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SOUND ADVICE
FOR EMPLOYERS

2024 EMPLOYMENT LAW UPDATE

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INTRODUCTION

WHAT WILL WE COVER?

- New Laws
- New Regulatory Agency Policy
- Recent Court Cases
- What does the future hold?

NEW LAWS

Laws adopted by federal, state & local governments

WAGES

Minimum Wage

Minimum Wage

- Minimum wage to $16.00 on January 1, 2024, for *all* employers.
- *See* state wage order MW-2024 (and adjusted rates):
  - https://www.dir.ca.gov/IWC/MW-2024.pdf

Minimum Wage

- Other effects:
  - Salary must be at least twice the amount (starting at $66,560) for white collar exemptions.
  - No “part time” salaried employees.
  - Meal and rest period minimum penalties increase.
  - “Unproductive time” and rest periods for piece-rate employees.
  - Reporting-time pay, split-shift pay.

Minimum Wage

- Computer Software Professionals = *exempt if paid:*
  - $55.58 per hour, *or*
  - annual salary of not less than $115,763.35 for full time employment and paid not less than $9,646.96 per month.
  - https://www.dir.ca.gov/OPRL/ComputerSoftware.htm

Minimum Wage

- Physicians = *exempt if paid:*
  - $101.22 per hour.
- But could also be paid $66,560 salary on a 'salary basis'!
- No similar hourly exemption for attorneys (unlike federal law) or *any other* professions (except software professionals, above).

Local Minimum Wages

Minimum Wage (No. Cal)

- Alameda
- Belmont
- Berkeley
- Burlingame
- Cupertino
- Daly City
- El Cerrito
- Emeryville
- Foster City
- Fremont
- Half Moon Bay
- Hayward
- Los Altos
- Menlo Park
- Milpitas
- Mountain View
- Novato
- Oakland
- Palo Alto
- Petaluma
- Redwood City
- Richmond
- San Carlos
- San Francisco
- San Jose
- San Leandro
- San Mateo (city)
- San Mateo (county)
- Santa Clara
- Santa Cruz
- Santa Rosa
- Sonoma (city)
- South San Francisco
- Sunnyvale

Minimum Wage

- Local ordinances – throughout Northern California
  - Consider workers who spend some time in different jurisdictions (delivery, telecommute, etc.).
- Remember: Labor Commissioner can now recover amounts owed under *local* wage statutes!

Local Ordinances

- Review *all* jurisdictions employees visit or work in.
- Local ordinances proliferate:
  - Sick and family leave
  - Benefit contributions
  - Scheduling requirements
  - Many other varied local ordinances

Local Ordinances

- New San Francisco Ordinance:
  - Military Leave Pay Protection Act
  - Requires covered employers to provide supplemental pay to San Francisco-based reservist employees when called to active duty
  - Guidance at: https://sf.gov/information/understanding-military-leave-pay-protection-act

Healthcare Employers

- SB 525: Higher minimum wage rates for certain "covered health care" facilities.
- Definition of facilities is complex – healthcare employers should assess with counsel to see where they fit in.
- 2024 wages ranges from $23 for large facilities to $18 for small-county facilities.
  - https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB525&version=20230SB52592CHP

Fast Food Workers

- AB 1228: Prior FAST Act (re national fast-food chains) repealed.
- Replaced with $20 minimum wage establishments that are parts of a national fast-food chain (consisting of more than 60 establishments nationally) effective April 1, 2024.
- Fast Food Council defined to implement higher amount(s) effective January 1, 2025.
  - *See* https://www.gov.ca.gov/2023/09/28/california-increases-minimum-wage-protections-for-fast-food-workers/

Food Handlers

Food Handlers

- SB 476 provides that employees requiring a food handler card but be paid "any cost" associated with obtaining a food handler card such as:
  - The cost of the certification program;
  - The time it takes to complete the certification program;
  - The time it takes to complete the training.
- Employers may not require applicants or employees to have an existing food handler card.
  - *See* https://legiscan.com/CA/text/SB476/id/2844784

Food Handlers

- Open question: what are all the "costs" required (transportation, materials, computer equipment?)
- The law is *not* part of the Labor Code, so PAGA penalties and expense indemnification rules *may not* apply.
- Likely to apply to private and *public* employers whose employees require food handler cards.

NEW HIRE NOTICE

New Hire Notices

- AB 636: Employers currently required to provide non-exempt employees with a new-hire notice per Labor Code section Labor Code 2810.5.
- Includes basic data such as wage and overtime rates, workers compensation contact information.
- Does not create a contract with employees.

New Hire Notices - Disaster

- New notice requirement: disclosure of any disaster declaration applicable to county or counties where the employee is to be employed, issued within 30 days before the employee's first day of employment, which may affect health and safety.

- *Update:* usually new information can be disclosed on wage statement or other materials required by law.

New Hire Notices - Disaster

- But this requirement is not likely to be reflected in wage statements or other documents, so notice would need to be provided to non-exempt employees within seven calendar days of a change (!)

- New initial notice is available at:
  - https://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf

New Hire Notices – H-2 Workers

- Additional requirement applies to employers who hire employees with H-2 agricultural visas.

- Notice must include (in Spanish) in Spanish, a "separate and distinct" section describing an agricultural employee's additional rights and protections under California law including *many* issues such as the federal H-2A program wage rate, overtime wage rates, meal and rest periods, health and safety protections, transportation rights, workers compensation coverage, and many more items.

- Must provide the disclosure in English upon request.

New Hire Notices – H-2 Workers

- No Labor Commissioner exemplar yet available.
- Watch for additional information by March at the DLSE "wage theft" page:
  - https://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html
- Text of the law at:
  - https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240AB636&version=20230AB63696CHP

LEAVES OF ABSENCE

Paid Sick Leave

Paid Sick Leave

- SB 616: Effective January 1, 2024
  - Minimum amount of annual leave allotment increased.
  - Certain other changes for employees previously excluded or limited.

Review - Who is Covered

- Most private employers regardless of size.
- All public employers regardless of size.
- Certain exception for unionized employees.

Review - When Eligible?

- **30-Day Rule** (eligibility)
  - Employee who works 30 days for an employer.
  - Within a year from "commencement of employment."
  - "Works" probably means "on the payroll" – not actual working days.

Review - When Eligible?

- **90-Day Probation** (use of leave)
  - Employee does not have a right to *use* leave until 90 days of employment.
  - This is not "within a year" – example: seasonal employees who work 60 days a year will become eligible to *use* leave after they return for a second year.

Basic Rule – "Accrual" (1:30)

- Requires at least 1 hour per 30 worked (0.033).
- Commencing at the start of employment (as above).
- Accrual rate *has not* changed.

Employers Have Other Options

- Employers can change some requirements if they have a "**paid leave**" or **paid time off policy.**"
  - The policy probably needs to be *written* due to the law's recordkeeping requirements.
  - Plus: written policy avoids *ambiguity* and provides *notice* to employees.

Modified Rule – "Accrual"

- While employers may adopt or keep other types of accrual schedules
- Revised: Schedule must result in:
  - 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment, and
  - 40 hours by the 200th calendar day of employment.

Requirements – "Accrual"

- Accrued hours **carry over** from year to year
  - Revised: Employer may limit accrual to 80 hours or 10 days;
  - Revised: Employers may cap annual usage at 40 hours or 10 days.
- Accrued hours **need not** be paid on termination.
  - *But*: If employee returns within one year, unused sick leave must be **reinstated.**

REVISED "Up Front" Option

- Employer policy may provide time "up front" so long as it is at least *40 hours or 5 days*.
  - Labor Commissioner: suggests this is at least 40 hours for all employees, and more for employees working over eight hours per day (e.g., 50 hours for ten-hour shift workers).
  - May be granted on any of the schedules allowed for employer policies (anniversary year, calendar year, other 12-month period).

REVISED Policy Requirements

- No less than 40 hours or 5 days of paid sick leave, or **equivalent paid leave or paid time off.**

- Available each:

  - year of employment (from anniversary date),
  - calendar year, or
  - 12-month basis (fiscal year, benefit year).

REVISED Policy Requirements

- Leave may be used for **the same purposes** and **under the same conditions** as mandated sick leave

- Policy must:

  - Match the accrual, carry over, and use requirements of mandated sick leave, *or*

  - Provides ***up front*** at least 40 hours or 5 days of equivalent paid time off.

REVISED Accrual and Carryover

- With its own policy, an employer may:
  - **Limit use of leave** to 40 hours or 5 days per year .
  - **Limit carryover of leave** by capping *accrual* at 80 hours or 10 days.
  - **No carryover** into subsequent years is required if the employer grants up-front leave.

Review: Basic Rules

- Leave may be used for employee or family member illness, preventive care or diagnosis, care or treatment of an existing health condition, or for specified purposes if employee is a victim of domestic violence, sexual assault or stalking.

- Family members include the employee's parent, child, spouse, registered domestic partner, grandparent, grandchild, sibling or designated person.

- No minimum required use above two hours.

- Reasonable notice required if known or as "soon as practical" if not.

- No certification may be required unless reasonable evidence of abuse.

Further Information

- Labor Commissioner advice:

  https://www.dir.ca.gov/dlse/paid_sick_leave.htm

- Fact Sheet:

  https://www.dir.ca.gov/covid19/outreach-files/Right-to-Paid-Sick-Leave-English.pdf

Reproductive Loss Leave

Reproductive Loss Leave

- SB 848: Five days of leave for:
  - Failed Adoption
  - Failed Surrogacy
  - Miscarriage
  - Stillbirth
  - Unsuccessful Assisted Reproduction

Reproductive Loss Leave

- Applies to:
  - employers with five or more employees.
  - employees employed at least 30 days prior to the leave's commencement.
  - days may be non-consecutive but must be within three months of the event *unless* on PDL or other leave – then within three months of the end of the other leave.
  - May be capped at 20 days in a 12-month period.
- Each event calculated from the day of, or final day of, the event itself.

Reproductive Loss Leave

- Reproductive loss leave is *unpaid*.
- Employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off.
- Text of the law:
  - https://legiscan.com/CA/text/SB848/id/2845342
- Discussion and examples at:

  https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/01/Reproductive-Loss-Leave.pdf

EQUAL EMPLOYMENT OPPORTUNITY

Cannabis Use

Cannabis Use

- AB 2188 – SB 700: A new EEO category on the same footing as race, religion, sex, national origin, sexual orientation, etc.

- Employee off-duty cannabis use is now one of the protected categories subject to Fair Employment and Housing Act protection.

Cannabis Use

- Employers may not take adverse action against employees for cannabis use off the job and away from the workplace.
- Pre-hire drug testing may not test for non-psychoactive cannabis metabolites.

Cannabis Use

- Employers may not ask applicants or employees about past cannabis use.
- Prior marijuana – related offences (such as DUI) must be considered under state “fair chance” requirements.
- Violation permits investigation by the California Civil Rights Department and complaints under the Fair Employment & Housing Act.

Cannabis Use

- Employees need not be allowed to possess or be under the influence of cannabis on the job.
- Does not interfere with obligations in keeping a drug and alcohol-free workplace.
- Does not apply to building and construction trades or positions requiring a federal background investigation or security clearance.

Cannabis Use

- Further information provided by the California Civil Rights Department:
  - https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/01/Cannabis-Use-FAQ-ENG.pdf

Retaliation

SB 497: Whistleblower Protection

- This is a *dynamite* new law. It may affect employers in similar (but different ways) that the Private Attorneys General Act (PAGA) (!)
- It is a type of law consistently vetoed by past governors but signed into law this year.
- Creates a *presumption* of liability requiring employers to prove their innocence.

SB 497: Whistleblower Protection

- Labor Code section 98.6 and 1197.5 – which prohibit many claims and complaints about wages, working conditions, or off-duty conduct – amended to create a *presumption of retaliation*.

- Adverse action within 90 days of any complaint or protected conduct is *presumed* to be a violation.

- Employers will bear the burden of proof on damages and $10,000 civil penalty.

SB 497: Whistleblower Protection

- Argument will be made that employees have a private right of action for lost wages, benefits, and reinstatement.
- Will also be alleged as a basis for public policy wrongful termination claims.
- May also be collected by the Labor Commissioner.

SB 497: Whistleblower Protection

- Practical guidance:
  - Ensure care when investigating workplace complaints regarding wages and conduct as well as discrimination and harassment.
  - Be mindful of the 90-day "temporal proximity" standard.
  - Gather facts to establish whether any complaints were *actually made*.

SB 497: Whistleblower Protection

- Text of the law at:
  - https://legiscan.com/CA/text/SB497/id/2844685
- Look for further guidance from the Labor Commissioner and the courts

Noncompete Agreements

Noncompete Agreements

- SB 699, AB 1076: California law has long prohibited "restrictive covenants" or "covenants not to compete."
- Restriction is a fundamental public policy – state courts have refused to recognize agreements executed in other states *and* judgments entered in other states.
- Employee attorneys have brought suits for wrongful failure to hire, interference with contract, etc.

Noncompete Agreements

- Potential issues:
  - Actual non-compete agreements accidentally imposed by *unknowing employers* or *employers from out of state*.
  - *Limited non-compete agreements* that may be construed as non-competes: restrictions on solicitation, misclassified contractor agreements, etc.

Noncompete Agreements

- Text of each law:
  - https://legiscan.com/CA/text/SB699/id/2839277
  - https://legiscan.com/CA/text/AB1076/id/2778129

SAFETY

Workplace Violence Prevention

Workplace Violence Prevention

- SB 533: Covered employers required to implement a workplace violence prevention plan (WVPP) by July 1, 2024.
- Plan must provide specific guidance for each work area.
- Recordkeeping logs with specific information about incidents must be maintained.

Workplace Violence Prevention

- Plan must include many items, such as:
  - effective procedures to obtain the active involvement of employees and union representatives in identifying risks and designing a plan; identifying those responsible for implementing the plan;
  - procedures to identify and correct workplace violence hazards in a timely manner; procedures to respond to actual or potential workplace violence emergencies;
  - procedures to communicate with employees regarding workplace violence matters and alert employees of workplace violence emergencies, including of the "presence, location, and nature" of such emergencies;
  - post-incident response and investigation plans;
  - periodic review and updates to the plan.

Workplace Violence Prevention

- Training required for all employees including interactive questions and answers in accessible language.

- Training required by July 1, 2024, and annually thereafter.

Workplace Violence Prevention

- Exemptions include:
  - locations where no more than nine employees are present at any one time and that are not accessible to the public;
  - employees working remotely in a place out of the employer's control, and
  - certain health care or law enforcement/correctional facilities.

Workplace Violence Prevention

- Cal/OSHA Standards Board will propose further standards by December 31, 2026.

- No specific guidance yet, but watch DOSH site for updates:
  - https://www.dir.ca.gov/dosh/
  - Law at: https://legiscan.com/CA/text/SB533/id/2434219

ARBITRATION

Arbitration Interference

- State limitations on arbitration agreement were overturned by a federal appellate court, but state law continues to interfere.
- New law: SB 365 provides that there will no longer be a stay of action pending appeal of a petition to compel arbitration.
- Will permit litigation to continue even if the employer were eventually successful in having an arbitration agreement enforced!

Arbitration Interference

- Potential challenges in federal court based on "preemption" by Federal Arbitration Act and offset of federal law

- See the law at:

  - https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202320240SB365&version=20230SB36596CHP

ADMINISTRATIVE ENFORCEMENT

Labor Code Enforcement

- AB 594 permits public prosecutors (including DA, County Counsel, and other local counsel) to bring civil or criminal actions to enforce alleged Labor Code violations.
- Permits fees to the prevailing plaintiff (but not a successful employer!).
- Provides that arbitration agreements with employees do not apply.

Labor Code Enforcement

- Potential impact in counties where government counsel is *aggressive* or where enforcement is seen as a *revenue source*

- Law at:

  - https://legiscan.com/CA/text/AB594/id/2845272

COVID CONFUSION

Cal-OSHA *Non-Emergency* Standards

COVID Regulation

- DOSH developed non-emergency regulations that took effect in early 2023.
- The regulations apply to employers not covered by the state Aerosol Transmissible Diseases (ATS) standards.
- New isolation standards were issued by the CDPH on January 9, 2024.
- A new fact-sheet is available from Cal-OSHA at:
  https://www.dir.ca.gov/dosh/coronavirus/Non-Emergency-regs-summary.pdf

COVID Regulation

- "Infectious period" for close contact is now limited to the date of onset of symptoms (with or without fever) until at least 24 hours have passed without fever (or fever-reducing measures).
- Where there are no symptoms, there is no "infectious period" and no isolation.
- Guidance:
- https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-Isolation-Guidance.aspx

COVID Regulation

- Employers must continue to:
  - provide face coverings and ensure they are worn by employees as required by the California Department of Public Health (CDPH).
  - report information about employee deaths, serious injuries, and serious occupational illnesses to Cal/OSHA.
  - make COVID-19 testing available at no cost and during paid time to employees following a close contact.
  - exclude COVID-19 cases from the workplace until no longer an infection risk .
  - implement policies to prevent transmission after close contact.
  - develop, implement, and maintain effective methods to prevent COVID-19 transmission by improving ventilation.

COVID Regulation

- Under the permanent rules:
  - standalone COVID-19 Prevention Plan no longer required; IIPP must address COVID-19 as a workplace hazard.
  - employers must provide effective COVID-19 hazard prevention training.
  - employers must provide face coverings when required by CDPH, respirators upon request.
  - employers must identify COVID-19 health hazards and develop methods to prevent transmission in the workplace.
  - employers must investigate and respond to COVID-19 cases and certain employees after close contact.
  - employers must make testing available at no cost to employees, including to all employees in the exposed group during an outbreak or major outbreaks.
  - affected employees must be notified of COVID-19 cases in the workplace.

COVID Regulation

- Under the permanent rules:
  - employers must maintain records of COVID-19 cases and immediately report serious illnesses to Cal/OSHA and to the local health department when required.
  - employers must now report major outbreaks to Cal/OSHA.
  - employers ARE NOT REQUIRED to pay employees while they are excluded from work.
  - excluded employees must receive information regarding COVID-19 related benefits they may be entitled to under federal, state, or local laws; their employer's leave policies; or leave guaranteed by contract.

COVID Regulation

- NOTE: the permanent rules have been approved and are in effect.
- DOSH has published the regulation text and guidance:

  https://www.dir.ca.gov/dosh/coronavirus/Non_Emergency_Regulations/

  https://www.dir.ca.gov/dosh/coronavirus/

- Also monitor CDPH standards:

  https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/EmployeesAndWorkplaces.aspx

COVID Exposure Notification

COVID Notice

- (AB 2693) (Labor Code § 6409.6):
  - *Removed* prior individual notice requirements.
  - Requires prominent display of exposure notification in places where postings are customarily displayed.
  - Requires posting within one business day of notice to employer and remain in place for fifteen calendar days.

Exposure Notification

- (AB 2693) (Labor Code § 6409.6) still applies in the workplace (!)
- Not fully integrated with Cal-OSHA or CDPH standards.
- No 2024 changes: but there is a discussion in our 2023 mid-year update – *see* https://ac96f285-bf39-43a0-b165-5f34f110238f.filesusr.com/ugd/dcdc9a_a8c8747fb53145918 10e8428e05fd1f7.pdf

Recall Rights

Prior Limited Right to Recall

- In the past - Labor Code section 2810.8 created recall rights for employees in the hospitality industry and in building services who were separated due to the COVID pandemic.

- Applies to:

  - Hotels (50 or more rooms, including private clubs).
  - Event centers (1000 plus seats).
  - Airport service providers and hospitality operations.
  - Building service providers (janitorial, maintenance, security).

Prior Limited Right of Recall

- Employees must have:
  - Been employed for at least six months in the year before January 1, 2020.
  - Have worked at least two hours per week.
  - Most recently separated from employment because of any non-disciplinary reason related to COVID

Prior Limited Right of Recall

- Requires notice in writing, and via email and text, of open positions that are the same or similar to that held by employees when laid off.
- Preference to those with greatest length of service, employer may send conditional notice to employees so long as it observes preference.
- Employee has at least five business days to respond.

Prior Limited Right of Recall

- If employer hires another person instead, must forward notice within 30 days including length of service of person hired and why decision was made.

- Law applies to successor owners as well!

New Limited Right of Recall

- No longer applies only to employees hired before 2020: now applies to all employees.
- No longer requires the employee to prove that separation was due to COVID: creates a *presumption* that any nondisciplinary separation due to lack of business, reduction in force, or other economic, nondisciplinary reason was due to a reason related to the COVID-19 pandemic.
- Recall rights extend to December 31, 2025.
- Amended guidance at:

  https://www.dir.ca.gov/dlse/COVID19Resources/FAQs-on-Recall-Rights.html

Additional Developments

U.S. DEPARTMENT OF LABOR

Independent Contractors

Independent Contractors

- DOL Final Rule issued on January 9, 2024 – full effect on March 11, 2024.

- Final Rule rescinds prior administration 2021 rule and "restores" prior federal regulations and guidance on contractor status.

Independent Contractors

- *Federal* contractor status will focus on six factors"
  - (1) opportunity for profit or loss depending on managerial skill;
  - (2) investments by the worker and the potential employer;
  - (3) degree of permanence of the work relationship;
  - (4) nature and degree of control;
  - (5) extent to which the work performed is an integral part of the potential employer's business; and
  - (6) skill and initiative.

Independent Contractors

- The federal rule *does not affect* California's independent contractor test.
  - It is similar to the state 'right of control' test that still applies where new state standards are excluded, but
  - It has no bearing whatsoever on issues determined by California's "ABC" contractor test.

Independent Contractors

- Guidance on the new federal rule can be viewed at:
  - https://www.dol.gov/agencies/whd/flsa/misclassification/rulemaking
- But be sure to consider state law as well; for example, see our blog at:
  - https://www.rybickiassociates.com/post/california-adopts-strict-limits-on-independent-contractors

NLRB – Unions

National Labor Relations Board

- As noted last year, General Counsel plans to revisit many rules scaled back over prior administration such as:
  - Scrutiny of handbook policies
  - Confidentiality agreements
  - Access to email systems
  - Misclassification of independent contractors
  - Pre-disciplinary warnings in non-union settings

Handbook and Policy Standards

In the recent past …

- NLRB scrutiny started during the Clinton Administration but was revised between 2017 and 2019.
- Over the past several years, the Board considered whether a neutral policy was lawful by examining:
  - (i) the nature and extent of the potential impact on NLRA rights, and
  - (ii) legitimate justifications associated with the rule.

In the recent past …

- This standard first looked at whether a reasonable interpretation from an ordinary person's perspective (not someone focused solely on NLRA issues) would interfere with protected rights, and
- Then looked at whether any potential restrictions would be justified by the employer's legitimate needs.
- Allowed many common policies such as confidentiality and trade secret restrictions.

New Law

- The current NLRB reverted to its prior standard in August, 2023:
  - *Stericycle, Inc. and Teamsters Local 628*
  - A policy is unlawful if it has a "reasonable tendency" to dissuade workers from engaging in organizing activity (such as discussions with outsiders or other workers).
  - Flips the standard from an *objective* reasonableness test to an unforgiving *subjective* standard.

New Law

- The new rule views a policy:
  - "from the perspective of an employee who is subject to the rule and economically dependent on the employer" and
  - "who also contemplates engaging in protected concerted activity."
- If employee "could reasonably interpret the rule" as limiting protected conduct it is *presumptively* unlawful.

New Law

- Relevant Board comments:
  - Employees are economically dependent on work so do not want to violate rules even if they are ambiguous.
  - A reasonable employee "interprets rules as a layperson, not as a lawyer."
  - So – if an employee "could reasonably interpret a rule to restrict or prohibit" protected activity, then it is assumed to be unlawful.

Employer Burden

- An employer must then show that the rule:
  - "advances a legitimate and substantial business interest," and that
  - "the employer is unable to advance that interest with a more narrowly tailored rule."

Policies Affected

- (1) Does not apply to *explicit* policies that directly mention protected activity (such as "do not make statements to outside parties about union activity in the workplace").
- (2) Applies to policies that *appear* to be neutral.
- (3) Some are "hot topics" while other are inherently dangerous.

Further Review

- There are many types of policies regarding communications, conduct, confidentiality and other areas that *require* close scrutiny

- There are too many for this presentation, but may view our recent presentation on employer policies under the NLRA at:

  - https://ac96f285-bf39-43a0-b165-5f34f110238f.filesusr.com/ugd/dcdc9a_83906e7d26cc4a259a040663293ebba0.pdf

COURT CASES

Court Cases

- In most years there are fewer statutes and regulations, leaving *more time* for caselaw!
- The past year has seen significant cases on arbitration, PAGA penalties, wage and hour issues, meal and rest periods, discrimination and retaliation claims, and various other areas.
- There are a few cases, however, to consider quickly:

Court Cases

- Reimbursement of workers for home work even when required by health officials.
- Use of federal percentage bonus standards rather than state Labor Commissioner opinion.
- Proportion of religious duties required for an employee to fall within the "ministerial exception."
- "Hobson's choice" case finding presence of music may be offensive on one hand even though prohibiting it could appear discriminatory.
- Revision of religious accommodation standard to limit *de minimus* standard.
- Affirmation of requirement that accommodation permit essential job functions.

OTHER NEW ISSUES

Other New Issues

- It is worth reviewing other relevant changes in law, regulation and cases in other sources, such as:
  - Refinement of California criminal background check regulation.
  - California consumer privacy laws.
  - Emerging indoor heat and other standards.
  - Industry-specific regulations and requirements.

ON THE HORIZON

On the Horizon

- There are many more changes likely.
- Various laws are also likely to be addressed such as potential state laws affecting arbitration agreements, family care, artificial intelligence.
- Federal agencies and Congress are likely to implement changes rapidly (potentially at or after elections).

On the Horizon

- Keep an eye on California Chamber of Commerce bill positions (such as “jobkiller” status) and position statements:
  - https://advocacy.calchamber.com/bill-positions/

Be Prepared

- WATCH for interpretations by agencies over the coming months (CCRD, Labor Commissioner, DOL).
- READ postings and newsletters from chambers and industry organizations.
- REVIEW policies and materials to ensure compliance with these new laws.

RYBICKI & ASSOCIATES, P.C.

LABOR AND EMPLOYMENT ATTORNEYS

QUESTIONS?

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