



Employment Law Year-in-Review 2025

January 29, 2026

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Agenda

- ❖ Housekeeping
- ❖ Hiring and Firing
- ❖ Leaves of Absence
- ❖ Unlawful Harassment, Discrimination, and Retaliation
- ❖ Wage and Hour
- ❖ Employment-Related Contracts and Trade Secrets
- ❖ Arbitration
- ❖ California Consumer Privacy Act
- ❖ Questions?

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Housekeeping

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California State Minimum Wage

- ❖ Effective January 1, 2026, California minimum wage is \$16.90/hour
- ❖ Fast food worker minimum wage remains at \$20/hour
- ❖ Certain healthcare workers will see an increase in June 2026, depending on facility size (\$22-23/hour) (physician groups with 24 or fewer physicians are not covered)

NOTE: Some cities/counties have a higher minimum wage (e.g., San Francisco)

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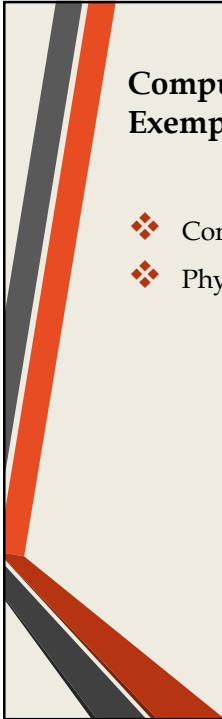
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California Exemption Salary Threshold

- ❖ Minimum salary for most exempt employees in California is \$70,304/year
 - Fast food worker exempt salary is \$83,200/year
 - Healthcare employee exempt salary is at least 150% above the healthcare worker minimum wage or 200% of the standard minimum wage, whichever is higher

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Computer Software and Physician Overtime Exemptions

- ❖ Computer Software = \$58.85/hour or \$122,573.13/year
- ❖ Physician = \$107.17/hour

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2026 IRS Mileage Reimbursement Rate

- ❖ 72.5 cents/mile

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Workplace Notices

SB 294, adds Labor Code §§ 1550-1554, 1556-1559

- ❖ Template notice to be published on the DIR website by January 1, 2026
 - Must be provided to all current employees before February 1, 2026, and annually thereafter
 - Personal service, email, text permissible provided notice is reasonably likely to be delivered in one business day
 - An optional “educational video” will be available by July 1, 2026

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Workplace Notices

SB 294, adds Labor Code §§ 1550-1554, 1556-1559

- ❖ Notice will address:
 - Workers’ compensation rights
 - Rights related to immigration agency inspections
 - Rights related to organizing/engaging in protected concerted activity
 - Summary of rights related to law enforcement interactions
 - New legal developments as required by the DLSE

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Workplace Notices

SB 294, adds Labor Code §§ 1550-1554, 1556-1559

- ❖ Must maintain records demonstrating compliance for 3 years (i.e., when notices were provided)
- ❖ No retaliation/discrimination for exercising rights
- ❖ Non-compliance penalties of up to \$500/employee/day, capped at \$10k/employee

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Emergency Contact Information

SB 294, adds Labor Code § 1555

- ❖ Before March 30, 2026, current employees must be given the opportunity to designate an emergency contact to call if the employee is arrested or detained while working (new hires must be given this opportunity at the time of hire)
- ❖ Notice must allow the employee to indicate whether they want their emergency contact notified if:
 - They are arrested or detained at the worksite; or
 - They are arrested or detained during working hours while off-site, if the employer has actual knowledge
- ❖ Same retaliation/discrimination protections
- ❖ Same non-compliance penalties

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Workplace Posting – Survivors of Violence and Family Members of Victims Right to Leave and Accommodation

- ❖ California Civil Rights Department issued its required posting for victims of violence and crime (FORM – CRDE20N-ENG)
 - Must be provided at the time of hiring, annually, upon request, and to any employee who notifies the employer they or their family member have been a victim of violence

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Pay Data Reporting SB 464, amends Govt. Code § 12999

- ❖ Applies to employers with 100 or more employees, hired directly or through labor contractors
- ❖ Effective January 1, 2026, data collected for pay reporting must be stored separate from employee personnel records
- ❖ Mandates civil penalties of \$100/employee for first reporting violation, \$200/employee for subsequent violations
- ❖ Effective January 1, 2027, employers must collect demographic data for pay reporting using the 23 categories identified in the Bureau of Labor Statistics Standard Occupational Classification Groups (until then, only 10 required)

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Wage Garnishments

AB 774, amends Code Civ. Proc. §§ 706.021-706.022, 706.105, 706.126

- ❖ Requires employer's return to the levying officer to include:
 - The date on which the employer provided the employee a copy of the earnings withholding order and the notice
 - The name and title of the person who provided the order and notice
 - A short description of the manner in which the order and notice were provided

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Hiring and Firing

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Onboarding / New-Hire Activities

***Martinho v. Amazon.com, Inc.* (N.D. Cal., Sept. 22, 2025, No. 4:22-CV-06849-YGR) 2025 WL 3500670**

- ❖ Amazon moved for summary judgment on a claim asserting that employees were required to attend mandatory new hire events (i.e., orientation), which were presented as a hybrid of online and in-person activities, and were not paid for their time
- ❖ The unpaid activities included:
 - Completion of I-9 paperwork
 - Taking a badge photo
 - Conducting a background check
 - Watching a welcome presentation
 - Completing a drug test

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Onboarding / New-Hire Activities

***Martinho v. Amazon.com, Inc.* (N.D. Cal., Sept. 22, 2025, No. 4:22-CV-06849-YGR) 2025 WL 3500670**

- ❖ **HELD:** Completing the drug test, background check paperwork, and I-9 form is not compensable hours worked because it is a condition precedent to beginning employment, even though the drug testing took place at Amazon's facilities
- ❖ **HELD:** The mandatory new hire event which included taking the badge photo and watching a welcome presentation was a compensable work activity

TAKEAWAY: Time spent in orientations and completing other new hire paperwork (e.g., employee handbook review, W4 forms, etc.) must be compensated

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Equal Pay

SB 642, amends Labor Code §§ 432.3, 1197.5

- ❖ Applies to employers with 15 or more employees
- ❖ “Pay Scale” required to be provided to employees/applicants defined as “a good faith estimate of the salary or hourly wage range the employer reasonably expects to pay for the position upon hire”
 - Extends the statute of limitations to 3 years, with ability to recover for the entire period of violation, up to 6 years

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

- ❖ Prohibits “stay or pay” agreements with “workers”
 - Workers is broadly defined to include any type of work relationship, including job training/skills training programs for employees or prospective employees

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

- ❖ Includes agreements which, at the end of the relationship, trigger:
 - A requirement that the worker pay a debt (including employment-related costs, education-related costs)
 - Authorization for the employer, training provider, or debt collector to resume or initiate collection or end forbearance of a debt
 - Imposition of any “penalty, fee, or cost”
 - Includes a replacement hire fee, retraining fee, replacement fee, quit fee, reimbursement for immigration or visa-related costs, liquidated damages, lost goodwill, or lost profit

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

- ❖ Exceptions:
 - Federal, state, or local loan repayment or loan forgiveness program
 - Contract for repayment of tuition for a transferable credential
 - Contract related to enrollment in an approved Division of Apprenticeship Standards program
 - Certain signing/retention bonuses

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

❖ Tuition repayment exception

- The tuition must be for a “transferable credential” (a degree offered by a third-party institution that is accredited and authorized to operate in the state, is not required for a worker’s current employment, and is transferable and useful for employment beyond the current employer)
- The contract is offered separately from any contract for employment
- The contract does not require obtaining the transferable credential as a condition of employment

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

❖ Tuition repayment exception

- The contract specifies the repayment amount before the worker agrees to it and the repayment amount does not exceed the cost to the employer
- The contract provides for prorated repayment amount during any required employment period that is proportional to the total repayment amount and length of the required employment period and does not require an accelerated repayment if employment is terminated
- The contract does not require repayment if the worker is terminated, except if the worker is terminated for misconduct (as defined by the Unemployment Insurance Code)

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Stay or Pay Agreements

AB 692, adds Bus. & Prof. Code § 16608, Labor Code § 926

- ❖ Signing bonus exception
 - The bonus and repayment obligations must be in a separate agreement outside the offer letter or employment agreement
 - The employee must be informed of the right to consult an attorney and is given at least 5 business days prior to expiration of the offer
 - Repayment is not subject to interest and is prorated based on the remaining retention period, not to exceed 2 years
 - The employee has the option to defer the bonus until the end of the retention period
 - Repayment is only required if the employee resigns or is terminated for misconduct (as defined by the Unemployment Insurance Code)
- ❖ Penalties = actual damages or \$5k/worker, whichever is greater, injunctive relief, attorneys' fees

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COVID-19 Layoff Rehire Rights

AB 858, amends Labor Code § 2810.8

- ❖ Extends the right to rehire to January 1, 2027, for certain employees laid off on or after March 4, 2020, due to the COVID-19 Pandemic
 - Applies to hotels, private clubs, event centers, building maintenance and janitorial services, and certain airport services and vendors

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Cal-WARN Act SB 617, amends Labor Code § 1401

- ❖ For employers with 75 or more employees, Cal-WARN requires 60-days' notice to employees of:
 - Mass layoff (layoff during 30-day period that impacts 50 or more employees)
 - Termination (cessation or substantial cessation of operations)
 - Relocation (removal of all or substantially all operations to a location 100 or more miles away)

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Cal-WARN Act SB 617, amends Labor Code § 1401

- ❖ Notices now must include:
 - A statement of whether the employer plans to coordinate services through the local workforce development board, through a different entity, or not at all
 - Phone number and email address of the local workforce development board

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Cal-WARN Act SB 617, amends Labor Code § 1401

- ❖ Notices now must include:
 - Specific statement:
 - “Local Workforce Development Boards and their partners help laid off workers find new jobs. Visit an America’s Job Center of California location near you. You can get help with your resume, practice interviewing, search for jobs, and more. You can also learn about training programs to help start a new year.”
 - A description of CalFresh, a number for the benefits helpline, and a link to the website
 - An email and telephone number of the employer

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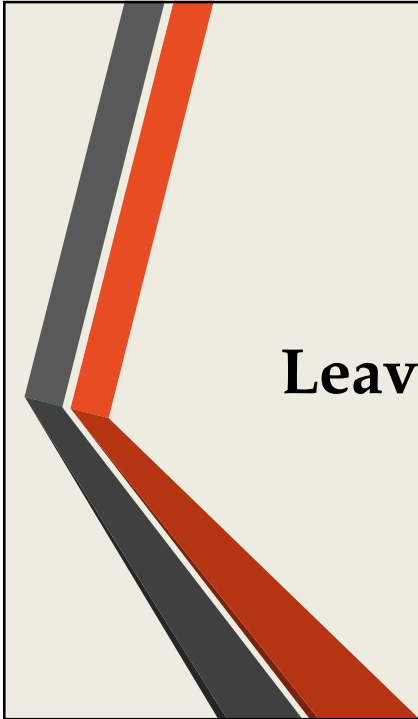
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Personnel Records Requests SB 513, amends Labor Code § 1198.5

- ❖ Expands the right to inspect/receive copies of personnel records to include documents related to education and training:
 - Employee’s name
 - Name of training provider
 - Duration and date of the training
 - Core competencies of the training, including skills in equipment and software
 - Resulting certification or qualification, if applicable
- ❖ This includes records related to workplace harassment training, workplace violence prevention program training, etc.

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Leaves of Absence

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Expanded Protections for Victims of Violence

AB 406, amends Govt. Code § 12945.8, Labor Code § 246.5, adds and repeals Labor Code §§ 230, 230.1, amends and repeals Labor Code §§ 230.2, 230.5

- ❖ Essentially, the prior Labor Code provisions dealing with victims of violence leave and reasonable accommodations are now fully incorporated into the Fair Employment and Housing Act (FEHA) and some amendments have been made

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Expanded Protections for Victims of Violence

Provision under the FEHA

- ❖ Prohibits all employers from discrimination and retaliation against employees for taking time off to serve on an inquest jury or trial jury
 - removed the requirement that there be reasonable advance notice provided by the employee for such protection to apply
- ❖ Prohibits all employers from discharging, discriminating, or retaliating against an employee who is a “victim” or a family member of a “victim” for taking time off from work to attend judicial proceedings related to the crime, including, but not limited to, any delinquency proceeding, post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding where a right of that person is an issue

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Expanded Protections for Victims of Violence

- ❖ Expands the definition of “victim” to include:
 - A person against whom a “qualifying act of violence” is committed
 - i.e., domestic violence, sexual assault, stalking, act or pattern of conduct which causes bodily injury or death, or in which a firearm or other dangerous weapon is used, or in which actual or perceived threats to use force to cause physical injury or death occur
- ❖ Includes permitting time off to appear in court to comply with a subpoena or other court order as a witness or a person who is a victim of any crime

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Expanded Protections for Victims of Violence

- For the purpose of taking time off to attend judicial proceedings related to the crime, a person against whom any of the following crimes are committed:
 - A violent felony (Penal Code § 667.5(c))
 - A serious felony (Penal Code § 1192.7(c))
 - A felony provision of law proscribing theft or embezzlement
 - A person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of any of the following crimes or delinquent acts:

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Expanded Protections for Victims of Violence

- Vehicular manslaughter while intoxicated (Penal Code § 191.5(b))
- Felony child abuse likely to produce great bodily harm or death (Penal Code § 273a)
- Assault resulting in the death of a child under 8 years (Penal Code § 273ab)
- Felony domestic violence (Penal Code § 273.5)
- Felony physical abuse of an elder or dependent adult (Penal Code § 368(b))
- Felony stalking (Penal Code § 646.9)
- Solicitation for murder (Penal Code § 653f(b))
- A serious felony (Penal Code § 1192.7(c))
- Hit-and-run causing death or injury (Vehicle Code § 20001)
- Felony DUI causing injury (Vehicle Code § 23153)
- Sexual assault (Penal Code §§ 261, 261.5, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288.5, 289, 311.4, and former § 288a)

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Expanded Protections for Victims of Violence

Provisions under the Labor Code

- ❖ Labor Code §§ 230, 230.1 only apply to actions/inactions occurring on or before December 31, 2024, though the statutes remain in effect until January 1, 2035, at which time they are repealed
- ❖ Labor Code §§ 230.2, 230.5 only apply to actions/inactions occurring on or before December 31, 2025, though the statutes remain in effect until January 2, 2035, at which time they are repealed

NOTE: Except as outlined, the law as it relates to victims of violence remains the same, with more onerous obligations on employers with 25 or more employees

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Unlawful Harassment, Discrimination, and Retaliation

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Bias Mitigation Training **SB 303, adds Govt. Code § 12940.2**

- ❖ Amends the FEHA to encourage employers to conduct bias mitigation training
 - Bias mitigation/elimination training to recognize conscious and unconscious bias, including through testing and assessment, workshops, toolkits, etc.
- ❖ Provides that an employee's assessment, testing, admission or acknowledgment of personal bias made in good faith as a part of this training does not, on its own, constitute unlawful discrimination

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Restrictions on AI-Assisted Employment Decisionmaking

- ❖ California Civil Rights Department regulations (October 1, 2025)
 - Apply to employers or anyone acting as an "agent" of the employer (directly or indirectly) in activities such as identifying applicants, screening, hiring, promotions, decisions regarding pay, benefits, or leave
 - "Automated decision systems"
 - Must keep records of the use of these systems for at least 4 years
 - Aimed at explicit and disparate impact bias that may occur due to use of these AI systems

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Restrictions on AI-Assisted Employment Decisionmaking

- Options for reducing risk of AI use
 - Conduct bias audits or impact assessments before using AI
 - Regularly review the impact of AI tools on protected groups
 - Evaluate the quality of any tools used to detect discriminatory outcomes in use of AI
 - Document results of anti-bias testing and the response to the outcomes
 - Institute human review of AI-facilitated employment decisions
- Definitions are very broad, and include use of any computer programs

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CRD 2025 Harassment Prevention Guide

- ❖ Published in a question-and-answer format in April 2025:
 - <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2025/04/Harassment-Prevention-Guide-2025.pdf>
- ❖ Addresses key questions, such as:
 - What does an effective anti-harassment program include?
 - Are there special considerations for remote/hybrid workplaces?
 - How should an employer respond to a report of harassment?
 - How is a fair investigation conducted, and its confidentiality maintained?
 - What remedial measures should be implemented when harassment or other improper conduct has taken place?

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Case Developments

Carranza v. City of Los Angeles (2025) 111 Cal.App.5th 388

- ❖ Employee, a Captain in the Los Angeles Police Department, learned that a photo of a topless woman who was incorrectly thought to be Employee was being circulated to various employees in the Department. Employee asked the Department to notify its employees that the photo was not of her, and to order employees to stop sharing it, but the Department refused.
- ❖ Employee filed suit alleging sexual harassment. After trial, the jury awarded Employee \$4 million dollars in damages. The Department appealed the verdict arguing that the conduct was not severe or pervasive such as to alter the conditions of Employee's job, given that Employee did not directly witness or experience the alleged harassment herself, but only learned about it from another employee. The court of appeal affirmed the jury verdict.

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Case Developments

Carranza v. City of Los Angeles (2025) 111 Cal.App.5th 388

- ❖ The court of appeal held that evidence showing the inappropriate photo was being shared between multiple employees and was being referred to as depicting Plaintiff, coupled with the Department's failure to take action to stop the sharing of the photo, was sufficient to amount to severe or pervasive harassment. The court of appeal further confirmed that sexual harassment could be established even without direct interactions or harassing conduct in an employee's presence.

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Case Developments

Kruitbosch v. Bakersfield Recovery Services, Inc. (2025) 114 Cal.App.5th 200

- ❖ Employee reported to Bakersfield Recovery's HR representative that he was subjected to crude sexual advances by a coworker at his home via his personal cellular telephone. The HR representative responded that there was nothing that could be done because the conduct occurred away from work. Following Employee's complaint, the HR representative also made a social media post that Employee thought was intended to mock him, and made a sarcastic comment to Employee at work about the complaint. Employee thereafter became distressed at work and resigned a week later.

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Case Developments

Kruitbosch v. Bakersfield Recovery Services, Inc. (2025) 114 Cal.App.5th 200

- ❖ Employee filed suit alleging various theories, including sexual harassment. The trial court dismissed the complaint and Employee appealed. The court of appeal found that, while the coworker's conduct was "reprehensible" and "thoroughly repugnant," it did not constitute sexual harassment because it did not occur inside the workplace. However, Bakersfield Recovery's response to Employee's complaint altered Employee's work environment in an objectively severe manner, and thereby created a viable claim for harassment.

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Case Developments

***Caldrone v. Circle K Stores Inc.* (9th Cir. 2025) 156 F.4th 952**

- ❖ Employees, three former business managers at Circle K, filed suit for age discrimination when they were denied a promotion.
- ❖ The district court dismissed the case on summary judgment, but the court of appeal reversed, finding that evidence of age-related comments, pressure from executives to remove older employees, doubts about the successful candidate's qualifications, and deviations from standard policy by not advertising or announcing the open position was sufficient to create a triable issue of fact for a jury regarding whether Circle K considered age to be significant in making its promotion decision.

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Case Developments

***Lui v. DeJoy* (9th Cir. 2025) 129 F.4th 770**

- ❖ Employee, a long-time employee of the US Postal Service, filed suit alleging race and gender discrimination, among other claims, after she was demoted from her position as Postmaster following grievances and complaints made against her by her white, male subordinate employees.
- ❖ HR conducted an investigation which corroborated some of the accusations against Employee, resulting in her demotion. Employee was replaced by a white man with less experience.

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Case Developments

Lui v. DeJoy (9th Cir. 2025) 129 F.4th 770

- ❖ The trial court granted summary judgment for the Postal Service, holding that the decision-maker made an independent decision unrelated to the alleged bias of Employee's subordinate employees.
- ❖ The court of appeal reversed, holding that an employer can be held liable where the ultimate decisionmaker, apparently lacking individual discriminatory intent, takes an adverse employment action in reliance on factors affected by the discriminatory animus of employees who were not involved in the decision.

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Case Developments

Allos v. Poway Unified School District (2025) 112 Cal.App.5th 822

- ❖ Employee filed suit against the School District for disability discrimination and related claims after the School District refused to allow her to work exclusively from home during the COVID-19 pandemic.
- ❖ The trial court granted summary judgment. With regard to the claim for failure to engage in the interactive process, the trial court held there could be no liability as Employee did not suffer from a disability.

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Case Developments

Allos v. Poway Unified School District (2025) 112 Cal.App.5th 822

- ❖ The court of appeal affirmed, holding that the School District was not required to engage in the interactive process with Employee because she did not have a qualifying disability.
- ❖ **CAUTION:** Employer is required to engage in the interactive process with an employee who is not disabled if the employee is “regarded as” being disabled by the employer.

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Wage and Hour

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Enhanced Penalties for DLSE Judgments

Amends Labor Code § 98.2, adds Labor Code §§ 238.05, 238.10

- ❖ Provides a civil penalty of up to 3x the outstanding judgment amount, including interest if an employer fails to pay the employee within 180 days of issuance of a final judgment in a wage-related claim (50% to DLSE, 50% to employee)
- ❖ Courts are required to award costs and attorneys' fees incurred by an employee in enforcing the judgment
- ❖ Successor is jointly and severally liable

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DLSE Outreach Program

SB 578, adds Labor Code § 11000, *et seq.*

- ❖ Establishes an outreach program to educate and train employees on their rights to promote awareness and compliance

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Construction Trucking Employer Amnesty Program

SB 809, adds Labor Code §§ 2750.9, 2775.5, 2802.2

- ❖ Removes liability for statutory and civil penalties from certain construction contractors who:
 - Misclassify truckers as independent contractors; and
 - Execute a settlement agreement with the DLSE before January 1, 2029

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Public Works Contracting

AB 538, amends Labor Code § 1776

- ❖ Requires that a contractor make payroll records available to the entity which awarded the contract within ten (10) days following receipt of the request and failure to timely comply with results in referral to the DLSE for potential penalties

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Special Meal and Rest Period Exemptions

- ❖ New meal period exemptions codified for employees of “water corporations” (amended Labor Code § 512)
- ❖ Exemption from rest periods for certain safety-sensitive positions at petroleum facilities indefinitely extended (amended Labor Code § 226.75)

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Case Law Developments

Hirdman v. Charter Communications, LLC (2025) 113 Cal.App.5th 376

- ❖ Paid sick leave for exempt, outside salesperson is paid in the same manner as for other exempt employees (i.e., at the rate of pay for other forms of paid time off)
 - Here, it was permissible to pay paid sick leave at the base hourly rate of pay, excluding commissions

NOTE: Nonexempt employees who earn commissions must be paid at the “regular rate of pay,” which includes commissions and other forms of non-discretionary compensation

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Case Law Developments

***Bradsbery v. Vicar Operating, Inc.* (2025) 110 Cal.App.5th 899**

- ❖ Advanced, written meal period waiver enforceable when:
 - there is no evidence of coercion
 - the agreements are revocable
 - the agreements advised employees of their meal period rights
- ❖ **Remember, employees may only waive meal periods as follows:**
 - 1st meal provided the shift does not exceed 6 hours
 - 2nd meal provided the shift does not exceed 12 hours and a 1st meal was taken

PRACTICE TIP: Review your written meal period waivers for compliance

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Case Law Developments

***Williams v. J.B. Hunt Transport, Inc.* (9th Cir. 2025) 151 F.4th 1020**

- ❖ Truck drivers alleged their piece rate compensation plan did not properly compensate them for all non-productive time
- ❖ Employer paid drivers an hourly rate of pay for all hours worked from the start of the day to the end of the day but also paid employees an “activity-based bonus” for certain activities (e.g., miles driven, stops, loading/unloading) as follows:

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Case Law Developments

Williams v. J.B. Hunt Transport, Inc. (9th Cir. 2025) 151 F.4th 1020

- Hourly Pay + Activity-Based Bonus = Total Compensation
- Eligible Activities - Total Hourly Pay = Activity-Based Bonus
 - If a negative amount, the driver received only pay for total hours worked
 - If a positive amount, the driver received all hourly pay plus the activity-based bonus

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Case Law Developments

Williams v. J.B. Hunt Transport, Inc. (9th Cir. 2025) 151 F.4th 1020

- ❖ **HELD:** Compensation plan was lawful because it paid drivers for all hours worked in addition to a bonus on a piece-rate basis. In other words, it was not a true piece-rate only compensation plan.

PRACTICE TIP: Avoid piece-rate compensation plans wherever possible and consult with legal counsel if your plan is or looks like a piece-rate compensation plan

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Case Law Developments

Murphy v. AAA Auto Insurance of Southern California (2025) 108 Cal.App.5th 476

- ❖ Labor Code § 2802 requires employers to cover reasonable and necessary expenses incurred by employees in carrying out their job duties
- ❖ Employee was transporting cannabis for his employer when he was in a car accident
- ❖ Employee's personal insurance carrier denied his claim for coverage for damage to his personal vehicle due to a "compensated carrying exclusion," which excluded from coverage accidents/damage incurred in carrying people or property for compensation

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Case Law Developments

Murphy v. AAA Auto Insurance of Southern California (2025) 108 Cal.App.5th 476

- ❖ **HELD:** The court upheld the exclusion and reasoned that it was not against public policy because the employer had the obligation to cover the damage under Labor Code § 2802

TAKEAWAY: Employers may not always be "off-the-hook" for damages to an employee's personal vehicle, though an exception may apply if the conduct was outside the course and scope of employment (e.g., reckless driving or speeding in violation of policy)

TAKEAWAY: If employees drive on company business make sure to have clear policies describing impermissible conduct

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Cases We are Still Watching . . .

***Camp v. Home Depot USA, Inc.* (2022) 84 Cal.App.5th 638, review granted Feb. 1, 2023**

- ❖ Rounding “total time” is unlawful
- ❖ *Dicta*: If the employer has captured the exact amount of time worked during a shift, the employer must pay for all time worked (i.e., pay to the minute)

***Woodworth v. Loma Linda Univ. Med. Ctr.* (2023) 93 Cal.App.5th 1038, review granted Nov. 1, 2023**

- ❖ If an employer can capture the exact minutes worked, the employer must pay for all time (i.e., rounding is unlawful)

PRACTICE TIP: Stop Rounding! Pay the precise amount you capture.

Open Question: Timekeeping software “rules” on rounding seconds

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Employment-Related Contracts and Trade Secrets

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Why Focus on Contracts and Trade Secrets?

- ❖ Contracts are critical to protecting your company's confidential information
- ❖ Confidential information protection contracts provide broader protection than do applicable statutes
- ❖ In California, employee handbooks are very rarely considered contracts (and for good reasons)
 - The absence of a confidential information protection agreement can leave you compromised and implicitly encourage brazen conduct

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Why Focus on Contracts and Trade Secrets?

- ❖ Potential new employees often have signed contracts in California or elsewhere with former employers
- ❖ Contracts that are not up to date can be legal liabilities for your company
- ❖ Trade secrets: nearly every company has the potential to have them
- ❖ Trade secrets: can be incredibly valuable, but can be easily lost

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Reminder: Types of Post-Employment Contractual Restrictions

- ❖ **Confidentiality agreements:**
 - Apply during and after employment and restrict post-employment possession or use of employer confidential information
 - “Confidential information” defined too broadly = may be unenforceable/unlawful
- ❖ **Non-compete clauses:** employer/employee post-termination non-compete clauses = unlawful
- ❖ Narrow exception under Labor Code §925(e) – lawyers involved on both sides of negotiated agreement

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Reminder: Types of Post-Employment Contractual Restrictions

- ❖ Non-compete during employment = permissible if properly limited to relevant activity
- ❖ **Customer non-solicitation clauses** post-termination = unlawful if bare restriction
- ❖ **Employee non-solicitation clauses** post-termination = historically potentially-to-likely unlawful if bare restriction

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Refresher: Business & Professions Code Section 16600.5 (New as of 2024)

- ❖ (a) Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed
- ❖ (b) An employer or former employer *shall not attempt to enforce* a contract that is void under this chapter regardless of whether the contract was signed and the employment was maintained outside of California
- ❖ (c) An employer *shall not* enter into a contract with an employee or prospective employee that includes a provision that is void under this chapter
- ❖ (d) An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation
- ❖ (e) (1) An employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both
 - (2) In addition to the remedies described in paragraph (1), a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable attorney's fees and costs

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Section 16600.5 Remains Unclear

- ❖ “Noncompete agreement” as used in these provisions remains undefined
 - Is an overbroad definition of “Confidential Information” a “noncompete agreement” under these new provisions?
- ❖ “Any contract that is void under this chapter is unenforceable regardless of where and when the contract was signed” (Section 16600.5(a) (emphasis added)) *But....*
 - Courts outside of California have, in certain circumstances, rejected this language to the extent that it is interpreted as preventing a foreign court from applying state law other than California

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Section 16600.5 Remains Unclear

- *See, e.g., DraftKings Inc. v. Hermalyn* (1st Cir. September 2024) (MA resident who moved to work for a new employer in CA; court of appeal noted CA did not have a materially greater interest in regulating noncompetes than MA and affirmed injunction against Hermalyn entered by MA trial court)
- *Bowser v. Foundation Building Materials, LLC* (C.D. Cal. September 2024) (TN resident sued CA-based employer under Section 16600.5; California federal court permitted case to be transferred to TN because nearly all relevant events occurred in TN)
- *Poer v. FTI Consulting, Inc.* (N.D. Cal. November 2024) (NV based employee sued MD-based former employer in CA for injunctive relief under Section 16600.5; court denied relief because plaintiff was not a Californian and MD, home of the former employer, had a materially greater interest in the dispute, concluding MD, not CA law, was likely to apply; court also concluded that plaintiff had failed to show irreparable harm justifying issuance of an injunction)

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Section 16600/16600.5 Recent Decisions

- ❖ The most recent decisions provide some small victories for employers:
 - *Luminate Home Loans, Inc. v. Better Mortgage Co.* (S.D. Cal., Jan. 14, 2026, No. 24-CV-02251-BAS-MSB) 2026 WL 102686
 - Post-acquisition dispute where purchaser sued manager/executive for unauthorized sharing of financial and employee data with a competitor. Defendants then filed counterclaims against Luminate, including for alleged violation of Labor Code section 432.5 and Business and Professions Code section 16600.
 - The court held that courts have ruled against interpreting section 432.5 and Bus. & Prof Code § 16600 together, finding that the plain language of section 432.5 appears to apply only to contracts that are specifically declared unlawful as opposed to void

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Section 16600/16600.5 Recent Decisions

- *Horton v. Takeda Pharmaceuticals USA, Inc.* (Cal. Ct. App., Dec. 29, 2025, No. D085379) 2025 WL 3753527
 - Plaintiffs, then current employees of defendant, pleaded a purported class action based on an employee non-solicitation provision within an intellectual property rights agreement
 - As to the claim for violation of **sections 16600 and 16600.5**, the court held that:
 - Plaintiffs had no standing because they “must demonstrate their legally protected interest in engaging in lawful work has been injured by the defendant. This Plaintiffs have failed to do. Their complaint does not include *any facts* that demonstrate Plaintiffs’ protected interests have been or are about to be harmed by Defendants. There are *no allegations* that former employees formed competing companies and refrained from offering jobs to Plaintiffs. Plaintiffs do not allege that Defendants threatened or attempted to enforce the non-solicitation agreement. And Plaintiffs do not identify any job opportunities lost because of the non-solicitation agreement.”

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Recent California Trade Secret Cases

Citibank, N.A. v. Mitchell (N.D. Cal., Nov. 26, 2024, No. 24-CV-08224-CRB) 2024 WL 4906076

- ❖ “Mitchell also makes much of the fact that he did not retain or take with him any documents, writings, or records when he left his employment with Citi.[] But that is not dispositive to Citi’s trade-secrets claim or even its breach-of-contract claim. California law protects against the misappropriation of trade secrets, which covers improper “use” of trade secrets *and which does not require the retention of physical documents or records.*[(Emphasis added.)] Furthermore, Mitchell contractually agreed not to “use” confidential information outside his employment with Citi. *See* Remak Decl. Exs. C, D. Whether he retained documents is therefore not dispositive to establish (or defeat) Citi’s breach-of-contract claim. *See Fidelity Brokerage Services LLC v. Rocine* (N.D. Cal., Sept. 7, 2017, No. 17-CV-4993-PJH) 2017 WL 3917216, at *4-5 (concluding that former employee’s solicitation of former clients, even if entirely from memory, is likely to constitute a breach of contract).

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Recent California Trade Secret Cases

***Citibank, N.A. v. Mitchell* (N.D. Cal., Nov. 26, 2024, No. 24-CV-08224-CRB) 2024 WL 4906076**

- ❖ Because Citi has shown that Mitchell likely misappropriated its trade secrets in the form of confidential client information (and likely breached at least some of his contractual obligations to Citi), the Court finds that there is a likelihood of success on the merits as to Mitchell”
- ❖ This is consistent with published California state court decisions. See *Morlife, Inc. v. Perry, et al.* (1997) 56 Cal.App.4th 1514, 1522-23 (“to afford protection to the employer, the [trade secret] information need not be in writing but may be in the employee's memory.”)

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Recent California Trade Secret Cases

***Quintara Biosciences v. Ruifeng Biztech, Inc., et al.* (9th Cir. 2025) 149 F.4th 1081**

- ❖ Trial court abused its discretion when striking certain of plaintiff’s alleged trade secrets because plaintiff did not describe the trade secrets with reasonable particularity
- ❖ This outcome clarifies that, under the federal Defend Trade Secrets Act (DTSA), a plaintiff likely does not need to satisfy the “reasonable particularity” standard applied in California state court actions under the California Uniform Trade Secrets Act (CUTSA) and related provisions of the California Code of Civil Procedure. Rather, for DTSA claims, plaintiff must satisfy the “sufficient particularity” standard, which is a factual issue often to be addressed by a jury.

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Recent California Trade Secret Cases

***Quintara Biosciences v. Ruifeng Biztech, Inc., et al.* (9th Cir. 2025)
149 F.4th 1081**

- ❖ It remains an open question as to whether the “reasonable particularity” standard applies when a plaintiff files suit in federal court alleging violations of both the DTSA and CUTSA
 - However, as seen in *Quintara Biosciences*, a federal district court abuses its discretion when striking claimed trade secrets for failure to comply with the “reasonable particularity” standard under California law

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What to Do in Response to Legal Changes

- ❖ **Check your employment agreements** for overly broad definitions of “confidential information” and prohibited noncompete language
- ❖ **Check your employment agreements** for presence of appropriate computer access language; consider stand-alone computer use and access policy
- ❖ **Identify and protect company trade secrets**
 - California employees are the most “mobile” in the U.S., but they still cannot take company trade secrets
 - Proactively address this – waiting until an employee leaves with your most important confidential information may be too late
 - Possession alone may not be actionable: put tools in place now to help show possession was not accidental
- ❖ **Outbound and inbound senior managers and executives** require special attention
- ❖ **Contracts with business partners and vendors** = the second leading leak point for trade secret theft (your employees and former employees are the first leak point)

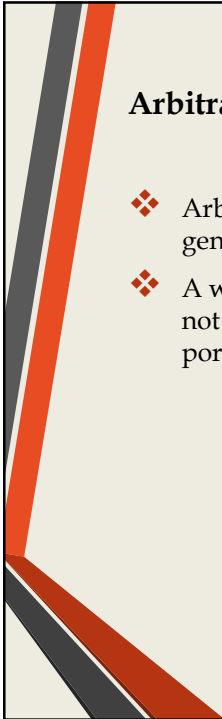
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Arbitration

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Arbitration Agreements Generally

- ❖ Arbitration agreements with class action waivers are generally enforceable
- ❖ A waiver of the right to bring a representative PAGA claim is not enforceable (though a waiver of the individual PAGA portion is enforceable)

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Case Law Developments

Gurganus v. IGS Solutions, LLC (2025) 115 Cal.App.5th 327

- ❖ 5 months into her employment, the employee electronically signed numerous additional employment documents, including an arbitration agreement, a voluntary dispute resolution policy, and a confidentiality agreement
- ❖ The employee later filed a lawsuit alleging a number of individual claims under the FEHA, as well as wrongful termination and her employer sought to enforce the arbitration agreement
- ❖ Because all three documents were signed on the same day, the court read them together and held that the arbitration agreement was unenforceable because:

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Case Law Developments

Gurganus v. IGS Solutions, LLC (2025) 115 Cal.App.5th 327

- The agreements collectively carved out the right of the employer to go to court on confidentiality breach claims (i.e., it lacked mutuality)
- The arbitration agreement contained a confidentiality provision which, if read broadly, could prohibit the employee from even contacting witnesses to pursue her claims
- Although the agreement stated it was voluntary, that it was presented 5 months into employment without additional consideration and Gurganus claimed it was mandatory and did not explain it to her, meant that it was a “contract of adhesion”
- The dispute resolution policy conflicted with the terms of the two agreements

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Case Law Developments

Silva v. Cross Country Healthcare, Inc. (2025) 111 Cal.App.5th 1311

- ❖ At the time of hire, the plaintiffs signed two contracts: (i) an arbitration agreement; and (ii) an employment agreement
 - The employment agreement provided that employment was “at will” but also included provisions which:
 - prohibited disclosure of confidential information that was more broadly defined than trade secrets (and included payroll records and employee lists)
 - prohibited the employees from working for anyone else while employed
 - prohibited the employees, during employment and for 12 months after, from soliciting employees
 - required the employees for 12 months after termination to notify the employer if they went to work for a competitor
 - provided for any breach of the agreement to be resolved in court

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Case Law Developments

Silva v. Cross Country Healthcare, Inc. (2025) 111 Cal.App.5th 1311

- ❖ Court construed the two agreements together because they had been executed at the same time
- ❖ **HELD:** The arbitration agreement was unenforceable because (i) excluded from it were claims under the employment agreement, which were claims the employer would bring against the employee; (ii) the employment agreement had a one-sided prevailing party attorneys’ fees provision in favor of the employer; and (iii) the employment agreement required the employees to agree that the restrictions were not only lawful, but would cause irreparable harm to the employer

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Case Law Developments

Velarde v. Monroe Operations, LLC (2025) 111 Cal.App.5th 1009

- ❖ Employee was presented with 31 documents during orientation, one of which was an arbitration agreement
- ❖ The trial court refused to enforce the arbitration agreement because:
 - The employee was placed under pressure to sign it because she had been presented with 31 documents, was told to get through them quickly, and knew that she had to sign everything before she could start working
 - The employee expressed a desire not to sign the agreement because she did not understand it and the HR representative told her it was a way they could resolve disputes without either of them having to pay lawyers, which was false

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Case Law Developments

Hernandez v. Delta Star, Inc. (2025) 2025 WL 326105

- ❖ Aerotek staffing agency employee sued the site employer, Delta Star for various wage and hour violations
- ❖ Delta Star attempted to enforce an arbitration agreement between Aerotek and the employee
- ❖ **HELD:** The agreement was not enforceable because Delta Star failed to show it was an intended third-party beneficiary of the employee's agreement with Aerotek

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Case Law Developments

Ford v. The Silver F, Inc. (2025) 110 Cal.App.5th 553

- ❖ An arbitration agreement's exclusion of PAGA claims broadly excluded both the employee's "representative" PAGA claims and his "individual" PAGA claims

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Arbitration Agreement Takeaways

- ❖ Must be carefully drafted (including to address FAA exemption, include potential third parties, such as staffing agencies and other joint employers, properly handle PAGA claims, and make sure there are no unconscionable terms)
- ❖ Ensure signatures can be authenticated (especially electronic signatures)
- ❖ Consider taking additional steps to document the process (e.g., attestation of when/how it was presented and signed)
- ❖ Review other documents signed at the time of the arbitration agreement to ensure no unconscionable/unenforceable provisions (e.g., confidentiality agreements)
- ❖ Ensure employees are provided agreements in a language they understand

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California Consumer Privacy Act (CCPA)

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CCPA Regulations (effective Jan. 1, 2026)

- ❖ California Privacy Protection Agency issued regulations under the CCPA
 - available at www.cppa.ca.gov/ccpa_statute_eff_20260101
- ❖ CCPA covers businesses which:
 - Have an annual gross revenue of \$26,625,000; or
 - Buys or sells the personal information of 100,000 or more California residents/households/devices; or
 - 50% or more of its annual revenue is from selling personal information

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CCPA Regulations (effective Jan. 1, 2026)

- ❖ Generally, the CCPA provides consumers with:
 - The right to know about the personal information that is collected, how it is used, and shared
 - The right to delete or correct personal information collected (with exceptions)
 - The right to opt-out of the sale or sharing of personal information
 - The right to non-discrimination for exercising rights under the CCPA

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Questions?

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For additional resources, text “2025” to (888) 688-3084 or use the QR code below:



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