



EMPLOYMENT LITIGATION CONFERENCE

Renaissance Newport Beach Hotel | January 22, 2026 | Newport Beach, CA

Labor and Employment Law Update



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California Legislative and Case Law Update

Introduction



- ▶ 2025 provided California employers with numerous new legal obligations, a multitude of updated rules and regulations and several court decisions that will require substantive planning for 2026.
- ▶ A constant theme in both legislation, and court decisions, is an emphasis on employers benefiting from engaging in preventative compliance measures.
- ▶ Activity in our legislature and judiciary branches also necessitate response, by employers, through updating of policies, practices and payroll administration.

2025 Legislation



- ▷ 2025 was the first year of a two-year legislative session
- ▷ There were **2,397** bills introduced in 2025
- ▷ Of these, **917** bills were sent to Governor Newsom's desk
- ▷ He signed **794 (86.6 %)**
- ▷ He vetoed **123 (13.4 %)**
- ▷ This is slightly below the average veto rate over the last 10 years (**15%**)

Minimum Wage Increases on the Horizon



- ▶ The state minimum wage will go up to \$16.90 effective January 1, 2026
 - ▶ Minimum salary for exempt employees rises from \$68,640 to \$70,304.
 - ▶ Minimum hourly rate for inside sales exemption rises from \$24.75 per hour to \$25.35
 - ▶ Tool rate increases from \$33 per hour to \$33.80
 - ▶ Impact on employees currently making between \$16.90 and \$18.00 an hour who may ask for rate increase.
 - ▶ Also must be mindful of local minimum wage increases.

AB 2499 – Updated Notice For Victims Of Crime



- ▶ Bill 2499 put new requirements on how California employers treat employees that are victims of crime. The bill expanded the definition of “victim” to include not only individuals directly subjected to domestic violence, sexual assault, or stalking, but also those who have experienced other qualifying crimes or abuse: including serious bodily injury, threat of injury or death, and crimes resulting in the death of a family member. The bill revises and expands leave protections for those victims.
- ▶ The bill requires that all employers provide employees with written notice of their rights under the statute. This means that it should be included in the new hire orientation packet or upon request by employees.
- ▶ The notice can be found at: https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2025/07/Survivors-Right-to-Time-Off_English-B.pdf

SB 446 – Data Breach Notification



- ▶ Prior to SB 446, CA law required notification to affected individuals of data breaches “without unreasonable delay.”
 - Now businesses have 30 calendar days from discovering or being notified of a data breach to inform affected individuals.
- ▶ The law further specifies that for breaches involving more than 500 CA Residents, the CA Attorney General must be notified within 15 calendar days of notifying affected consumers of a breach.
- ▶ There is some flexibility to accommodate the practical realities of incident response—notification may be delayed for legitimate law enforcement investigations or as needed to determine the breach’s scope and restore system integrity, but must proceed promptly once those needs no longer apply.

AB 692 – No Stay or Pay



- ▶ Prior to AB 692, some employers used contracts commonly called "stay-or-pay" or Training Repayment Agreement Provisions (TRAPs), which obligated workers to repay the employer for costs such as training, tuition, or other fees if the worker left the job before a specified time.
- ▶ Under this bill, employers would be prohibited from entering into contracts that require an employee to repay the employer (or a training provider) for certain expenses when ending employment.
- ▶ This applies to employment contracts entered into on or after January 1, 2026 and does not apply retroactively.



AB 692 – No Stay or Pay

- ▶ Key exceptions include: government loan repayment programs, tuition repayment for a transferable credential, contracts related to government approved apprenticeship programs, and sign-on bonuses with a built-in “stay” incentive which would be required to be paid back all or in part.
- ▶ There is a private right of action by a worker or worker representative effected by a violation, either individually or as a class action.
 - ▶ Employers found liable for violation will be subject to monetary damages in the amount of the worker’s actual damages or \$5,000, whichever is greater.



SB 464 – Pay Data Reporting

- ▷ Previously, a private employer with 100 or more employees had to submit an annual pay data report to the Civil Rights Department (CRD) that includes the number of employees by race, ethnicity, and sex in 10 specified job categories.
 - This also includes employees whose pay falls within federal pay bands, within each job category the median and mean hourly rate for employees, and the total number of hours worked by each employee counted in each pay band.



SB 464 – Pay Data Reporting

- ▶ Changes to the law require an employer to collect and store demographic information gathered for the pay data report separately from employees' personnel records. This means that voluntary identification forms, for example, must be kept independent from personnel files similar to I-9 documentation.
- ▶ Beginning January 1, 2027, reporting requirements increase the number of job categories from 10 to 23.
- ▶ Additionally, courts are required to impose civil penalties on employers who fail to submit a report when requested by the CRD.



SB 294 – Know Your Rights Notice (“Workplace Know Your Rights Act”)

- ▷ This bill which establishes new workplace written notice requirements advising workers about their rights under the law – including protection against unfair immigration-related practices and constitutional rights when interacting with law enforcement in the workplace.
- ▷ The notice must communicate workers’ rights in areas including:
 - Wage and hour laws
 - Health and safety protections
 - Workers’ compensation
 - Unemployment insurance
 - Paid sick days
 - Immigration inspections,
 - Protection against retaliation
 - Union organizing rights
 - Data privacy
 - Emergency and disaster protections,
 - Constitutional rights when interacting with law enforcement at work

SB 294 – Know Your Rights Notice (“Workplace Know Your Rights Act”)



- ▶ Employers must provide the notice in the language normally used to communicate employment information to the employee, or English if a translation is unavailable.
- ▶ It also requires an employer (if requested by the employee) to notify their designated emergency contact in the event the employee is arrested or detained at work.
- ▶ Noncompliance with requirements can result in civil penalties up to \$500 per employee per day, with a maximum of \$10,000 per employee.
- ▶ Template notice to come out before 1/1/2026.

SB 642 – Job Postings and Equal Pay



- ▶ This law changes the rules regarding what information, regarding pay, must be included in job postings.
- ▶ Existing law defines “pay scale” as the salary or hourly wage range that the employer reasonably expects to pay for the position.
- ▶ This bill redefines “pay scale” as a good faith estimate of the actual salary or wage range reasonably expected for the position, inclusive of supplemental compensation, fringe benefits and overtime.
- ▶ It makes significant changes to CA’s Equal Pay Act, including extending the statute of limitations for pay discrimination claims to 3 years and allowing potential recovery of lost wages up to 6 years.



AB 858 – COVID Rehire Rights

- ▶ Initially enacted in 2021 by SB 93, CA law required certain employers in hospitality and service sectors to offer reemployment opportunities to employees laid off due to COVID-19 closures or reductions.
 - This protection is limited to industries such as hotels, private clubs, event centers, airport hospitality operations, airport service providers, and building services for commercial buildings.
- ▶ AB 858 extends the rehiring and retention rights from December 31, 2025, to January 1, 2027, keeping the protections in place for workers laid off for COVID-related reasons.



AB 858 – COVID Rehire Rights

- ▶ Covered employers must notify laid-off, qualified employees in writing within five business days of any job openings and offer reemployment in order of seniority.
 - Eligible employees must have worked at least six months and been laid off on or after March 4, 2020, for COVID-related reasons.
- ▶ The CA Division of Labor Standards Enforcement (DLSE) enforces these rights and may order remedies including reinstatement, front pay, back pay, and penalties for violations.
- ▶ The DLSE retains enforcement authority for violations occurring before December 31, 2026, even if discovered after that date.



SB 590 – PFL “Designated Persons”

- ▶ Previously, CA’s Paid Family Leave (PFL) program provides up to eight weeks of partial wage replacement for workers who take leave to care for a seriously ill family member, bond with a new child, or support a family member’s military deployment.
 - Family member has been limited to child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.
- ▶ Under SB 590, an employee can use PFL to care for a seriously ill “designated person” – meaning any blood relative or individual who is the equivalent of family. This change expands eligibility for accessing PFL benefits.

AB 250 – Extended SOL for Sexual Assault Claims



- ▶ Before AB 250, CA law set the statute of limitations (SOL) for civil actions regarding sexual assault of an adult (over 18 years old) to the later of either 10 years from the last act of assault or 3 years from discovery of resulting injury.
- ▶ There was a revival law allowing claims against entities that covered up sexual assaults to proceed if filed between January 1, 2023 and December 31, 2023.
 - However, this revival only applied to entities and did not explicitly apply to perpetrators of the assaults.
 - Claims against public entities remained subject to different limitations

AB 250 – Extended SOL for Sexual Assault Claims



- ▶ AB 250 explicitly revives claims against both perpetrators and non-public entities responsible for cover-ups, enabling survivors of adult sexual assault to file claims that would otherwise be time-barred due to SOL expiration, given certain allegations.
- ▶ The revival period is extended, allowing claims to be pending as of January 1, 2026, or commenced between January 1, 2026, and December 31, 2027.
- ▶ The bill also revives related claims arising out of the sexual assault, such as wrongful termination and sexual harassment connected to the assault.



SB 513 – Personnel Records

- ▶ CA law gave current and former employees, or their representatives, the right to inspect and receive copies of personnel records that relate to their performance or grievances.
- ▶ Employers were required to make such records available within 30 calendar days of a written request and maintain personnel records for at least 3 years after employment termination.



SB 513 – Personnel Records

- ▶ SB 513 adds education and training records to the definition of personnel records relating to employee performance.
- ▶ Employers who maintain education or training records must ensure these records include: the employee's name, the training provider's name, duration and date of the training, core competencies (i.e. skills with specific equipment or software), and resulting certification or qualification earned.
- ▶ The records must still be made available within the existing 30 calendar days of a written request.



AB 1514 – AB 5 Exemption Extensions

- ▶ AB 1514 extends certain exemptions from CA's AB 5, which originally codified the ABC test for distinguishing employees from independent contractors.
- ▶ AB 5 broadly tightened worker classification, making it harder to treat workers as independent contractors except in specified exempt categories.
- ▶ Many exemptions under AB 5 were initially set to sunset or expire by January 1, 2025/2026.



AB 1514 – AB 5 Exemption Extensions

- ▶ AB 1514 specifically extends these exemptions for certain professions and industries beyond the original sunset date.
 - The exemption for licensed manicurists from the ABC test is extended until January 1, 2029.
 - The exemption for commercial fishers operating on American vessels is extended until January 1, 2031.
- ▶ These extensions mean that for these groups, worker classification will continue to be determined using the older Borello multifactor test instead of the stricter ABC test set by AB 5 for the specified periods.



SB 617 – WARN Notice Changes

- ▶ The existing CA Worker Adjustment and Retraining Notification Act (CalWarn) requires employers to provide 60 days' advance notice to employees, state agencies, and local officials before mass layoffs, terminations, or relocations at covered establishments.
- ▶ It applies to employers with 75 or more employees at a covered establishment—this is broader than federal WARN which has a 100-employee threshold.



SB 617 – WARN Notice Changes

- ▶ SB 617 mandates new information for employers to include in notices:
 - Whether the employer plans to coordinate services, such as a rapid response orientation, and through which entity;
 - Email and telephone number of the local workforce development board;
 - Description of the rapid response activities offered by the local workforce development board;
 - Description of CalFresh, the state’s food assistance program;
 - CalFresh benefits helpline;
 - Link to CalFresh website; and
 - Email and telephone number of the employer.
- ▶ If the employer plans to coordinate with workforce development boards or other entities, they must arrange those services within 30 days of the notice.



SB 648 – DLSE Enforcement of Tip Claims

- ▶ Under existing law, CA employers are prohibited from collecting, taking, or receiving any tips paid to employees by patrons.
 - It declares every gratuity to be the sole property of the employee or employees to whom it was paid.
- ▶ Existing law also requires employers who permit credit card gratuity payments to pay employees the full amount without deducting credit card processing fees.
- ▶ Prior to SB 648, the only avenue for enforcement was through individual employee lawsuits or wage claims.



SB 648 – DLSE Enforcement of Tip Claims

- ▶ SB 648 expands protections for an employee's tips by giving the Division of Labor Standards Enforcement's (DLSE) Labor Commissioner the power to investigate, issue violations, and pursue civil actions against an Employer. Specifically, the law provides:
 - Employees with an avenue to directly sue for violations of CA's gratuity laws, either individually or on behalf of others.
 - Recovery of civil penalties range from \$250 per violation to \$1,000 for willful violations.
 - Employers must maintain detailed records of all gratuity transactions, tip pool distributions, and credit card processing fees to demonstrate compliance during DLSE investigation.

Who Must Report & When



Covered Employers

- ▷ Private employers with 100+ employees nationwide and more than 1 in California (or report to a California establishment) → Payroll Employee Report.
- ▷ Private employers with 100+ labor contractor workers and more than 1 in California (or report to a California establishment) → Labor Contractor Employee Report.
- ▷ Include all full- and part-time workers; affiliates forming an “integrated enterprise” count toward threshold.

Key Dates

- ▷ Snapshot Period: One pay period between Oct 1-Dec31.
- ▷ Deadline: Second Wednesday of May → For 2025 reporting year, May 13, 2026 is reporting deadline.
- ▷ Portal: Submit via CRD portal only (no paper/email).

Penalties

- ▷ \$100/employee first offense; \$200/employee for repeat failures (Gov. Code § 12999(f)).



What Must Be Reported

Covered Employers

- ▷ Job Category (10 EEOC categories)
- ▷ Pay Band (12 U.S. BLS bands)
- ▷ Race/Ethnicity (includes new MENA category)
- ▷ Sex (Female/Male/Non-binary)
- ▷ Hours Worked (incl. paid leave)
- ▷ Mean and Median Hourly Rate (by job category, pay band, race/ethnicity, sex)
- ▷ Remote worker indicator

Separate Reports

- ▷ Payroll Employee Report – for direct employees.
- ▷ Labor Contractor Employee Report – for contractor-supplied workers.
- ▷ Employers must identify labor contractors and obtain required data; contractors must cooperate.

Compliance & Strategic Considerations



Before Filing

- ▷ Verify headcount thresholds and integrated enterprise status.
- ▷ Select and document Snapshot Period early (Q4 each year).
- ▷ Conduct privileged pay equity audits by job category and demographic group.
- ▷ Ensure accurate self-identification data for race/ethnicity/sex and track remote-work status.

Coordination

- ▷ Engage PEOs, HROs, and staffing vendors early to gather complete data.
- ▷ Retain pay data reports for 10 years.

Enforcement & Public Disclosure

- ▷ CRD may pursue court orders and civil penalties for missed filings.
- ▷ Individual data confidential; aggregate statewide pay data published annually.

Next Steps

- ▷ Schedule Q1 data prep and Q2 submission timelines.
- ▷ Review pay transparency postings under SB 1162.
- ▷ Align federal EEO-1 and CA reports for consistency.



Federal Legislative and Case Law Update

The *Chevron* Doctrine - Background to *Loper Bright Enterprises v. Raimondo* (U.S. 2024)



- ▶ A 1984 U.S. Supreme Court decision on admin law
- ▶ The *Chevron* doctrine provided a two-step framework for courts/agencies to interpret statutes
 - If the text spoke to a precise issue, then the agency was bound by the unambiguous expressed language
 - If it was silent or ambiguous, then the court should defer to the agency's interpretation
- ▶ Deference provided stability throughout the years – but has given agencies outsized power to set regulations that govern the workplace



The *Chevron* Doctrine Overturned

- ▷ June 2024 -- The U.S. Supreme Court overturned the decades-old *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo and Relentless Inc. v. Department of Commerce*
- ▷ If agency action is challenged in court, courts will continue to respect the agency's authority if it has been properly ***delegated by statute***
- ▷ However, if a law is ambiguous, ***courts will now get to decide*** whether an agency has acted within its statutory authority – rather than yielding to the agency



The “White-Collar” Exemption Salary Threshold

- ▷ DOL Rule effective July 1, 2024:
 - Minimum salary = \$844 / week (\$43,888 / year)
 - \$1,128 / week (\$58,656 / year) – 1/1/25
 - Highly Compensated Employee = \$132,964 / year
 - \$151,164 / year – 1/1/25
 - Amounts automatically updated every three years beginning 7/1/27
- **Federal court enjoined the increases on November 14, 2024 (both the July 2024 and January 2025 increase)**
- **So, we are back to \$684/week (for now)**



The Federal Minimum Wage

- ▶ Trump has been unclear about raising the federal minimum wage
 - opposed increasing it in his first term as harmful to small businesses
 - opposed to increasing it in 2020 election
 - his 2024 campaign website says he supports raising the federal minimum wage, but \$15 per hour?
 - revoked Biden Executive Order 14026 setting the current federal contractor minimum wage at \$17.20 per hour
- ▶ Raise in federal minimum wage may be irrelevant for some employers (depending on state or local minimum wages)

Potential Trump Administration EEO-Related Initiatives



- ▷ DEI opposition at the EEOC
 - Commissioner Lucas has made it clear that affirmative action-type diversity measures are on shaky ground after *UNC/Harvard*
 - More “reverse discrimination” charges and lawsuits
 - More religious freedom charges and lawsuits
- ▷ Disparate Impact – Trump Executive Order – no longer an enforcement priority
- ▷ Reinstating and expanding Trump’s Executive Order 13950
 - Prohibited federal contractors from providing certain workplace diversity training and programs
- Revoking Biden executive orders promoting diversity for federal agencies, contractors, and grant recipients



EEOC Guidance

On March 19, 2025, the EEOC released technical assistance documents to provide clarity for employers. Key takeaways:

- ▷ Reminder on the scope of Title VII protections
 - Prohibits employment discrimination based on protected characteristics
 - “apply equally to all racial, ethnic, and national origin groups, as well as both sexes.”
- ▷ “Reverse” discrimination
 - Title VII protections apply equally to minority and majority groups
 - The US Supreme Court affirmed that majority group not required to meet higher showing of proof for so-called “reverse” discrimination claims.



Examples of Potentially Unlawful DEI Practices

- ▷ **Quotas and other “balancing” practices** based on race, sex, or other protected characteristics.
- ▷ **Disparate treatment** based (in whole or in part) by a protected characteristic.
- ▷ **Limiting, segregating, and classifying employees** based on protected characteristics if it affects their status or deprives them of employment opportunities. (Examples: affinity groups that exclude employees, separating employees for trainings even if content is the same).
- ▷ **Harassment during DEI training**
- ▷ **Retaliation** for objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge.



“Majority Groups” Title VII Claims

- ▶ Recently the US Supreme Court ruled that members of a majority group alleging employment discrimination under Title VII do not need to meet a heightened evidentiary standard.
- ▶ Previously courts had required plaintiffs to show “background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority.”
- ▶ *Ames v. Ohio Department of Youth Services* (June 5, 2025).
- ▶ Such claims appear to be a focus of the EEOC and this administration.



“Gender Ideology”

- ▷ Declares it is the policy of the US to recognize two sexes – male and female
- ▷ Instructs federal agencies to enforce laws in this manner
- ▷ Directs civil rights agencies like DOL and EEOC to recognize only two sexes when enforcing anti-discrimination law
- ▷ Will likely require EEOC to amend previous guidance
- ▷ Sets up conflict with Sup. Ct. *Bostock* ruling, which explicitly determined that “sex” under Title VII includes “gender identity”



Religious Discrimination

- ▶ *Groff v. Dejoy* (S.Ct. 2023): Employers must provide religious accommodations under Title VII unless doing so imposes an undue hardship. Prior standard was “more than a *diminimis* cost.”
 - Impact: harder to deny religious accommodations
- ▶ *Kluge v. Brownsburg Community School Corp.* (7th Cir. 2025)
 - Teacher objected based on religion to policy requiring use of transgender students’ names. Accommodated by allowing use of last names.
 - When that became controversial, the school withdrew the accommodation and the teacher resigned.
 - Lower court ruled in favor of school under the “more than *diminimis* standard.”
 - 7th Cir applied new standard and remanded.





Animals – Title I of the ADA



- ▶ Title I does not define “service animal” and does not have the same limitation.
- ▶ This means you have to engage in the interactive process with employee.



Animals – Title I of the ADA

- ▷ Title I of the ADA – deals with employees
 - This is the reasonable accommodation process you are already familiar with
- ▷ No regulations.
- ▷ Limited case law.
- ▷ General requirement that employers provide reasonable accommodations for employees with disabilities.
- ▷ Interactive process is required.
- ▷ You may require a certification from a health care provider if the employee's disability or need for a service animal is not clear.



Animals – Title I of the ADA

- ▷ No restrictions on the *types* of animals that can be service animals (i.e. not necessarily limited to dogs and miniature horses).
- ▷ No specific training or certification is required but the animal should be trained to perform specific tasks for owner.
- ▷ An accommodation must enable employee to perform the essential functions of the job. Accommodations need not be made for the convenience of the employee.



Animals – Title I of the ADA

Employee may be prohibited from bringing a service animal to work if it imposes an **undue hardship**.

- ▷ Undue interference with the operation of the business.
- ▷ Interference with other employees' ability to perform their job duties.
- ▷ Direct threat to health or safety of employees or customers.

Don't forget to consult state and local laws when addressing animal issues.



No Tax on Tips / Overtime

- ▷ The One, Big, Beautiful Bill includes a provision allowing employees who “customarily and regularly receive tips” to deduct tip income and all employees to deduct overtime
- ▷ Treasury and IRS are requesting comments on proposed regulations defining what is a “qualified tip”
 - Paid in cash or an equivalent medium
 - Received from customers or through a mandatory or voluntary tip-sharing arrangement (tip pool)
 - Paid voluntarily by customer – does not include service charges (unless customer can disregard/modify)
- ▷ Deduction does not apply to business-side taxes



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