ADVERTISING SUPPLEMENT

LAWRANCE A. BOHM, EMIL DAVTYAN, DAVID J. FISHMAN AND TODD B. SCHERWIN SHARE INSIGHTS ON LABOR & EMPLOYMENT LAW

The **Labor & Employment Law** Roundtable is produced by the LA Times Studios team in conjunction with Ballard Rosenberg Golper & Savitt, LLP; Bohm Law Group; D.Law, Inc.; and Fisher & Phillips LLP.

David J. **FISHMAN**
Partner
Ballard Rosenberg Golper & Savitt, LLP
dfishman@brgslaw.com
brgslaw.com

Lawrance A. **BOHM**
Principal and Lead Trial Attorney
Bohm Law Group
lbohm@bohmlaw.com
bohmlaw.com

Emil **DAVTYAN**
Founder and Managing Attorney
D.Law, Inc.
emil@d.law
d.law

Todd B. **SCHERWIN**
Regional Managing Partner
Fisher Phillips LLP
tscherwin@fisherphillips.com
fisherphillips.com

BALLARD ROSENBERG GOLPER & SAVITT, LLP

BLG

D.Law

Fisher Phillips

With the many unprecedented operational changes and adjustments that businesses in every sector have had to make over the last three years, a whole new landscape has emerged in terms of labor and employment issues. This has left even the most seasoned human resources and C-suiters struggling to find answers to crucial questions, not to mention the confusion among employees themselves.

Are the changes that have emerged trend-driven or here to stay? What should management be focusing on in terms of new standards and laws pertaining to employee relations? What do employees need to know?

To address these issues and concerns as well as many other topics pertaining to labor and employment hot buttons, the LA Times Studios team turned to four uniquely knowledgeable experts for their thoughts and insights about the most important "need to know" trends and updates and to get their assessments regarding the current state of labor legislation, the new rules of hiring and firing, and the various trends that they have been observing in general from both sides of the table.

Q: WHAT ARE THE BIGGEST LABOR AND EMPLOYMENT LAW TRENDS BUSINESSES NEED TO BE AWARE OF IN 2025?

A: FISHMAN

California businesses should be aware of several significant labor and employment law trends including minimum wage increases, expanded leave rights, freedom from employer intimidation, whistleblower protections, independent contractor classification, artificial intelligence (AI) in the workplace, amendments to the Private Attorneys General Act (PAGA), and equal pay and transparency. California's labor and employment landscape is continually evolving. Employers should regularly consult legal counsel and stay informed about legislative changes to ensure compliance and maintain fair workplace practices.

A: DAVTYAN

The evolving workplace continues to shape California's labor and employment landscape, with several key trends emerging in 2025. Pay transparency laws are expanding, requiring employers to provide more detailed disclosures about compensation structures. AI in hiring and workforce management is under increasing regulatory scrutiny, particularly regarding bias and privacy concerns. Additionally, enforcement of wage and hour laws remains a priority, with heightened penalties for misclassification and off-the-clock work violations. Employers must also stay ahead of shifting regulations on workplace surveillance and data privacy, ensuring compliance with both state and federal standards. These trends highlight the need for proactive policy updates and a commitment to fair, compliant employment practices.

> *"Employers should regularly consult legal counsel and stay informed about legislative changes to ensure compliance and maintain fair workplace practices."*
>
> – DAVID J. FISHMAN

A: SCHERWIN

While there may be major shifts on a federal level following the Trump administration's policies and executive orders and some belief that there will be employer-leaning policies and orders, that will not be the case in California. In California, and particularly Los Angeles, we should continue to expect an active Labor Commissioner's office, a flurry of wage-hour and Private Attorney General Act (PAGA) actions and a continual crack-down on independent contractors and employer safety. Employers should update and review their policies – and in particular their wage-hour policies – to stay compliant.

Q: HOW CAN BUSINESSES DEVELOP AND ENFORCE EFFECTIVE WORKPLACE HARASSMENT AND DISCRIMINATION POLICIES IN TODAY'S ENVIRONMENT?

A: BOHM

Developing and maintaining policies is the easy part; enforcing and fairly applying them is the issue. For smaller businesses, most local chambers of commerce have a template policy manual that can be purchased and modified. Larger corporations should retain experienced employment counsel. Every business my firm has hit with a giant verdict had appropriate policies. The number one indicator of an unlawful employment action is failing to follow company policies. That is the essence of an unfair workplace, and there is not a juror out there who believes employers should be allowed to treat employees unfairly. When leadership sees that policies have not been followed, alarm bells should ring. Training and performance management should be implemented and documented. A zero-tolerance policy should mean "zero" tolerance. Do not claim employees will be treated with "integrity and fairness" while simultaneously firing an employee without any effort to adhere to progressive discipline.

A: SCHERWIN

To develop a positive workplace culture and help prevent harassment, employers should implement clear policies with zero tolerance, detailed examples and reporting procedures. Communicate these policies effectively through onboarding, regular reminders and leadership involvement. Train managers to recognize and address harassment, avoiding assumptions about "welcomed" behavior or excusing conduct. Promptly investigate all complaints, documenting findings and ensuring no retaliation. Take immediate action, prioritizing investigations over other tasks. Consistently enforce standards, disciplining fairly and ensuring accountability regardless of employee status. This reinforces policy effectiveness and fosters a respectful workplace culture. Moreover, with the recent decisions by California courts making it clear that arbitration is not permissible for cases in which sexual harassment is alleged, it is even more important to implement and enforce a zero-tolerance policy.

Q: HOW ARE HYBRID AND REMOTE WORK POLICIES EVOLVING, AND WHAT LEGAL CONSIDERATIONS SHOULD EMPLOYERS KEEP IN MIND?

A: DAVTYAN

Hybrid and remote work policies continue to evolve, balancing flexibility with legal and operational challenges. Employers are refining policies to address work-from-home reimbursements, timekeeping for remote employees and cross-state employment tax implications. Additionally, California's wage and hour laws, including meal and rest break compliance, apply equally to remote workers, requiring employers to maintain accurate tracking mechanisms. Data security and privacy remain key concerns, particularly with increased reliance on monitoring software. Employers should ensure policies clearly define expectations while aligning with evolving legal standards to mitigate risks and maintain compliance.

Q: WHAT IMPACT ARE RECENT LEGISLATIVE CHANGES HAVING ON EMPLOYEE CLASSIFICATION (W-2 VS. INDEPENDENT CONTRACTOR)?

A: FISHMAN

Recent legislative changes in California have significantly impacted employee classification, particularly concerning the distinction between independent contractors and employees. Enacted in 2019, AB 5 codified the "ABC test" from the 2018 California Supreme Court's Dynamex decision, establishing stricter criteria for classifying workers as independent contractors: The worker must operate free from the company's direction and control; the worker must perform tasks outside the usual course of the hiring entity's business; and the worker must be engaged in an independently established trade, occupation or business similar to the work performed. Workers not meeting all three criteria must be classified as employees, granting them access to benefits like minimum wage, overtime and unemployment insurance. While certain professions are exempted, most industries had to reassess their classification practices. These legislative changes underscore the evolving landscape of employee classification in California, reflecting the state's efforts to balance worker protections with the flexibility of gig economy models.

> *"As a best practice, employees should never be surprised by the termination because warnings should be given with the opportunity to correct poor performance/issues."*
>
> – LAWRANCE A. BOHM

Q: HOW CAN BUSINESSES PREPARE FOR NEW PAY TRANSPARENCY LAWS AND ENSURE COMPLIANCE?

A: SCHERWIN

With pay transparency laws expanding at the state and local level, now is the time to create or update your compliance plan. Many states are now requiring employers to disclose salary ranges in job listings and for promotional opportunities, and because pay transparency affects all aspects of workplace relationships – including hiring, recruitment, and retention efforts; supervision and leadership; and compensation and benefits – compliance with these changing laws is important. Employers should review job postings, train staff and establish regular compensation reviews. You should also coordinate with third-party job posting services, conduct a privileged pay audit with counsel and consider a standardized pay scale. And finally, decide whether to adopt a uniform or patchwork approach for multi-state operations.

Q: WHAT ARE THE LATEST BEST PRACTICES FOR HANDLING EMPLOYEE TERMINATIONS TO MINIMIZE LEGAL RISKS?

A: FISHMAN

To minimize legal risks during employee terminations, it's essential to implement the following key strategies: (1) Maintain thorough

documentation of performance issues, disciplinary actions and any communications related to the employee's conduct. This documentation serves as evidence to justify termination decisions, demonstrating that they are based on legitimate business reasons; (2) Compliance with federal, state and local employment laws as well as internal company policies, including providing any required notices or severance benefits; (3) Engage legal advisors early in the termination process to assess potential legal risks and ensure that all actions comply with applicable laws and regulations; (4) Consistently apply company policies uniformly to all employees to prevent perceptions of bias or favoritism, which can lead to discrimination claims; (5) Conduct termination meetings in a private setting, clearly and respectfully communicating the reasons for termination; and (6) Offer resources such as severance packages, information on unemployment benefits or outplacement services to assist the employee's transition. By implementing these best practices, employers can handle employee terminations in a manner that minimizes legal risks and upholds a respectful workplace environment.

A: BOHM

First, remember the golden rule – do unto others as you would have them do to you. If you treat employees like you would want to be treated, most lawsuits would be avoided or defeated. As a best practice, employees should never be surprised by the termination because warnings should be given with the opportunity to correct poor performance/issues. Never make termination decisions while you are angry or emotional. Second, do NOT overreach. If you are firing an employee because they are chronically and habitually late, then leave it at that. Unfortunately, many untrained managers think that one good reason is not enough. Adding other flimsy reasons for termination that can be proven to be false or unfair will likely result in a finding of liability for wrongful termination and possibly defamation. In a worst-case scenario, this can result in massive punitive damages and a public relations nightmare for companies.

"Employers using AI must conduct regular audits, maintain human oversight and ensure compliance with emerging laws addressing algorithmic bias and data privacy."

– EMIL DAVTYAN

A: DAVTYAN

Handling terminations properly is crucial to minimizing legal exposure. Employers should ensure termination decisions are well-documented and based on legitimate, non-discriminatory reasons. Conducting termination meetings with professionalism and providing employees with clear explanations can help reduce disputes. Severance agreements with clear language and enforceable waivers can also mitigate risk. Additionally, compliance with final paycheck laws – including timely payment of wages, accrued PTO and expense reimbursements – is essential to avoiding wage claims. A well-structured termination process not only reduces legal risk but also protects the company's reputation.

Q: WHAT ARE THE KEY LEGAL RISKS ASSOCIATED WITH USING AI IN HIRING, PERFORMANCE REVIEWS AND WORKFORCE MANAGEMENT?

A: SCHERWIN

In the new age of remote work, more and more employers are showing an interest in artificial intelligence (AI) when it comes to recruiting and hiring new talent. By applying AI in pre-employment assessments and interviews, employers are able to streamline their recruiting processes and screen through a seemingly unmanageable pool of candidates. This practice, however, needs to be carefully managed to eliminate legal concerns.
When using AI in the workplace context, privacy concerns arise from data collection, necessitating compliance with state and federal laws like HIPAA. Bias and discrimination are significant issues to consider, as AI algorithms reflect existing data, potentially favoring profiles similar to current employees. This can disadvantage women, minorities and older applicants. Resume scanning tools may inadvertently penalize women returning to work. Furthermore, AI analyzing word choice or expressions risks discriminating against individuals with speech impediments, accents or mental impairments. These limitations can perpetuate existing biases, leading to unfair hiring practices and opening companies up to risk.

A: DAVTYAN

The use of AI in employment decisions raises significant legal concerns, particularly around bias, transparency and privacy. California's anti-discrimination laws apply to AI-driven hiring and evaluation tools, meaning employers must ensure these technologies do not disproportionately impact protected classes. There is growing regulatory focus on requiring transparency regarding how AI-driven decisions are made, and employees may soon have more rights to challenge automated decisions affecting their employment. Employers using AI must conduct regular audits, maintain human oversight and ensure compliance with emerging laws addressing algorithmic bias and data privacy.

Q: WHAT ARE SOME BEST PRACTICES FOR HANDLING EMPLOYEE ACCOMMODATIONS UNDER ADA AND OTHER DISABILITY-RELATED LAWS?

A: BOHM

In addition to following the golden rule, employers should remember that the cost of allowing an employee to remain out on leave is negligible compared to the astronomical legal bills of defending a lawsuit. While accommodations can cause disruption and headaches, these annoyances rarely qualify as an "undue burden." Financially solvent companies rarely avoid having to make reasonable accommodations, because they are expensive (even though this is the most common unsuccessful defense seen in failure to accommodate cases.) The best practice to handle accommodations is to work collaboratively with the employee and their healthcare provider. The employee is not entitled to their choice of accommodation but rather an accommodation that works. The important aspect is that an employer makes an effort to find a reasonable workable solution before they throw their hands up in defeat.

Q: HOW SHOULD COMPANIES ADDRESS WAGE AND HOUR COMPLIANCE TO AVOID COSTLY LITIGATION?

A: DAVTYAN

Wage and hour violations continue to drive litigation, making proactive compliance critical. Employers should implement strong timekeeping policies to prevent off-the-clock work, ensure proper classification of employees and conduct regular payroll audits. Meal and rest break compliance remains a major area of risk, requiring clear policies and enforcement. With California's strict reimbursement laws, employers must also ensure remote work expenses and job-related costs are properly documented and reimbursed. Staying updated on evolving state and local wage laws can help businesses prevent costly disputes and class-action lawsuits.

A: FISHMAN

California employers must be proactive in addressing wage and hour compliance to avoid costly litigation. Employers must ensure that they are properly classifying employees; staying updated on state and local minimum wage rates; properly calculating overtime using the correct regular rate of pay for all hours over eight in a day or forty in a week; ensuring meal and rest break compliance; maintain accurate timekeeping records that record all time worked (i.e., do not round time); avoid any off-the-clock work of any duration; reimburse for all reasonable and necessary business expenses including mileage, cell phone and internet; and pay employees on time during employment and at time of separation. Employers should implement clear policies (including the use of arbitration agreements) and training and have regular wage and hour audits conducted by legal counsel. Employers who proactively follow these steps can mitigate risks of class action and Private Attorneys General Act (PAGA) lawsuits as well as create a fair workplace.

A: SCHERWIN

Wage and hour laws present many challenges to businesses, ranging from increasingly complex compliance demands to the risk of high-stakes litigation. In California, this means wage-hour class actions and Private Attorney General Act (PAGA) actions. Having clear and concise policies when it comes to employee pay – and in particular, meal and rest period policies – is important as that continues to be one of the more popular claims filed against employers in Los Angeles and California as a whole. Importantly, companies in California should explore whether to implement arbitration agreements to help mitigate the risk of class action lawsuits related to wage-hour claims and ensure compliance with PAGA by continuing to audit/remediate any issues. With the PAGA reform statute that passed during the summer of 2024, employers can greatly reduce exposure and litigation risks by being proactive in continually auditing their wage-hour policies and practices.

Q: WHAT PRACTICES SHOULD BE IMPLEMENTED BY A BUSINESS TO ENSURE DOCUMENTS AND RECORDS ARE KEPT APPROPRIATELY?

A: BOHM

Employers should know that every time a case involves missing employment records, there is going to be a problem for the employer. Companies should develop reasonable and consistent document retention policies. Documents should not be destroyed unless required by law. Juries hate when a document that is supposed to exist cannot be found. Missing and/or shoddy documentation is an enormous red flag, pointing a jury in the direction of finding a company liable for an unlawful employment action. There is an expression in nursing, "If you did not document it, it did not happen."

Q: WHAT TRENDS ARE YOU SEEING RELATED TO ARBITRATION AGREEMENTS IN THE EMPLOYMENT CONTEXT?

A: DAVTYAN

Arbitration agreements remain a contentious issue in California employment law. While they provide employers with a tool to limit costly litigation, courts continue to scrutinize their enforceability, particularly in cases involving allegations of workplace misconduct. Employees are increasingly challenging these agreements, arguing they limit access to justice. Additionally, recent legislative efforts may further restrict mandatory arbitration in certain employment disputes. To ensure enforceability, arbitration agreements should be carefully drafted with clear, fair terms and explicit opt-out provisions.

Q: WHAT PROACTIVE STEPS SHOULD BUSINESSES TAKE TO PREPARE FOR ANTICIPATED CHANGES IN EMPLOYMENT LAW OVER THE NEXT FEW YEARS?

A: SCHERWIN

It sounds cliché or easy to say, but anticipated changes and compliance with changes start with an updated and compliant employee handbook. Employers should watch out for the latest legal alerts and legal updates to understand what is on the horizon and what may need to change. Updating the employee handbook every year is key in a state like California, which has several new laws (at least) that pass every year that affect the workplace.

Q: CAN EMPLOYERS STILL TEST FOR MARIJUANA IN CALIFORNIA?

A: FISHMAN

As of January 1, 2024, California law prohibits most employers from discriminating against employees or job applicants based on off-duty marijuana use. This means that employers cannot take adverse action based on a drug test that detects non-psychoactive cannabis metabolites (which remain in the system long after use). However, employers can still test for marijuana if the test detects active THC, which indicates recent use and possible impairment. Employers can also prohibit cannabis use during work hours and at the workplace. Certain industries, such as federal jobs, positions requiring security clearances, and jobs in construction, may still require traditional drug testing. Therefore, while employers in California can still test for marijuana, the type of test and how they use the results are now more restricted.

Q: HOW WOULD YOU DESCRIBE THE CURRENT CLIMATE FOR EMPLOYEE WHISTLEBLOWERS IN 2025?

A: BOHM

Whistleblowing is an employment claim that appeals to everyone, regardless of political affiliation or ideology. During jury selection, it is clear that jurors across the board detest the idea of companies breaking the law and getting away with it. CEOs hate the idea of competition getting a leg up while their company complies. Employees hate the idea of their loved ones losing their jobs because they reported illegal conduct. Over the years, Bohm Law Group, Inc. has represented numerous employees across various industries who tried to stop their company from breaking the law. When retaliation is proven, juries view the employer as evil. The hammer of a massive headline-grabbing verdict awaits any employer foolish enough to terminate an employee who has blown the whistle. No juror has ever disclosed a bias in favor of companies firing people who speak out.

"Having clear and concise policies when it comes to employee pay – and in particular, meal and rest period policies – is important as that continues to be one of the more popular claims filed against employers in Los Angeles and California as a whole."

– TODD. B. SCHERWIN

A: DAVTYAN

California remains one of the most protective states for whistleblowers, but challenges persist. Strong anti-retaliation laws continue to safeguard employees who report legal violations, yet many whistleblowers still face subtle forms of retaliation or career setbacks. Regulatory agencies are increasing oversight, particularly in industries with high rates of wage violations and workplace safety concerns. As more businesses adopt AI-driven compliance tracking, new concerns about digital whistleblower protections are emerging. While legal protections remain strong, fostering a workplace culture that encourages transparency and ethical reporting is key to ensuring employees feel safe speaking up.

This supplement was produced by LA Times Studios. It did not involve the editorial or reporting staffs of the Los Angeles Times. Contact us with comments or questions at *b2bpublishing@latimes.com.*