



SOUND ADVICE  
FOR EMPLOYERS

# 2026 ANNUAL EMPLOYMENT LAW UPDATE

Richard C. Rybicki  
Rybicki & Associates, P.C.

[www.rybickiassociates.com](http://www.rybickiassociates.com)

# 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 AND PAYMENT**

# Minimum Wage

# *Minimum Wage*

- Minimum wage rose to \$16.90 on January 1, 2026, for *most* employers (higher for others)
- See state wage order MW-2025 (and adjusted rates):
  - <https://www.dir.ca.gov/IWC/MW-2026.pdf>





# *Minimum Wage*

- Other effects:
  - Salary must be at least twice the amount (starting at \$70,304) 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:*
  - \$58.85 per hour, or
  - annual salary of not less than \$118,657.43 for full time employment and paid not less than \$10,214.44 per month
- <https://www.dir.ca.gov/OPRL/ComputerSoftware.htm>



# *Minimum Wage*

- Physicians = *exempt if paid:*
  - \$107.17 per hour
- But could also be paid \$70,304 salary on a 'salary basis' as a *professional employee!*
- No similar hourly exemption for attorneys (unlike federal law) or *any other* professions (except software professionals, above)

# Local Minimum Wages

# *Minimum Wage*

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

# *Minimum Wage (No. Cal)*

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

# 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

- Variety of situations where an employer may owe minimum wages in another area:
  - **San Francisco**: all employees working more than *two hours per week*
  - **Sonoma**: (\$18.47/\$17.38) all employees who work two hours in *any particular workweek*
  - **Santa Rosa**: (\$18.21) two hours *in a particular week*



# Local Ordinances

- Very important to consider some of the issues:
  - How to calculate 'regular rate' and overtime
  - How to calculate payment of sick leave
  - Other potential ordinances (health coverage etc.!).)

# Other Issues

- This presentation does not address some specific areas that should be familiar to employers in certain industries:
  - Large fast-food operations
  - Hotel/hospitality wages in certain locations such as Los Angeles

# California Equal Pay Act

# Equal Pay Act

- California Equal Pay Act is a *timebomb* for many employers
- Unlike federal law, employees need not be “substantially similar.”
- Employees need only perform *substantially similar work*, and any differences must account for the *entire difference* in pay.

# Equal Pay Act

- Employees who work in different locations but do similar work must receive the same pay as others by race, gender, ethnicity.
- 2026: Claims under the Act extended to *three years*, with *continuing violations* allowing extended claims to *six years*.
- Employers should review this requirement carefully: see discussion at [www.dir.ca.gov/dlse/California\\_Equal\\_Pay\\_Act.htm](http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm)



# Equal Pay Act

- Additional changes:
  - ‘Wages’ include all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. (Labor Code section 1197.5)
  - Employers who are required to disclose wage scales in job postings (15 employees) must make a “good faith estimate” of what the employer “reasonably expects to pay for the position upon hire.” (Labor Code section 432.3)

# (Equal) Pay Data Reporting

- Demographic pay data reporting by employers with 100+ employees (Labor Code section 12999):
  - Pay data reporting will include increased categories in 2027 *and*,
  - Penalties for failure to report pay data will be a *mandatory* \$100 per employee (1st) and \$200 per employee (subsequent) per failure (!).
- Information at <https://civildrights.ca.gov/paydatareporting/>





# Tips and Gratuities

# Labor Commissioner

- Tips and gratuities are *not* considered wages under state or federal law.
- California: tips may not be used as a credit against minimum wage.
- Governed by Labor Code section 351, which prohibits keeping part of employee tips or gratuities.

# Labor Commissioner

- Tips and gratuities have been confusing for courts and attorneys, as they usually cannot be collected via wage actions.
- Courts have created possible claims for ‘conversion’ or theft of employee tips, and many attorneys use ‘unfair competition’ laws to “disgorge” tips unlawfully withheld.

# Labor Commissioner

- Effective 2026: Labor Code section 351(b) allows the Labor Commissioner to issue a 'citation' or bring a civil action for recovery of tips.
- Initial appeal is to the Labor Commissioner, with appeal to courts with a bond (though the bond requirement is unclear).

# Labor Commissioner

- Issues:
  - Employees may contest the form of tip pools, allocations to managers or supervisors, including non-service employees.
  - Will also cover: non-hospitality gratuities, some automatic service charges, tip jars, etc.
  - Labor Commissioner discussion at [https://www.dir.ca.gov/dlse/FAQ\\_tipsandgratuities.htm](https://www.dir.ca.gov/dlse/FAQ_tipsandgratuities.htm)



# Wage Judgments

# Nonpayment Penalties and Fees

- Failure to pay wage and penalty judgments become more expensive.
- Labor Code 238.05/.10: Judgment not paid within 180 days creates a penalty at *triple* the original amount (plus the original judgment) unless the debtor shows good cause for nonpayment by *clear and convincing evidence* (plus fees and costs).
- And: **public prosecutors** now allowed jurisdiction to enforce judgments (and collect fees and costs!).



# EMPLOYEE CONTRACTS

# Repayment Agreements

# Repayment Agreements

- Employers may offer signing bonuses, paid training, or other benefits to be paid back if an employee leaves within a certain time.
- Agreements have led to litigation in *many* areas:
  - Financial services professional who leave but spent the money;
  - Truck drivers who received paid training;
  - Transition benefits to “bridge” sales compensation.

# Repayment Agreements

- Repayment agreements often seen as a type of “**restrictive covenant**” interfering with an employee’s ability to leave for better employment;
- **Vague or unfair terms** (such as involuntary termination) largely unregulated, left to **unpredictable litigation** on ancient concepts such as “the covenant of good faith and fair dealing.”

# Repayment Agreements

- 2026: Longstanding state law prohibiting “restraints on trade” amended to address repayment agreements.
- Contracts after January 1, 2026: unlawful to include contract or employment terms that:
  - **Require a worker to pay a debt** if the worker’s employment or work relationship with a specific employer terminates;
  - **Authorize collection of, or ends forbearance on, a debt** if the worker’s employment or work relationship with a specific employer terminates.
  - **Impose any penalty, fee, or cost on a worker** if the worker’s employment or work relationship with a specific employer terminates.
- Applies to any “employer, training provider, or debt collector.”

# Repayment Agreements

- Exceptions are allowed in narrow situations, including *qualifying* contracts for:
  - Federal, state or local **loan repayment assistance or forgiveness** programs;
  - **Tuition repayment** of qualified transferrable credentials not required as a condition of employment;
  - Enrollment in a Division of Apprenticeship Standards approved **apprenticeship program**;
  - Lease, financing, or purchase of **residential property**.

# Repayment Agreements

- Exception also allowed “discretionary or unearned monetary payment, including a financial bonus, at the outset of employment,” not tied to specific job performance, if:
  - The contract is **separate** from the primary employment contract;
  - The employee is **notified of the right to consult an attorney** and provided with a reasonable time period of not less than five business days to obtain advice;
  - Any repayment obligation for early separation from employment is **not subject to interest accrual and is prorated** based on the remaining term of any retention period, no more than two years from the receipt of payment;
  - The worker has an **option to defer receipt** of the payment to the end of a fully served retention period without any repayment obligation;
  - Repayment is not required unless separation from employment is at the **sole election of the employee**, or at the election of the employer for **misconduct**.



# Repayment Agreements

- Any contract violating requirements is void under Labor Code section 926.
- Unlawful contracts allow an employee to sue individually or on behalf of other similar situated workers.
- Remedies include:
  - **actual damages** sustained by the worker or workers on whose behalf the case is brought, **or five thousand dollars** (\$5,000) per worker, **whichever is greater**;
  - **injunctive relief**, and
  - reasonable **attorney's fees** and costs.

# Repayment Agreements

- Applicable to contacts entered into *on or after* January 1, 2026:

- Business and Professions Code section 16608:

[leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=16608](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=16608)



- Labor Code section 926:

[leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=926](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=926)



# NOTICES AND RECORDKEEPING

# Personnel Records

# Personnel Records

- Personnel records are the “entry point” for employee attorneys.
- They may request personnel records as “representatives” under Labor Code section 1198.5.
- Definition is unclear: materials “that the employer maintains relating to the employee’s performance, including education or training records, or to any grievance concerning the employee.”

# Personnel Records – Education or Training

- New law expands data that must be contained in the personnel file on *training records*.
- The law does not *require* employers to maintain training records that are not already required by law (such as periodic harassment training).
- But “education or training” records employers do keep must include:

# Personnel Records – Education or Training

- The name of the employee.
- The name of the training provider.
- The duration and date of the training.
- The core competencies of a training, including skills in equipment or software.
- The resulting certification or qualification.

# Personnel Records

- Labor Commissioner provides a discussion that probably is *too broad*, as it suggests personnel records includes more materials than required by the law's vague language.
- Labor Commissioner discussion of “personnel files and records:”
  - [https://www.dir.ca.gov/dlse/FAQ\\_RightToInspectPersonnelFiles.htm](https://www.dir.ca.gov/dlse/FAQ_RightToInspectPersonnelFiles.htm)





# The Workplace Know Your Rights Act

# “Know Your Rights” Notice

- Effective February 1, 2026, *and annually* after, employers must provide a new notice to all employees.
- Notice must be provided *every year*.

# “Know Your Rights” Notice

- Must be a “**stand-alone**” document (not part of a handbook or other documents);
- Given to **all** current employees and any subsequent new employees;
- Provided in “a **manner the employer normally uses to communicate** employment-related information” in any manner that “can reasonably be anticipated to be received by the employee within one business day of sending.”
- The written notice shall also be provided to each **new** employee upon hire.

# “Know Your Rights” Notice Contains

- The right to **workers’ compensation benefits**, including disability pay and medical care, and contact information for the Division of Workers’ Compensation.
- The right to **notice of inspection by immigration agencies** pursuant to Labor Code section 90.2(a).
- The right to protection against **unfair immigration-related practices**.

# “Know Your Rights” Notice Contains

- The right to **organize a union** or engage in concerted activity in the workplace.
- **Constitutional rights** when interacting with law enforcement including the Fourth Amendment right against unreasonable searches and seizures and Fifth Amendment rights to due process and against self-incrimination.
- But that’s not all:



# “Know Your Rights” Notice Contains

- **Also:** A description of **new legal developments** pertaining to laws enforced by the Labor and Workforce Development Agency “that the Labor Commissioner deems material and necessary.”
- **Also:** A list, developed by the Labor Commissioner, of agencies enforcing the listed rights.
- **Labor Commissioner** must develop a “template” form of notice.

# “Know Your Rights” Notice

- Generally: must distributed in the language commonly used with and understood by employees.
- Employers must keep records of distribution for three years, including the date each notice is provided or sent.
- **Penalty:** \$500 per employee (consider PAGA again).

# “Know Your Rights” Notice

- The Labor Commissioner has created a model notice for distribution that can be distributed easily:
  - (English model): 
  - Discussion and others: 
- Model notice *probably* easiest and most efficient *but watch future years!*



# Detainee Notification

# Detainee Notification

- Effective March 30, 2026:
  - Current and new employees must be offered the opportunity to designate an emergency contact to be notified in the event the employee is arrested or detained on their worksite.
  - Employees may revise their contact at any time.

# Detainee Notification

- Employers must notify the designated contact if the employee is arrested or detained on their worksite.
- Employers must also notify the designated contact if an employee is arrested or detained during work hours, or during the performance of the employee's job duties, but not on the worksite (if the employer has actual knowledge of the event).

# Detainee Notification

- The notification requirement is part of the Know Your Rights law.
  - *See above:* Labor Commissioner template *already includes* notice of the right to designate a contact.
- \$500 penalty, per employee, for noncompliance.

# Reductions in Force

# Cal-WARN RIFs

- California's 'mini-WARN' law requires notice to employees affected by closures, layoffs and reductions affecting employers with 75 or more employees.
- Rule is much broader than federal WARN act, which applies only to employers with 100 or more full-time employees.

# Cal-WARN RIFs

- Employers closing an entire facility, or relocating or laying off a substantial number of workers for a period of time, should always consider whether Cal-WARN might extend to their situation.
- Where the state law applies, employers must now include some additional information in employee notices.

# Cal-WARN RIFs

- Whether the employer **plans to coordinate services**, such as a rapid response orientation, through the local workforce development board, the employer plans to coordinate services through a different entity, or the employer does not plan to coordinate services with any entity.
- A **functioning email and telephone number of the local workforce development board** and a *specific* statement describing the assistance offered by the WIB.
- The employer shall arrange any coordinated services within **30 days** from the date of the notice.
- A description of the statewide food assistance program, **CalFresh**, the CalFresh benefits helpline, and a link to the CalFresh internet website.



# Cal-WARN RIFs

- Compliance with WARN and Cal-WARN is complicated and penalties are *severe*.
- Keep a close eye on the scope of layoffs and closures!
- A good discussion of state and federal requirements is at: [https://edd.ca.gov/en/jobs\\_and\\_training/Layoff\\_Services\\_WARN](https://edd.ca.gov/en/jobs_and_training/Layoff_Services_WARN)



# LEAVES OF ABSENCE

# Crime Victims' Leave

# Victim of Crime Leave

- 2025: *most* crime victim leave was moved into the Fair Employment and Housing Act (“FEHA”).
- 2026: *remaining* crime victim provisions also moved into the FEHA, placing most crime victim leave issues within the California Civil Rights Department (“CCRD”, formerly “DFEH”).
- 2026: Paid Sick Leave now also allowed for jury duty, witness leave, and qualifying crime victim leaves.

# Victim of Crime Leave

- Effect of 2026 amendments:
  - **Handbook Revision:** Handbooks may now combine crime victim leave policies into a single policy.
  - **Leave Policies:** Paid sick leave policies should be amended to allow use for jury duty, witness leave and qualifying crime victim-related purposes.

# Victim of Crime Leave

- **Mandatory Notices and Postings:**

- CCRD will update its *Survivors of Violence and Family Members of Victims Right to Leave and Accommodations* posters/handouts.
- Handout must be provided to employees “when hired, annually, upon request, and to any worker who informs the employer that they are a victim of violence or the family member of a victim of violence.”
- Materials available at: <https://civildrights.ca.gov/Posters/>



# Victim of Crime Leave

- **Mandatory Notices and Postings:**

- DLSE (Labor Commissioner) has updated its *California Paid Sick Leave: Frequently Asked Questions* site and its **mandatory HEALTHY WORKPLACES/HEALTHY FAMILIES ACT: CALIFORNIA PAID SICK LEAVE** poster.

- FAQs available at: [https://www.dir.ca.gov/dlse/paid\\_sick\\_leave.htm](https://www.dir.ca.gov/dlse/paid_sick_leave.htm)



- Poster format available at:  
[https://www.dir.ca.gov/DLSE/Publications/Paid Sick Days Poster Template \(11 2014\).pdf](https://www.dir.ca.gov/DLSE/Publications/Paid_Sick_Days_Poster_Template_(11_2014).pdf)



# Paid Family Leave



# Paid Family Leave

- Paid Family Leave (“PFL”) is *not* employer-provided sick leave, it is a disability-type benefit paid by the Employment Development Department.
- PFL does not create a right to leave, but often provides benefits where someone has a right to take leave – such as when the victim of certain qualifying acts of violence or crimes.

# Paid Family Leave

- **2028:** PFL amended to permit benefits for employees who care for a seriously ill designated person.
- Includes any person “related by blood or whose association with the individual is the equivalent of a family relationship.”
- Will require a declaration attesting to the relationship.

# Paid Family Leave

- Effect: EDD will amend the postings and notices associated with PFL – watch for changes!

- *Notice to Employees* (posting):

[https://edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de1857a.pdf](https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de1857a.pdf)



- *Paid Family Leave Benefits* (brochure) (for **new hires**, employees who take **time off work to bond with a new child**, employees who take time off work to **care for a seriously ill family member**, and employees who take time off to support a family member in the US armed forces **deploying abroad**):

- [https://edd.ca.gov/siteassets/files/pdf\\_pub\\_ctr/de2511.pdf](https://edd.ca.gov/siteassets/files/pdf_pub_ctr/de2511.pdf)



# TRAINING

# Bias Training Protection

## ... on the topic of training:

- Legislature adopted a new safe-harbor for people discussing bias (even their own bias) in a training environment.
- The law originally was introduced as an *evidence code* amendment protecting such discussions.
- Eventually amended into the Fair Employment & Housing Act (“FEHA”).

# Training Discussion

- Now (Government Code section 12940.2):
  - an employee's assessment, testing, admission, or acknowledgment of *their own personal bias* that was **made in good faith and solicited or required as part of a bias mitigation training** does not, by itself, constitute unlawful discrimination.
  - This is meant to (1) encourage employers to conduct bias mitigation trainings, and (2) affirm that conducting a bias mitigation training does not, by itself, constitute unlawful discrimination.
- “**Bias mitigation training**” means training, education, and activities provided “for the purpose of educating employees on understanding, recognizing, or acknowledging the influence of conscious and unconscious thought processes.”
- The section protects “**specific strategies**” such as assessing or testing for personal bias, analyzing bias assessments or tests, conducting bias training, conducting workshops, using toolkits, and tracking bias mitigation and elimination.

# Restaurant Training



# Open Restaurant Pest Prevention

- Health & Safety Code section 114266 amended to permit open food preparation in *bona fide* restaurants with open windows, folding doors, or nonfixed store fronts.
- But: operation requires an “integrated pest management and food safety risk mitigation plan.”
- Requires risk assessment including facility layout, operations, storage practices, and surrounding environment.

# Open Restaurant Pest Prevention

- “Integrated pest management” requires training for all employees:
  - upon hire and annually,
  - on pest prevention practices,
  - the restaurant’s pest control procedures,
  - and the employee’s individual responsibilities in maintaining a vermin-free environment.
- Good discussion by the County of San Diego is at:  
[www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/publications\\_ab592faqs.pdf](http://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/publications_ab592faqs.pdf)



# Home Health Care

# Home Care Aid

- Home Care Aid training amended to take effect in 2027 (Health & Safety Code section 1796.44):
- Fine hours annual training required.
- Effective 2027: Mandatory training must include “core competencies” and be “population specific” the “special care needs of clients with dementia.”

# ONE BIG BEAUTIFUL BILL

# Big Beautiful Bill

- Federal administration ushered through several workplace agendas this year affecting items such as taxation on tips, overtime, and employer reporting.
- These are *federal* changes that do not directly affect state-law obligations.

# Big Beautiful Bill

- *Federal* income tax deductions for “qualified” overtime and tip/gratuity income from 2025 to 2028.
- No immediate *state* impact on tax or wages.
- Employers should work with payroll and tax preparers to ensure coordination of tax/overtime and reporting obligations: federal tax authorities working with states to ease reporting burden.

# Big Beautiful Bill

- *Questions:*
  - Will California match any of the federal enhanced deductions? (Not currently.)
  - Service charges appear *not* to count as “tips” as they are not paid voluntarily.
  - Ensure that non-hospitality businesses treat gratuities properly and identify voluntary vs. mandatory gratuities.



# MISCELLANEOUS LAWS

# Miscellaneous Laws

- Safety-Sensitive Petroleum Facility Workers (Rest Periods)
- Unionized Water Corporation Workers (Meal Periods)
- Wage Garnishment – Slight Change to Information Required
- Rideshare Driver Organizing – Representation (PERB)
- Transportation Network Employee Organizing
- Manicurist – Commercial Fisher ABC / Independent Contractor Exemption

# Miscellaneous Laws

- Modification of CCRD Enforcement Procedures (ADR and Group Claims)
- Coordinated Referral of Agricultural Employee Complaints (Between LWDA Agencies)
- Construction Trucking Independent Contractor Status (Ownership / Owner-Operation Not Determinative of Status)
- Direct Contractor and Subcontractor Liabilities (Wage and Fringe)
- Transparency in Frontier Artificial Intelligence Act (TFAIA)
- Hospitality and Service Industry COVID Layoff Recall Rights (1/1/2027)

# Miscellaneous Laws

- State Jurisdiction over Federal NLRB/NLRA Matters (SB 288)
  - Allows state to exercise jurisdiction where a federal agency (such as the National Labor Relations Board) declines or fails to take action.
  - Largely stopped by federal court action.
  - *May* be applicable in limited situations (some “grey area” entities) but almost certainly *very* constrained.

# ADMINISTRATIVE AGENCIES

# Automated Decision Systems

# Automated Decision Systems

- California Civil Rights Department (“CCRD”) published regulations effective October 1, 2025.
- Regulates use of “Automated Decision Systems” (“ADS”) whether or not AI-based.
- Includes “computational process that makes a decision or facilitates human decision making regarding an employment benefit ... [including] artificial intelligence, machine-learning, algorithms, statistics, and/or other data processing techniques.”

# Automated Decision Systems

- “Employment benefits” includes hiring, discipline, compensation, training, termination and even investigation of harassment and discrimination.
- Examples of ADS include computer-based questions, puzzles, tests, or other methods to predict or measure employee performance, fit, or placement.



# Automated Decision Systems

- Included: artificial intelligence, algorithms, machine learning routines, statistics, data processing.
- Not included: word processors, spreadsheets, database, or similar traditional systems.
- Prohibited: criteria that discriminate based on protected categories defined under FEHA.
  - Anti-bias testing practices may support defenses against discrimination, including evaluation of biases or inequitable outcomes across different groups.

# Automated Decision Systems

- Recordkeeping:
  - Maintain data and related records for four years from:
    - date of creation, or
    - the personnel action involved.
- Reasonable accommodation may also be required for religious beliefs or disabilities – consider ADHD and similar issues (!).

# Automated Decision Systems

- Watch for guidance from the CCRD over the coming year.
- Consider reviewing anti-discrimination testing in sources such as online posting sites, recruitment tools.
- Regulations may be viewed at:
  - <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2025/06/Final-Text-regulations-automated-employment-decision-systems.pdf>



# DEI Guidance

# DEI Guidance

- Federal Equal Employment Opportunity Commission (“EEOC”) and Department of Justice (“DOJ”) issued guidance on Diversity, Equity and Inclusion (“DEI”) issues.
- Each agency will solicit complaints from individuals who feel they have been excluded from employment benefits, or treated differently, due to preference for other protected classes.

# DEI Guidance

- DEI policies, programs, or practices “may be unlawful if they involve an employment action **motivated**—in whole or in part—by an employee’s race, sex, or another protected characteristic.”
  - Example: Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups.
  - Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resource.

# DEI Guidance

- This is likely to be a focus of the current federal administration. Some careful steps might include:
  - Avoid creating or sponsoring workplace groups, or focusing recruitment at events or locations, expressly identifying with a particular protected characteristic.
  - Absolutely avoid internal communication discussing risk, discipline, strategy with reference to *any* party's individual protected characteristic(s).

# DEI Guidance

- EEOC guidance can be viewed at:

[https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)



- Further EEOC Guidance at:

[https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)





# **DISCUSSION OF SELECTED COURT CASES**

# Court Cases

- New *laws* are not the only source of new *law*
- Court cases happen throughout the year and affect
  - *How* the law is viewed and applied, and
  - *What* the law is.

# AI and Harassment

# AI Deepfakes

- Courts have started imposing liability for AI-generated fake images in the workplace
- Example: LAPD captain sued for distribution of explicit AI image – just awarded \$4 million, despite no direct harassment or propositions

# AI Deepfakes

- Appellate court upheld FEHA harassment verdict based on ‘knowledge’ that the image was distributed
- **“Carranza asked the Department to notify its employees that the photo was not of her, and to order they stop sharing it. The Department declined to do so. Its own investigation later confirmed that the photo, intended to depict Carranza, was distributed throughout the Department.”**

# AI Deepfakes

- Case highlights several points, especially:
  - Harassment need not be ‘in your face’ – *knowledge* of comments, jokes, etc. can be enough.
  - Employers should consider policies addressing AI and take action when notified of potential harassment.
- *Carranza v. City of Los Angeles*



# Rounding Practices

# Time Rounding

- Federal law allows “rounding” where an employer counts time back, or forward, to the nearest multiple (often quarter-hour).
- California courts have allowed rounding for many years consistent with the federal practice.
- Rounding allowed so long as it does not *practically* benefit the employer rather than the employee.



# Time Rounding

- California Supreme Court will review the rounding issue following a *new* court decision holding that:

“where employee **worktime in minutes can be captured and has been captured by the employer** and, as a result of a quarter-hour rounding system, the employee is **not compensated for all actual work time**”

# Time Rounding

- This case creates potential liability for all employers who round time to amounts more than one minute.
  - Question: why not require time recording to the *second*?
- Decision anticipated in the coming year.

# Time Rounding

- *Camp v. Home Depot, Inc.*

- Original decision:

[https://scholar.google.com/scholar\\_case?case=9259834967178456601&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=9259834967178456601&hl=en&as_sdt=6&as_vis=1&oi=scholar)



- Supreme Court docket:

[https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=o&doc\\_id=2433297&request\\_token=NilwLSEnPkW%02BWYBBSCMtXE1JQFgoUDxTJCMuUztRMCAgCg%03D%03D&doc\\_no=S277518](https://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=o&doc_id=2433297&request_token=NilwLSEnPkW%02BWYBBSCMtXE1JQFgoUDxTJCMuUztRMCAgCg%03D%03D&doc_no=S277518)



# 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 in early 2025)

# 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?



RYBICKI & ASSOCIATES, P.C.

LABOR AND EMPLOYMENT ATTORNEYS

**THANK YOU!**

Richard C. Rybicki

10 Executive Court

Suite 204

Napa, CA 94558

(707) 222-6361