to seek a temporary restraining order or injunction against anyone who poses a threat to the workplace if an employee suffers unlawful violence or a credible threat of violence. Under the CWVSA:

- Unlawful Violence is any assault, battery or stalking, but does not include lawful acts of self-defense or defense of others; and
- A Credible Threat of Violence is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

A temporary restraining order or injunction obtained under the CWVS Act may include an order prohibiting a person from taking any of the following actions against an employee:

- Harassing;
- Intimidating;
- Molesting;
- Attacking;
- Striking;
- Stalking;
- Threatening;
- Sexually assaulting;
- Battering;
- Abusing;
- Telephoning, including making annoying telephone calls;

- Destroying personal property;
- Contacting, either directly or indirectly, by mail or otherwise;
- Coming within a specified distance;
- Disturbing the peace; or
- Any other specified behavior that the court determines is necessary.

Effective Sept. 1, 2020, employers and certain other parties may also petition a court for a restraining order that prohibits an individual from possessing a firearm or ammunition. To obtain this type of injunction, an employer must show that:

- There is a substantial likelihood that the subject of the petition poses a significant danger of self-harm or harm to another in the near future by having a firearm; and
- The order is necessary to prevent personal injury to the subject of the petition or another.

WORKPLACE VIOLENCE PLAN IMPLEMENTATION FOR EMPLOYERS

Employers can create a workplace violence plan to outline policies and processes that can help prevent workplace violence. If an employer elects to have a workplace violence plan, the plan will be most effective if it is tailored to the individual needs and circumstances of the employer. It should take into account the resources available to the employer to enact and maintain the program. A workplace violence policy may include the following items:

- A statement of the employer's workplace violence policy and its relation to other policies the employer has enacted;
- Standard practices to address workplace violence or threats of violence;
- Designation and training of an incident response team;
- Clearly stated disciplinary procedures designed to prevent violent behavior in the workplace;
- Procedures for workplace violence that will handle all levels of violence;
- Reference to sources outside of the workplace that employees may consult to deal with workplace violence; and
- An effective training program to inform employees of the workplace violence policy.

WORKPLACE VIOLENCE PREVENTION PLAN AND TRAINING LAW

Most employers in California are subject to several workplace safety requirements under Cal/OSH. These include a mandate to establish, implement and maintain an effective injury and illness prevention program (IIPP).

In addition, as of July 1, 2024, a new law, Senate Bill (SB) 553, requires employers to include a written workplace violence prevention (WVP) plan as a component of their IIPPs. SB 553 also requires employers to:

- Keep a record of certain workplace incidents in a violent incident log;
- Provide annual WVP training to all employees; and
- Create and maintain certain records.

Covered Employers

SB 553 generally applies to all employers, employees, places of employment and employer-provided housing in California.

However, most health care facilities, prisons and law enforcement agencies are exempt from the new requirements. Exemptions are also available for:

- Employees working remotely at a location that is not under the employer's control; and
- Workplaces that are not accessible to the public and in which fewer than 10 employees are working at any given time.

Nevertheless, the California Division of Occupational Safety and Health (Cal/OSHA), which is the agency that enforces Cal/OSH, may order any exempt employer to comply with the new law.

Written WVP Plan

SB 553 requires employers to establish, implement, and maintain an "effective" WVP plan. This may be incorporated as a stand-alone section in an employer's existing IIPP or maintained as a separate document. Either way, the WVP plan must be in writing and:

- Available and easily accessible to Cal/OSHA, employees and their representatives at all times;
- In effect at all times and in all work areas; and
- Specific to the hazards and corrective measures for each work area and operation.

Content Requirements

The law's minimum content requirements for an effective WVP plan include the names and job titles of individuals responsible for implementing the plan, along with the items listed in the table below.

Plan Procedures	WVP written plan must explain how the employer will:
Employee Involvement	Obtain employees' active involvement in developing and implementing the plan.
Employer Coordination	Coordinate implementation with other employers, when applicable, to ensure compliance.
Incident Reporting	Accept and respond to reports of workplace violence and prohibit retaliation against an employee who makes a report.
Employee Compliance	Ensure that both supervisory and nonsupervisory employees comply.
Employee Communication	Communicate with employees about workplace violence matters.
Emergency Response	Respond to actual or potential workplace violence emergencies.
Employee Training	Develop and provide the required WVP training.
Hazard Identification	Conduct periodic and incident- or hazard-specific inspections to identify unsafe conditions and work practices.
Incident and Hazard Response	Respond to, investigate and correct reports of workplace violence and hazards.
Plan Review and Revision	Review the effectiveness of and revise the plan as needed, annually, when a deficiency is observed or becomes apparent, and after a workplace violence incident.

The WVP plan must also include any procedures or other information required by Cal/OSHA as being necessary and appropriate to protect the health and safety of employees.

Violent Incident Log

Employers must record information in a violent incident log for every workplace violence incident. Information that is recorded in the log for each incident must be based on information solicited from the employees who experienced workplace violence, on witness statements and on investigation findings.

Employers must omit any element of personal identifying information sufficient to allow identification of any person involved in a violent incident. This includes the person's name, address, electronic mail address, telephone number, Social Security number or other information that, alone or in combination with other publicly available information, reveals the person's identity.

The list below enumerates the information that must be included in each WVP log entry.

- Date, time and location of the incident
- Types of workplace violence involved in the incident (identified in the law as types 1-4, generally depending on the relationship between perpetrator and victim)
- Detailed description of the incident
- Classification of who committed the violence
- Classification of circumstances at the time of the incident, such as whether the employee was completing usual job duties or working in poorly lit areas
- Classification of where the incident occurred, such as in the workplace, parking lot or other area outside the workplace
- Type of incident, such as physical attack with or without a weapon
- Consequences of the incident, including actions taken to protect employees from a continuing threat or from any other hazards identified
- Name and job title of the person completing the log, along with the date completed

WVP TRAINING PROGRAM

SB 553 requires employers to provide effective WVP training to each employee at the following times:

- When the employer's WVP plan is first established; and
- Every year thereafter.

Additional training must be provided when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The additional training may be limited to addressing the new workplace violence hazard or plan changes.

Training material must be appropriate in content and vocabulary to the educational level, literacy and language of the employees. Each WVP training program must include:

- The employer's plan, how to obtain a copy of the employer's plan at no cost, and how to participate in the development and implementation of the employer's plan
- The definitions and requirements of SB 553
- How to report workplace violence incidents or concerns to the employer or law enforcement without fear of reprisal
- Workplace violence hazards specific to the employees' jobs, the corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm
- The employer's violent incident log and how to obtain copies of related records as required
- An opportunity for interactive questions and answers with a person knowledgeable about the employer's plan

Recordkeeping

The table below provides the minimum periods of maintenance required for these records.

Minimum Maintenance Periods for WVP Records	
One year	• WVP training records, including: • WVP training dates; • Contents or a summary of the training sessions; • Names and qualifications of persons conducting the training; and • Names and job titles of all persons attending the training sessions.
Five years	• Hazard identification, evaluation and correction records • Violent incident logs • Violent incident investigation records

All WVP-related records must be made available to employees and their representatives upon request and without cost for examination and copying within 15 calendar days of a request.

Enforcement

SB 553 is enforced by Cal/OSHA, which may issue citations to and impose penalties on noncompliant employers. Under the new law, Cal/OSHA is required to propose additional standards for WVP plans and training programs by Dec. 31, 2025. These standards must then be adopted no later than Dec. 31, 2026.

DRUG TESTING AND LEGALIZED MARIJUANA

TESTING FOR DRUGS

While California does not have a comprehensive law regulating the use of drug or alcohol testing by private employers, court decisions have established the following parameters for testing:

- Employers are permitted to conduct pre-employment drug screenings as long as they ensure that:
    - Job applicants receive notice of the drug testing requirement.
    - The collection process minimizes intrusiveness.
    - The test is administered in a reasonable fashion, such as part of a lawful pre-employment medical examination required of all job applicants.
    - Access to test results is restricted.
- Employers may generally test current employees only if they have a compelling safety reason.
- Random testing is generally permissible only where an employee holds a safety- or security-sensitive position.
- Employers must keep the results of any drug or alcohol test confidential.
- Employers can establish and enforce workplace policies on marijuana use.

PRIVACY ISSUES

In most cases involving disputes over drug or alcohol testing and employment issues, California courts will assess the employer's testing policy to determine whether it violates an individual's rights to privacy under the California Constitution.

Specifically, courts apply a balancing test that weighs an employer's legitimate interests in regulating the conduct of its employees against the intrusion the employer's drug test has on an employee or applicant's reasonable expectation of privacy.

In this analysis, courts may consider several factors, such as:

- The nature of the drug or alcohol test (including the extent to which a person is monitored while supplying urine);
- The equipment used for testing;
- The manner in which the test was administered; and
- The reliability of the test.

California laws governing the use of medical information also require employers to keep the results of any drug or alcohol test confidential. In general, employers may not disclose an applicant or employee's test results without first obtaining valid authorization from the individual. Under the state's labor laws, employers must also pay for any workplace testing they require.

Pre-Employment Vs. Current Employee Testing

California courts have determined that job applicants have a reduced expectation of privacy because they necessarily must disclose personal information to prospective employers during the application process. Therefore, employers in California are permitted to conduct pre-employment drug screenings as long as they ensure that:

- Job applicants receive notice of the drug testing requirement;
- The collection process minimizes intrusiveness;
- The test is administered in a reasonable fashion, such as part of a lawful pre-employment medical examination required of all job applicants; and
- Procedural safeguards restrict access to the test results.

In order to conduct testing on current employees without violating privacy rights, an employer must identify compelling reasons why its interests in testing would be increased or why the employee's privacy expectations would be reduced. For example, an employer's reasonable belief that an employee is intoxicated at work would strengthen its argument that its testing did not violate the employee's privacy rights.

Random Testing

Random tests are those performed when an employer has no individualized suspicion that an employee is impaired by or has used drugs or alcohol at work. Although the California Supreme Court has not addressed whether employers may require employees to submit to random testing, lower courts in the state have ruled that random testing may be permissible only in limited circumstances, such as where an employee holds a safety- or security-sensitive position.

However, employers in certain California cities may be prohibited from conducting any random employee drug tests. For example, a San Francisco ordinance prohibits employers from requesting, requiring, or conducting random or companywide drug tests under any circumstances. Employers should become familiar and comply with all laws that apply where their employees' workplaces are located.

Enforcement

An individual who believes his or her privacy rights have been violated as a result of workplace drug or alcohol testing may file a lawsuit against his or her employer. Remedies may include damages resulting from the violation and an order preventing the employer from committing further violations. An employer who intentionally violates an employee's right to privacy may also face criminal prosecution.

LEGALIZED MARIJUANA AND DRUG TESTING LAWS

Though all marijuana use remains illegal under the federal Controlled Substances Act, California has adopted laws that allow individuals to possess and use marijuana in the state. This Employment Law Summary provides a high-level overview of California's medical and recreational marijuana laws and information about their impact on employers.

Overview

California was the first state to legalize medical marijuana. In 1996, the state's voters approved Proposition 215, now known as the California Compassionate Use Act of 1996, to protect against criminal prosecution for certain medical uses of marijuana.

In 2016, California voters legalized recreational marijuana by approving Proposition 64. This is now known as the California Control, Regulate and Tax Adult Use of Marijuana Act. Under this law, individuals who are age 21 or older may possess, cultivate and use limited amounts of marijuana in the state.

Impact on Employers

Until Jan. 1, 2024, California's legalized marijuana laws do not affect an employer's rights to establish or enforce workplace policies that restrict or prohibit marijuana use by employees. In other words, the state's marijuana laws generally permit employers to:

Perform drug testing (without any specified limitations); and

Take adverse employment actions against an individual solely based on his or her positive test for marijuana, even if the individual is authorized to use marijuana for medical purposes.

The California Supreme Court confirmed this in its 2008 decision in Ross v. Raging Wire Telecommunications. In this case, the court held that an employee who was authorized to use marijuana for medical purposes did not have the right to sue his employer for terminating his employment based on his off-duty medical marijuana use. The court ruled that California's Fair Employment and Housing Act, under which the employee brought a disability discrimination claim, does not require employers to accommodate an employee's use of drugs that are illegal under federal law.

Starting on Jan. 1, 2024, however, an amendment (AB 2188) to the California Fair Employment and Housing Act (FEHA) provides employment protection for job applicants and employees who use marijuana outside of work. Under AB 2188, employers with 5 or more employees may not discriminate against or in any way penalize an employee or applicant based on the individual's:

- Use of marijuana off the job and away from the workplace; or
- Positive tests for marijuana that do not measure impairment.

These new prohibitions added by AB 2188 do not apply to:

- Employees in the building and construction trades;
- Individuals applying for or working in positions that are subject to federal background investigation, clearance requirements, or state or federal laws that require drug testing as a condition of employment or for federal funding, licensing-related benefits or contracts; or
- Individuals who possess, use or are impaired by marijuana at work.

AB 2188 allows individuals to recover damages and penalties from employers that engage in unlawful discrimination.

Recreational Marijuana

As of June 27, 2017, the California Control, Regulate and Tax Adult Use of Marijuana Act (CAUMA) protects individuals who are age 21 or older from state or local prosecution for possessing, cultivating or using limited amounts of marijuana in California. The table below provides additional information about what the CAUMA allows.

Individuals age 21 and older may:	
Possess, process, transport, purchase, obtain, or give away to others who are 21 or older without any compensation whatsoever:	• 28.5 grams of marijuana; • Eight grams of marijuana concentrate; and • Marijuana accessories.
Possess, plant, cultivate, harvest, dry, or process (and possess cannabis produced by):	• Six living marijuana plants.
Smoke or ingest:	• Marijuana and marijuana products.

Impact on Employers

The CAUMA specifies that it does not:

- Affect employers' rights to maintain drug and alcohol-free workplaces or to have policies that prohibit employees and applicants from using marijuana;
- Require employers to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growth of marijuana in the workplace; or
- Prevent employers from complying with state or federal law.

Other Restrictions on Recreational Use

The CAUMA includes certain time and place restrictions on legalized recreational marijuana use. These are summarized in the table below.

Individuals may NOT:	
Use marijuana:	• In any public place; • While driving, operating or riding as a passenger in any vehicle used for transportation; or • In or on the grounds of a school, day care center or youth center while children are present.
Possess marijuana:	• In unsealed containers or packages while driving, operating or riding as a passenger in any vehicle used for transportation; or • In or on the grounds of a school, day care center or youth center while children are present.
Smoke or vaporize marijuana:	• In any location where smoking tobacco is prohibited; or • Within 1,000 feet of a school, day care center or youth center where children are present (subject to limited exceptions).

In addition, the CAUMA allows California cities and counties to enact local regulations that restrict where or when recreational marijuana may be used. These regulations may not completely prohibit recreational marijuana use in either of the following:

- A private residence (such as a house, an apartment unit, a mobile home or other similar dwelling); or
- Any fully enclosed and secure accessory structure to a private residence (such as a garage or enclosed porch).

However, local regulations may completely prohibit individuals from using recreational marijuana virtually anywhere else within a particular city or county. For example, a city or county may prohibit individuals from using recreational marijuana in their own yards or anywhere else that is not part of an enclosed residential structure.

Finally, the CAUMA specifically allows individuals and other private entities to prohibit or restrict marijuana possession or use on the individual or entity's privately owned property.

Medical Marijuana

Under the California Compassionate Use Act (CCUA), individuals called "qualifying patients" (QPs) and their primary caregivers may possess and cultivate larger amounts of marijuana than the CAUMA allows for individuals age 21 and over in general. The table below provides more information about what the CAUMA allows.

For each QP, the QP and his or her primary caregiver may:	
Possess	• Up to eight ounces of dried marijuana; or • Any amount of marijuana consistent with the QP's needs, if the QP's physician recommends that the eight ounces does not meet those needs.
Maintain	• Up to six mature or 12 immature marijuana plants.

Unlike in most other states that have legalized medical marijuana, an individual does not have to register with any government agency in order to be considered a QP in California. Instead, an individual may be considered a QP if a physician determines that his or her health would benefit from marijuana use and the physician recommends or approves marijuana use by the individual for treatment of any of the following:

- Cancer;
- Anorexia;
- AIDS;
- Chronic pain;
- Spasticity;
- Glaucoma;
- Arthritis;
- Migraine; or
- Any other illness for which marijuana provides relief.

Under the law, the recommendation or approval by a physician may be written or oral. In addition, the CCUA defines "primary caregiver" simply as an individual who:

- Is designated by a QP; and
- Has consistently assumed responsibility for the housing, health or safety of the QP.

However, a primary caregiver must be at least 18 years old unless he or she is:

- The parent of a minor child who is a QP; or
- Otherwise entitled to make medical decisions for a QP.

Despite having no requirement for a QP or primary caregiver to register with the state, the CCUA establishes a voluntary program that requires county health departments to issue identification cards to QPs and primary caregivers who apply for them. The main advantage of obtaining an identification card under this program is that a state or local law enforcement official must accept a valid card as proof that its holder is entitled to the CCUA's protections against prosecution (unless the official has probable cause to believe that the card is being used fraudulently).

Impact on Employers

The CCUA specifies that it does not require employers to accommodate medical marijuana use "on the property or premises of a place of employment or during the hours of employment."

As noted above, the California Supreme Court has also confirmed that the CCUA does not require employers to accommodate an employee's off-duty medical marijuana use, even if the employee is a QP. In other words, the CCUA does not prohibit employers from taking adverse employment actions against employees based solely on the fact that the employees violate a workplace drug policy by testing positive for marijuana.

In addition, the CCUA makes clear that medical marijuana does not have to be covered under any health care plan.

NOTE: Employers in certain California cities may be prohibited from conducting any random employee drug tests. For example, a San Francisco ordinance prohibits employers from requesting, requiring or conducting random or company-wide drug tests under any circumstances. Employers should become familiar and comply with all laws that apply where their employees' workplaces are located.

Other Restrictions on Medical Use

The CCUA specifies that it does not authorize any QP to smoke medicinal marijuana under any of the following circumstances:

- In a place where smoking is prohibited by law;
- In or within 1,000 feet of the grounds of a school, recreation center, or youth center (unless the medicinal use occurs within a residence);
- On a school bus;
- While in a motor vehicle that is being operated; or
- While operating a boat.

NOTICES AND POSTERS

Employers must display required posters in a public place where employees can easily access them. While most posters apply to all employers within the state, some may **apply** to specific industries or employers. Employers can review each poster description to determine whether they are required to display that particular poster. Employers must also comply with all applicable federal posting requirements.

Please note that under state law, employers must distribute certain workplace notices and posters as an email attachment, in addition to displaying them as required.

All California Employers

The following posters are required for all employers in California:

- Discrimination and harassment poster: English
- Earned Income Tax Credit Notice: All employers are required to notify their employees that they may be eligible for VITA, CalFile, and other state and federal antipoverty tax credits, including the federal and the California EITC. Employers must give notification within one week of providing employees with an annual wage summary (IRS Form W-2 or 1099). You must give notification by either handing it directly to your employee or mailing it to your employee's last known address. Posting on an employee bulletin board will not satisfy the notification requirement.
- Emergency contact poster: English
- Minimum wage poster: English | Spanish
- Notice of inspection by immigration agencies: Employers must post this notice within 72 hours after receiving notice of any inspection of employment records by an immigration agency. English | Spanish
- Paid sick leave poster: English
- Payday notice: English
- Right to vote notice: English | Spanish
- Rights of victims of domestic violence, sexual assault, and stalking poster: English | Spanish
- Sexual harassment fact sheet: English | Spanish
- Sexual harassment poster: English | Spanish
- Smoking notice(s): California law requires employers to indicate areas where smoking is prohibited or allowed in the workplace. Employers must obtain adequate signage to designate these areas from their local law enforcement agencies.
- Time off to vote notice: Employers must post this notice at least 10 days before statewide elections. English | Spanish
- Transgender rights in the workplace poster: English | Spanish
- Unemployment insurance benefit poster: English | Spanish
- Unemployment insurance registration notice : English | Spanish
- Whistleblower protection poster: This poster must be at least 8.5 inches by 11 inches in size, have margin of 0.5 inches or smaller, and use 14-point or larger font. English

Posters that Depend on Employer Size

The following posters affect only employers with the number of employees specified below:

- Family care and medical leave and pregnancy disability leave poster: Required for all employers with 50 or more employees, and all public agencies. English
- Pregnancy leave poster: Required for all employers that have between five and 49 employees. English

Employers subject to Specific Laws

Employers must display the following posters only if they are affected by the laws, conditions or requirements specified below:

- Agricultural Safety/Health Poster: English/Spanish
- Farm labor contractor pay notice: Required for labor contractors licensed by the Division of Labor Standards Enforcement. The notice must be at least 12 inches high and 10 inches wide. English/Spanish
- Human trafficking public notice: Required for farm labor contractors. English/Spanish
- Industrial trucks poster: Required for employers that have workers operating forklifts or other industrial trucks or tow tractors. English | Spanish
- Medical record access notice: Required for all employers that use hazardous or toxic substances. English | Spanish
- Required workplace posting for all California barbering and cosmetology licensees: English | Spanish
- Safety and Health Protection on the Job (State OSHA poster): Required for all employers subject to Cal/OSHA. English | Spanish

- Workers' compensation notice: Required for all employers subject to California's workers' compensation laws. Employers must obtain the "Notice of Workers' Compensation Carrier and Coverage" from their insurance carrier.
- Workplace injuries poster: Required for all California employers that offer workers' compensation insurance. English/Spanish

Industrial Wage Orders

California wage orders regulate work conditions in certain industries. Employers in these industries must display the appropriate industry-specific poster.

- Wage order #1: manufacturing industry: #1-2001 (English) | #1-2001 (Spanish)
- Wage order #2: personal services industry: #2-2001 (English) | #2-2001 (Spanish)
- Wage order #3: canning, freezing and preserving industry: #3-2001 (English) | #3-2001 (Spanish)
- Wage order #4: professional, technical, clerical, mechanical and similar occupations #4-2001 (English) | #4-2001 (Spanish)
- Wage order #5: public housekeeping industry #5-2001 (English) | #5-2001 (Spanish)
- Wage order #6: laundry, linen supply, dry cleaning and dyeing industry #6-2001 (English) | #6-2001 (Spanish)
- Wage order #7: mercantile industry #7-2001 (English) | #7-2001 (Spanish)
- Wage order #8: industries handling products after harvest #8-2001 (English) | #8-2001 (Spanish)
- Wage order #9: transportation industry #9-2001 (English) |#9-2001 (Spanish)
- Wage order #10: amusement and recreation industry #10-2001 (English) | #10-2001 (Spanish)
- Wage order #11: broadcasting industry #11-2001 (English) | #11-2001 (Spanish)
- Wage order #12: motion picture industry #12-2001 (English) | #12-2001 (Spanish)
- Wage order #13: industries preparing agricultural products for market, on the farm #13-2001 (English) | #13-2001 (Spanish)
- Wage order #14: agricultural occupations #14-2001 (English) | #14-2001 (Spanish)
- Wage order #15: household occupations #15-2001 (English) | #15-2001 (Spanish)
- Wage order #16: certain on-site occupations in the construction, drilling, logging and mining industries #16-2001 (English) | #16-2001 (Spanish)

RECORDKEEPING REQUIREMENTS

Federal laws, such as the Federal Insurance Contribution Act, the Fair Labor Standards Act (FLSA), the Equal Pay Act and the Civil Rights Act, impose recordkeeping duties on employers. Recordkeeping duties include creating, updating and preserving information.

California law also imposes several recordkeeping requirements. These operate in addition to or in conjunction with the federal requirements. The summary below provides a general overview of state recordkeeping requirements for employers in California.

Additional state and federal recordkeeping requirements may exist for specific industries. Consult with local state agencies for more information about recordkeeping requirements that may affect your business.

PERSONNEL RECORDS

Employers must maintain personnel records **for at least three years** after separation from employment at the location where employees report for work, or at another location agreeable to the employer and those authorized to review or inspect them.

Employees have the right (or can authorize another) to inspect their own records. Inspection requests must be in writing. Employers must make these records available to the employee **within 30 days** after he or she requests them.

Exceptions

The requirements outlined above do **not** apply to:

- Records relating to the investigation of a possible criminal offense;
- Letters of reference;
- Ratings, reports or other records obtained prior to a worker's employment and prepared by identifiable examination committee members or in connection with a promotional examination;
- Employees working for an agency subject to the Information Practices Act; or
- Employees covered under a valid collective bargaining agreement that prescribes:
- The wages, hours of work and working conditions for the employees;
- A procedure for the inspection and copying of personnel records;
- Premium wage rates for all overtime hours worked; and
- A regular rate of pay of at least 30% higher than the state minimum wage rate.

PAYROLL AND EARNINGS STATEMENTS

Employers must create employee payroll records and maintain them **for at least three years** at the place where employees work or at a central location within the state. Each employee payroll record must include:

- The employee's name and address;
- Proof of the employee's age (if a minor);
- Gross wages earned (including accurate records of all gratuities received);
- Total hours worked by the employee (unless an exception applies a fixed salary or overtime exemption);
- The number of piece-rate units completed and any applicable piece wage rate if the employee is paid on a piece-rate basis;
- All deductions (they can be aggregated and shown as one item);
- Net wages earned;
- The inclusive dates of the period for which the employee is paid;
- The employee's name and his or her identification number (or the last four of the Social Security number if employees are not assigned an employee number);
- The employer's name and address (and the legal entity that secured the services of the employer if the employer is a farm labor contractor); and
- All hourly rates that apply to each employee during each pay period.

In addition, temporary service employers must also keep records of the rate of pay and the total hours each employee works for a temporary service assignment.

Under the law, employees have the right to inspect and receive their payroll records from an employer **within 21 calendar days** after requesting them. Employers that fail to provide access to payroll records within the 21-day period may be fined up to $750 per infraction.

If an employer fails to create or keep the records as required, the California Department of Labor Standards Enforcement (DLSE) may order it to pay fines of up to $4,000. A noncompliant employer may also be ordered to pay court costs, attorney's fees, and the amount of any damages a violation caused to an employee.

EQUAL PAY

Employers must maintain sufficient records to prove to the DLSE that they pay similar wage rates to employees that perform work that requires similar levels of skill, effort and responsibility under similar working conditions. If there is a variation in wage rates, the records must justify a difference based on seniority, merit, performance (quality or quantity of production) or any other system that takes into account bona fide factors other than sex.

If an investigation ensues and an employer fails to furnish adequate records, it may be required to pay back wages, interest on back wages, court costs, attorney's fees and damages (usually an amount equal to back wages). California law requires employers to keep these records **for at least two years**.

CHILD LABOR

Employers must keep record of the safety training they provide to minors for the operation of tractors and machinery. Safety training records must be part of each minor's personnel file. In addition, personnel files for minors must identify the name of the minor and contain copies of any certificates or documents authorizing the minor to work for the employer.

UNEMPLOYMENT COMPENSATION

The California Employment Development Department (CEDD) requires employers to keep true and accurate record of any information it may need to assess individual eligibility for benefits, including records to show each employee's status (employed, on layoff, on leave) and wages. If an employer fails to keep and furnish the records required, the CEDD will assume that the employee is entitled to receive the maximum benefit payable under the law and the employer's account will be charged accordingly.

When a claimant worked for more than one employer, additional assessments will be charged only to those employers that fail to keep or furnish adequate records.

WORKING WITH CONTRACTORS

Employers must keep record of contractor agreements in the construction, farm labor, garment, janitorial, security guard or warehouse industries **for at least four years**.

The records must prove that, at the time of contract, employers had sufficient funds to allow the contractors to comply with all applicable local, state and federal laws. Specifically, the record must include:

- The employer's name, address, telephone number and identification number;
- The contractor's name, address and telephone number;
- The contractor's workers' compensation insurance policy number and the name, address and telephone number of its insurance carrier;
- A description of services the contractor will provide (including beginning and completion dates);
- The amount of commission or other payment made to the contractor for services rendered under the contract;
- The total number of workers to be employed under the contract, and the total amount of all wages to be paid and pay dates;
- The address of any real property that will be used to house workers in connection with the contract of service;
- The vehicle identification number of any vehicle the contractor will use in connection with the services it will provide to the employer;
- The number of the vehicle liability insurance policy that covers the vehicles mentioned above and the name, address and telephone number of the insurance carrier;
- A list of any independent contractors the contractor may hire to provide its services to the employer along with the independent contractor's local, state and federal license identification numbers (if applicable); and
- The signature of all the parties to the contract and the date the contract was signed.

WORKERS' COMPENSATION

The California Division of Workers' Compensation (DWC) requires all employers to record and report every occupational injury or illness that causes an employee to seek medical treatment beyond first aid or lose working time beyond the date of the injury or illness.

Self-Insured Employers

The DWC requires self-insured employers to record and report:

- The amount of all compensation claims;
- The amount of benefits paid to date;
- An estimated amount of future liability on open claims under state and federal laws;
- The average number of employees and the total wages for each adjusting location;
- A list of all open indemnity claims; and
- The amount of security deposit made by the employer.

WORKPLACE VIOLENCE

The DLSE requires employers to keep track of any leave an employee takes because the employee or the employee's immediate family member or registered domestic partner was the victim of a violent felony, a serious felony, felony theft or embezzlement. These records must remain confidential.

In addition, employers must keep record of any violence committed against a community health care worker they employ. A copy of these records must be filed with the DIR.

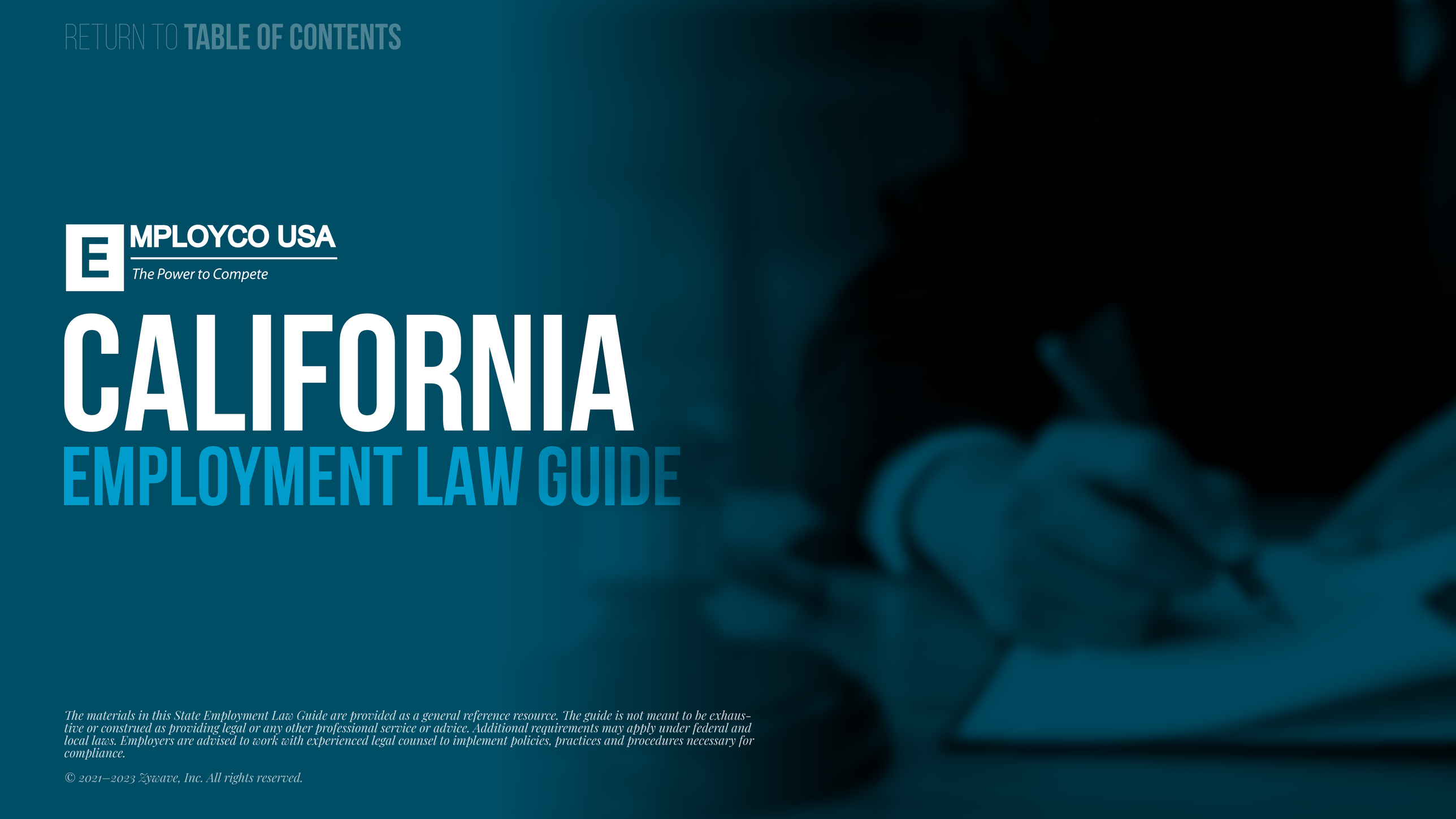
RETURN TO TABLE OF CONTENTS

EMPLOYCO USA

The Power to Compete

CALIFORNIA

EMPLOYMENT LAW GUIDE



The materials in this State Employment Law Guide are provided as a general reference resource. The guide is not meant to be exhaustive or construed as providing legal or any other professional service or advice. Additional requirements may apply under federal and local laws. Employers are advised to work with experienced legal counsel to implement policies, practices and procedures necessary for compliance.