SDEAC PLENARY SESSION

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Presented by:
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DAY OF REST RULE

DAY OF REST RULE

- California law guarantees employees “one day’s rest therefrom in seven.”
- But what does that mean?

DAY OF REST RULE

- Question: Is the day of rest calculated by the workweek, or does it apply on a rolling basis to any consecutive seven-day period?

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
OFF	WORK	WORK	WORK	WORK	WORK	WORK
WORK	WORK	WORK	WORK	WORK	WORK	**OFF**

DAY OF REST RULE

- Question: Does the exemption for workers employed six hours or less per day apply so long as an employee works six hours or less on at least one day of the applicable week, or does it apply only when an employee works no more than six hours on each and every day of the week?

DAY OF REST RULE

- Question: What does it mean for an employer to cause an employee to go without a day of rest: force, coerce, pressure, schedule, encourage, reward, permit, or something else?

DAY OF REST RULE

- Takeaways:
  - Train supervisors to refrain from encouraging employees to work seven days in a workweek.
  - Employee handbooks should be revised to apprise employees of their entitlement to a day of rest.
  - If an employee chooses to work a seventh day in a workweek, and is not exempt from the day of rest rule, the employee should acknowledge in writing that it was the employee's choice to work the seventh day, and that the employee was not encouraged or pressured to do so.

MANDATED WRITTEN NOTICES

DOMESTIC VIOLENCE, SEXUAL ASSAULT, & STALKING

- Employers are required to inform employees who are victims of domestic violence, sexual assault, or stalking about their right to take time off work.
- The California Labor Commissioner developed a form ("Rights of Victims of Domestic Violence, Sexual Assault and Stalking") for employers to use to comply with the notice requirements under the law.
- Employers can either use the form developed by the Labor Commissioner or prepare a notice that is substantially similar in content and clarity to the form.

DOMESTIC VIOLENCE, SEXUAL ASSAULT, & STALKING

The Labor Commissioner's Office

EMPLOYERS MUST PROVIDE THIS INFORMATION TO NEW WORKERS WHEN HIRED AND TO OTHER WORKERS WHO ASK FOR IT

RIGHTS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING

Your Right to Take Time Off:

- You have the right to take time off from work to get help to protect you and your children's health, safety or welfare. You can take time off to get a restraining order or other court order.
- If your company has 25 or more workers, you can take time off from work to get medical attention or services from a domestic violence shelter, program or rape crisis center, psychological counseling, or receive safety planning related to domestic violence, sexual assault, or stalking.
- You may use available vacation, personal leave, accrued paid sick leave or compensatory time off for your leave unless you are covered by a union agreement that says something different. Even if you don't have paid leave, you still have the right to time off.
- In general, you don't have to give your employer proof to use leave for these reasons.
- If you can, you should tell your employer before you take time off. Even if you cannot tell your employer before, your employer cannot discipline you if you give proof explaining the reason for your absence within a reasonable time. Proof can be a police report, court order or doctor's or counselor's note or similar document.

Your Right to Reasonable Accommodation:

- You have the right to ask your employer for help or changes in your workplace to make sure you are safe at work. Your employer must work with you to see what changes can be made. Changes in the workplace may include putting in locks, changing your shift or phone number, transferring or reassigning you, or help with keeping a record of what happened to you. Your employer can ask you for a signed statement certifying that your request is for a proper purpose, and may also request proof showing your need for an accommodation. Your employer cannot tell your coworkers or anyone else about your request.

Your Right to Be Free from Retaliation and Discrimination:

Your employer cannot treat you differently or fire you because:

- You are a victim of domestic violence, sexual assault, or stalking.
- You asked for leave time to get help.
- You asked your employer for help or changes in the workplace to make sure you are safe at work.

You can file a complaint with the Labor Commissioner's Office against your employer if he/she retaliates or discriminates against you.

For more information, contact the California Labor Commissioner's Office. We can help you by phone at 213-897-6595, or you can find a local office on our website: www.dir.ca.gov/dlse/DistrictOffices.htm. If you do not speak English, we will provide an interpreter in your language at no cost to you. This Notice explains rights contained in California Labor Code sections 230 and 230.1. Employers may use this Notice or one substantially similar in content and clarity.

Labor Commissioner's Office Victims of Domestic Violence, Sexual Assault and Stalking Notice 5/2017

WORKPLACE HARASSMENT GUIDE

- DFEH issued a "Workplace Harassment Guide For California Employers" to assist employers in preventing and remedying workplace harassment.
- Either the brochure or the poster satisfies an employer's responsibility to provide employees an information sheet regarding sexual harassment under California Government Code Section 12950(b).
- The brochure and poster can be found on the DFEH's website at www.dfeh.ca.gov.

WORKPLACE HARASSMENT GUIDE

THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

THE MISSION OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING IS TO PROTECT THE PEOPLE OF CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS, AND FROM THE PERPETRATION OF ACTS OF HATE VIOLENCE AND HUMAN TRAFFICKING.

SEXUAL HARASSMENT

THE FACTS

Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

THERE ARE TWO TYPES OF SEXUAL HARASSMENT

1. *"Quid pro quo"* (Latin for "this for that") sexual harassment is when someone conditions a job, promotion, or other work benefit on your submission to sexual advances or other conduct based on sex.
2. *"Hostile work environment"* sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interfere with your work performance or create an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you.

The harassment must be severe or pervasive to be unlawful. That means that it alters the conditions of your employment and creates an abusive work environment. A single act of harassment may be sufficiently severe to be unlawful.

BEHAVIORS THAT MAY BE SEXUAL HARASSMENT:

1. *Unwanted sexual advances*
2. *Offering employment benefits in exchange for sexual favors*
3. *Leering; gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters*
4. *Derogatory comments, epithets, slurs, or jokes*
5. *Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations*
6. *Physical touching or assault, as well as impeding or blocking movements*

Actual or threatened retaliation for rejecting advances or complaining about harassment is also unlawful.

Employees or job applicants who believe that they have been sexually harassed or retaliated against may file a complaint of discrimination with DFEH within one year of the last act of harassment or retaliation. DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court to address the causes of the discrimination and on behalf of the complaining party. DFEH may seek court orders changing the employer's policies and practices, punitive damages, and attorney's fees and costs if it prevails in litigation. Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

If you have a disability that prevents you from submitting a written pre-complaint form on-line, by mail, or email, the DFEH can assist you by scribing your pre-complaint by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice).

To schedule an appointment, contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY) or by email at contact.center@dfeh.ca.gov.

The DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.

Contact the DFEH at (800) 884-1684 (voice or via relay operator 711), TTY (800) 700-2320, or contact.center@dfeh.ca.gov to discuss your preferred format to access our materials or webpages.

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FOR MORE INFORMATION

Department of Fair Employment and Housing

Toll Free: (800) 884-1684
TTY: (800) 700-2320
Online: www.dfeh.ca.gov

Also find us on:

EMPLOYER RESPONSIBILITY & LIABILITY

All employers, regardless of the number of employees, are covered by the harassment provisions of California law. Employers are liable for harassment by their supervisors or agents. All harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassment or for aiding and abetting harassment. The law requires employers to take reasonable steps to prevent harassment. If an employer fails to take such steps, that employer can be held liable for the harassment. In addition, an employer may be liable for the harassment by a non-employee (for example, a client or customer) of an employee, applicant, or person providing services for the employer. An employer will only be liable for this form of harassment if it knew or should have known of the harassment, and failed to take immediate and appropriate corrective action.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct, and to create a workplace free of harassment.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way for an employer to avoid or limit liability if harassment occurs.

ALL EMPLOYERS MUST TAKE THE FOLLOWING ACTIONS TO PREVENT HARASSMENT AND CORRECT IT WHEN IT OCCURS:

1. Distribute copies of this brochure or an alternative writing that complies with Government Code 12950. This pamphlet may be duplicated in any quantity.
2. Post a copy of the Department's employment poster entitled "California Law Prohibits Workplace Discrimination and Harassment."
3. Develop a harassment, discrimination, and retaliation prevention policy in accordance with 2 CCR 11023. The policy must:
   - Be in writing.
   - List all protected groups under the FEHA.
   - Indicate that the law prohibits coworkers and third parties, as well as supervisors and managers with whom the employee comes into contact, from engaging in prohibited harassment.
   - Create a complaint process that ensures confidentiality to the extent possible; a timely response; an impartial and timely investigation by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures.
   - Provide a complaint mechanism that does not require an employee to complain directly to their immediate supervisor. That complaint mechanism must include, but is not limited to including: provisions for direct communication, either orally or in writing, with a designated company representative; and/or a complaint hotline; and/or access to an ombudsperson; and/or identification of DFEH and the United States Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
   - Instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so that the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment prevention training (see 2 CCR 11024).
   - Indicate that when the employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
   - Make clear that employees shall not be retaliated against as a result of making a complaint or participating in an investigation.
4. Distribute its harassment, discrimination, and retaliation prevention policy by doing one or more of the following:
   - Printing the policy and providing a copy to employees with an acknowledgement form for employees to sign and return.
   - Sending the policy via email with an acknowledgment return form.
   - Posting the current version of the policy on a company intranet with a tracking system to ensure all employees have read and acknowledged receipt of the policy.
   - Discussing policies upon hire and/or during a new hire orientation session.
   - Using any other method that ensures employees received and understand the policy.
5. If the employer's workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their spoken language, that employer shall translate the harassment, discrimination, and retaliation policy into every language spoken by at least ten percent of the workforce.
6. In addition, employers who do business in California and employ 50 or more part-time or full-time employees must provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.

CIVIL REMEDIES

1. *Damages for emotional distress from each employer or person in violation of the law*
2. *Hiring or reinstatement*
3. *Back pay or promotion*
4. *Changes in the policies or practices of the employer*

AND DON'T FORGET…. CALIFORNIA IS SPECIAL

- Other written disclosures mandated by California
  - Discrimination, harassment and retaliation prevention
  - DLSE 2810.5 for Non-Exempt Employees
  - And a whole host of other required postings and notices!

MEAL AND REST PERIODS FOR ON-CALL EMPLOYEES

MEAL AND REST PERIODS FOR ON-CALL EMPLOYEES

Shift Length (in hours)	Number of Rest Periods
Less than 3.5	0
3.5 – 6	1
6.01 – 10	2
10.01 – 14	3

Shift Length (in hours)	Number of Meal Periods	May it be Waived?
Less than 5	0	Yes
5.01-6	1	Yes
6.01-10	1	No
10.01-12	2	Yes
12.01 +	2	No

MEAL AND REST PERIODS FOR ON-CALL EMPLOYEES

- Absent circumstances permitting an on-duty meal period, employers are obligated to provide off-duty meal periods:
  - Uninterrupted
  - Thirty Minutes (or more)
  - Duty Free
  - Unpaid
- As well as off-duty rest periods:
  - Uninterrupted
  - Ten Minutes (or more)
  - Duty-Free
  - Paid

MEAL AND REST PERIODS FOR ON-CALL EMPLOYEES

- What does it mean to be “off-duty”?
  - “Time during which an employee is relieved from all work-related duties and from employer-control.”
- Can you require the employee to be “on-call” during a meal or rest period?
  - i.e. carry a pager or radio?
  - NO

MEAL AND REST PERIODS FOR ON-CALL EMPLOYEES

- Takeaways:
  - Make sure employees are truly off-duty/off-call during meal and rest periods
  - Revise handbooks/policies to make it clear employees may do what they want with their time
  - This includes permitting them to leave the premises during rest periods!

CALIFORNIA'S
NEWEST VACATION DECISION

CALIFORNIA'S NEWEST VACATION DECISION

- Minnick v. Automotive Creations, Inc., 13 Cal.App.5th 1000 (2017)
- Employee alleged that the employer's vacation policy violated state law because it allegedly required employees who worked for less than one year to "forfeit" vested vacation pay.
- California Court of Appeal found that the employer's vacation policy, as set forth unambiguously in writing, lawfully provided that employees do not begin to earn vacation time until after the end of the employee's first year.
- Because the employee's employment ended during his first year, he did not have any vested or accrued vacation pay, and thus was not owed any vacation wages.

CALIFORNIA'S NEWEST VACATION DECISION

- Takeaways:
  - An employer may lawfully decide it will not provide paid vacation.
  - An employer may lawfully decide it will provide paid vacation after a specified waiting period at the front end.
  - An employer may limit the amount of vacation pay that is earned by restricting vacation accrual on the back end.
  - But once the vacation pay benefit is earned, it cannot be taken away.

COMPENSATION FOR BAG CHECKS

COMPENSATION FOR BAG CHECKS

- Frlekin v. Apple Inc., Case No. 15-17382 (9th Cir., August 16, 2017)
  - The Ninth Circuit has just asked the California Supreme Court to address the question of whether time spent on the employer's premises for required exit searches of employee belongings was compensable as "hours worked."

COMPENSATION FOR BAG CHECKS

- Takeaway:
  - Employers with similar bag check requirements should closely monitor the resolution of this issue, and be prepared to change their policies and practices should the California Supreme Court determine that time spent conducting employee bag checks is compensable.

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

- California's "Healthy Workplaces, Healthy Families Act" requires employers to provide sick pay to eligible employees.
- On July 21, 2017, an attorney for the Labor Commissioner issued an opinion concerning the calculation of paid sick leave for an on-call employee paid two different hourly rates of pay under Labor Code Section 246(l).

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

- The DLSE stated that:
  - "the statute defines 'paid sick days' as 'time that is compensated at the same wage as the employee normally earns during regular work hours ….' (Labor Code § 245.5(e).) This provision reflects and embodies the Legislature's overall express intent that employees be entitled to take sick days without losing any of the compensation they would otherwise normally have earned for that day."
- The opinion noted that Labor Code § 246(l) gives the employer the option of using the regular rate of pay in the workweek in which the leave time is taken **or** a 90 day look-back period to average pay by hours.

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

- The opinion went on to state that the hourly rate of pay in the scenario presented is either $40.00 or $10.00, depending on the assignment.
- The employer would comply with subsection (1) by applying the rate in effect for the type of shift missed in the workweek because the statute envisions paid sick days, by definition, as time that is compensated at the same wage rate the employee would have earned but for the use of paid sick leave.

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

- The opinion observed that an employee "must be scheduled to work in order to be paid for a paid sick day" under ordinary circumstances.
- Therefore, if the employee was scheduled to work a shift where the employee was to be paid $40.00 per hour, the employee should be paid for the hours utilizing paid sick leave at $40.00 per hour.
- For the standby shifts, there is a contractual obligation to pay the employee $10 per hour, so if the employee chose to use accrued paid sick leave for this time then the employee need to be paid at $10.00 per hour.
- Given the two different natures of the shifts, there would be no averaging of the pay rates.

SICK PAY FOR EMPLOYEES PAID DIFFERENT RATES

- Takeaways:
  - This letter provides a practical solution to a situation where an employee receives substantial compensation that is not for hours worked and an hourly rate of pay for hours that are worked.
  - It also provides a solution where employees are paid two or more rates for different types of work.
  - The rate in effect method endorsed by the opinion is equitable because it compensates sick time at the same wage rate the employee would have earned if he worked rather than missed work and used paid sick leave.

STEREOTYPING AND DISCRIMINATION

STEREOTYPING AND DISCRIMINATION

- Husman v. Toyota Motor Credit Corp., 12 Cal.App.4th 1168 (2017).
- Stereotyping can be evidence of discriminatory animus.
- Employee presented evidence that his supervisor:
  - Articulated opinions about the appropriateness of gender identity expressions.
  - Commented on his own sexual orientation.
  - Suggested that the employee cut his hair.
  - Ridiculed him for wearing a scarf as an accessory when it was not cold outside.

STEREOTYPING AND DISCRIMINATION

- Despite providing a legitimate business justification for termination, Court of Appeal found this constituted a “reasonable inference” that discriminatory animus – a dislike for the employee being “too gay” – also contributed to his termination.

STEREOTYPING AND DISCRIMINATION

- Takeaways:
  - Comments on employee's apparel should be tied to objective criteria (e.g. uniform requirements).
  - Do not comment on protected characteristics (e.g. race, gender, sexual orientation, age, etc.).

BAN THE BOX MOVEMENT

BAN THE BOX LEGISLATION

- 9 States and 15 localities, including San Francisco and Los Angeles, have laws limiting the ability of private employers to inquire about applicants' criminal history.
- Referred to as "ban the box" laws because they prohibit the use of a criminal history "box" on job applications.
- California has not yet enacted state-wide ban the box laws which apply to private employers.
- Los Angeles' Fair Chance Ordinance went into effect January 1, 2017, with penalties imposed beginning July 1, 2017.

BAN THE BOX—LOS ANGELES

- Applies to any employer with at least 10 employees who work two or more hours each week within the City of Los Angeles.
- Prohibits an employer from asking or requiring disclosure of a job applicant's criminal history prior to a conditional offer of employment.
- Employers must also engage in a "Fair Chance Process" before withdrawing a conditional offer of employment based on the applicant's criminal history, no matter how severe the disclosed offense may be.

BAN THE BOX—LOS ANGELES

- The Fair Chance Process requires the following:
  - Before withdrawing a conditional offer based on applicant's criminal history, an employer must notify the applicant that the job offer may be withdrawn due to the applicant's criminal history, and must prepare a "written assessment" that addresses why the applicant's criminal history is relevant to the position.
  - The employer must give a job applicant five business days to respond to the written assessment.
  - If the applicant provides any documentation or information in response, the employer must prepare a "written reassessment," again with notice and a copy of the reassessment sent to the job applicant.

BAN THE BOX—LOS ANGELES

- Ordinance also places additional obligations on employers with respect to advertisements and notices:
  - Employers must state in every advertisement seeking applicants for employment that they will consider qualified applicants with criminal histories.
  - Employer must prepare and post a notice informing applicants of the Ordinance's provisions in a conspicuous place at any location job applicants may visit.
  - Employers must send copies of the posted notice to every labor union with which they have a collective bargaining agreement.

BAN THE BOX—LOS ANGELES

- Employers may not retaliate against an employee or applicant for reporting any alleged violation of the Ordinance or for participating in the Fair Chance Process.
- Employers may be fined a maximum of $2,000 per violation.

WHERE DID MY EMPLOYEES GO?

NO CALL/NO SHOW POLICIES

- Parker v. Comcast Cable Communications Management, LLC, (N.D. Cal. May 25, 2017).
  - Employee missed four consecutive scheduled workdays
  - Employer's attendance policy said three or more consecutive days of no call/no show constituted a voluntary termination
  - Employee never informed employer, nor did she provide a doctor's note
  - Employer terminated employee's employment
  - After termination, the employee self-enrolled in chemical dependency program for marijuana abuse

NO CALL/NO SHOW POLICIES

- So she sued… claiming that her employment was terminated because of:
  - (1) her alleged disability of anxiety and severe stress;
  - (2) she was obtaining treatment for substance abuse; and
  - (3) she had complained about being shorted on her paychecks.

NO CALL/NO SHOW POLICIES

- Court said “Nope.”
- Employee failed to produce evidence that the employer knew about her alleged disability, her treatment for substance abuse, and alleged complaints about being shortened on her paychecks.
- In addition, there was no evidence that her direct supervisor or anyone else harbored discriminatory intent.

WORKING FROM HOME AS ACCOMMODATION UNDER ADA

WORKING FROM HOME AS ACCOMMODATION UNDER THE ADA

- Court of Appeals addressed whether employer was required to allow employee to work from home indefinitely to accommodate employee's disability.
- State of Louisiana ("DOJ") attorney developed serious health problems due to complications from a kidney transplant.
- Attorney was granted an accommodation to work from home for approximately six months.

WORKING FROM HOME AS ACCOMMODATION UNDER THE ADA

- After exhausting FMLA leave, DOJ again granted attorney's request to work from home in October 2013.
- In August 2014, DOJ formally denied attorney the ability to work from home.
- Attorney sued DOJ for its alleged failure to accommodate her disability.

WORKING FROM HOME AS ACCOMMODATION UNDER THE ADA

- Court ruled that the attorney was not an otherwise "qualified individual" because attorney could not perform her essential job duties working from home.
- Court reasoned that the attorney's position was interactive, team-oriented, and required day-to-day coordination with supervisors.
- Court that "regular work-site attendance is an essential function of most jobs."

WORKING FROM HOME AS ACCOMMODATION UNDER THE ADA

- Takeaways:
  - If applicable, consider including “regular work-site attendance” as an essential job duty on employee job descriptions.
  - Temporary work-from-home accommodations may be required as a reasonable accommodation under the ADA.
  - Employers are not required to provide employees with an indefinite work-from-home accommodation under the ADA so long as work-site attendance is essential to the position.

NEW EMPLOYMENT LEGISLATION!

LEGISLATIVE UPDATE

- AB 168 – Salary inquiry ban SIGNED
  - Would prohibit an employer from seeking salary history information from an applicant
  - Would require an employer, upon request, to provide a pay scale for a position to an applicant

LEGISLATIVE UPDATE

SIGNED

- AB 450 – California as a Sanctuary State
  - Would prohibit employers from allowing immigration enforcement agents to have access to non-public areas of a workplace without a judicial warrant
  - Would prohibit an employer from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or court order

LEGISLATIVE UPDATE

SIGNED

- AB 450 – California as a Sanctuary State
  - Would require, except as required by federal law, an employer to provide a notice, containing specified information, of an inspection of I-9 forms or other employment records conducted by an immigration agency within 72 hours of receiving the federal notice of inspection

LEGISLATIVE UPDATE

- AB 450– California as a Sanctuary State SIGNED
  - Would prohibit an employer from re-verifying the employment eligibility of a current employee at a time or in a manner not required by specified federal law

LEGISLATIVE UPDATE

- SB 63 – Expanded parental leave SIGNED
  - Would expand CFRA by requiring employers with 20 or more employees in a 75-mile radius to provide employees with up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement if the employee has at least 2 months of service with the employer, has worked at least 1,250 hours
  - Would prohibit an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave

LEGISLATIVE UPDATE

- AB 1008 – Statewide Ban the Box SIGNED
  - Would make it unlawful under FEHA to:
    - include on any application any question that seeks the disclosure of an applicant's conviction history;
    - inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer of employment; or
    - consider, distribute, or disseminate information about any specified arrests not followed by conviction, referral to or participation in pretrial or post-trial diversion programs, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated

LEGISLATIVE UPDATE

SIGNED

- AB 1008 – Statewide Ban the Box
  - Would require employers who intend to deny employment based solely or in part on conviction history to perform an "individualized assessment" of whether the conviction history has a "direct and adverse relationship with the specific duties of the job that justify denying the applicant the position" and to provide the applicant written notification of the decision and the disqualifying conviction history if a preliminary decision to deny employment is made
  - Applicant would be entitled to respond to the notice before the employment decision becomes final and the employer would be required to consider any information provided by the applicant in response to the notice

LEGISLATIVE UPDATE

- AB 1008 – Statewide Ban the Box SIGNED
  - Would require an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of the final decision, of any procedures for challenging the decision, and of the right to file a complaint with the DFEH

LEGISLATIVE UPDATE

- AB 1209 – Public salary database

VETOED

  - Would require any employer that has more than 500 employees in CA to collect information on gender wage differentials every two years, beginning on 7/1/2019
  - Would require the employer to submit the information to the Secretary of State by 7/17/20, and every two years thereafter
  - Would require the Secretary of State to publish this information at a public website

LEGISLATIVE UPDATE

VETOED

- AB 569 – Reproductive health discrimination
  - Would prohibit employers from taking adverse action against employees based on reproductive health decisions
  - Must be included in all handbook updates
  - Exempt religiously-affiliated institutions are not exempt unless the employee qualifies as a minister

LEGISLATIVE UPDATE

- AB 978 – Illness and Injury Prevention Plans

VETOED

  - Would require an employer to provide (*upon request) a copy of the written injury and illness prevention program to a current employee or authorized representative

QUESTIONS? THANKS FOR JOINING US!

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