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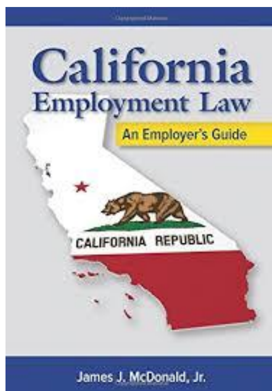
California Labor Regulations! The Most Employee Friendly State in the US



California has been one of the most employee-centric (employee-friendly) states for employment regulations.
It has always been a challenge to keep up with all the regulations trending for Employers who are in California or have employees who work remotely in California.
California also is a trendsetter with all the protections for employees with many other states using California's changes as a model. That is why as a compliance officer I enjoy researching and training on all regulations but especially California.

There so many regulations effective in 2019 & 2020 and beyond. Employers must ensure they are compliant with the regulations and also update their employee handbook and stand-alone policies immediately or suffer the cost of non-compliance. Many employers are located in other states but have employees who work in California.

Legal requirements in California prevail over other state laws and in some cases supersede federal laws. California regulations are enforced by six different state regulatory agencies, in comparison, other states are usually subject to only two or three. California workplace laws cover a wide array of topics—from wage and hour issues to mobile-device safety to accommodations for people with disabilities, to name a few. Employers need to be familiar with all of these issues to ensure that they're in compliance, particularly in today's 24/7 workplace

What California Regulations are Trending for 2020?

On July 3, 2019, California became one of the first states to ban race-based hair discrimination by enacting SB 188, also known as the Creating a Respectful and Open Workplace for Natural Hair (CROWN) Act. The CROWN Act expands the definition of "race" under the California Fair Employment and Housing Act (FEHA) to include

traits historically associated with race, such as hair texture and protective hairstyles. “Protective hairstyles” include, but are not limited to, “braids, locks, and twists.” The new law goes into effect on January 1, 2020.

The CROWN Act acknowledges the disparate impact workplace dress code and grooming policies potentially could have on black individuals. Policies that prohibit natural hair, including afros, braids, twists, and locks, are more likely to deter black applicants and burden or punish black employees than any other group. The stated purpose of the CROWN Act is thus to enforce the “constitutional values of fairness, equity, and opportunity for all.”

California employers should review their dress codes, grooming policies, and general hiring and employment practices to ensure compliance with the new law. Employers operating nationally should monitor legislative developments—New York has enacted a similar law forbidding race-based hair discrimination, and New Jersey, Michigan, Wisconsin, Illinois, and Kentucky are also considering such legislation.

Accommodations for Lactation Expression in the Workplace
SB 142 significantly changes existing law regarding an employer's obligation to provide accommodations to an employee for the purpose of expressing breast milk. Existing law:
prohibits an employer, who is required by law to give an employee a rest period during a workday, from requiring the employee to work during the rest period;
requires an employer to pay the employee one additional hour of pay, at the employee’s regular rate of compensation, for each rest period not provided;
requires employers to provide a reasonable amount of break time to employees desiring to express milk for the employee’s infant child;

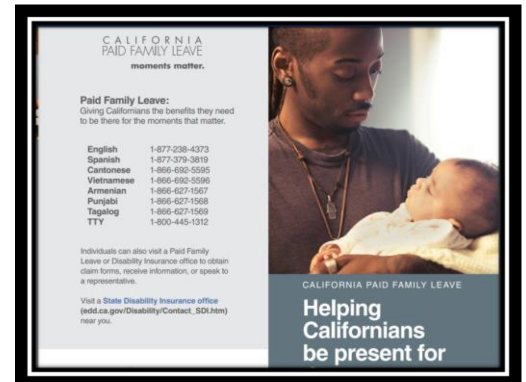
- Requires an employer to make reasonable efforts to provide the employee with the use of a room, or other location, other than a bathroom, in close proximity to the employee’s work area, for the employee to express milk in private;
- exempts an employer from the break time requirement if the employer’s operations would be seriously disrupted by providing that time to employees desiring to express milk; and
- SB 142 amends Labor Code section 1030 by requiring a "reasonable amount of break time" to express breast milk "each time the employee has a need to express milk." The bill would also amend Labor Code section 1031 by adding additional requirements for a lactation room. As a result, a lactation room or location:

Parental Leave Act
The New Parent Leave Act (NPLA) took effect in January 2018 and expanded the availability of baby-bonding benefits to smaller employers (those with at least 20 employees).

As amended by the NPLA, the California Family Rights Act (CFRA) provides 12 weeks of unpaid, job-protected leave for the birth, adoption, or foster care placement of an employee's child if the employer has 20 or more employees. Under both the NPLA and the CFRA, employers must guarantee reinstatement to employees who avail themselves of this statutory benefit.

Don't Forget Poster Compliance

New posting requirements regarding the NPLA took effect as of April 1, 2019. Employers with 20-49 employees now have to post information on the available baby-bonding benefits, and employers with 50 or more employees have to update their previous postings.



The new required postings primarily address the addition of the NPLA in the CFRA's definition section and the removal of gender-specific pronouns and references in the CFRA's Certification of Health Care Provider form.

Sexual Harassment Mandatory Training

Existing law that went into effect on January 1, 2019, expanded requirements for sexual harassment training such that it applies to employers with five or more employees (previously the sexual harassment training requirements applied to employers with 50 or more employees). The existing law includes requirements that employers provide:

at least two hours of classroom or other effective training and education regarding sexual harassment prevention to supervisory employees every two years;

at least one hour of sexual harassment prevention training and education to nonsupervisory employees every two years;

new employees with sexual harassment training within six months of hire; and

temporary or seasonal employees with sexual harassment prevention training within 30 calendar days after the hire date or within 100 hours worked if the employee is expected to work for less than six months.

SB 778 extended the initial deadline for providing new training to those non-supervisory employees who were not previously covered under prior state law from January 1, 2020, to January 1, 2021. It also clarifies that employees who completed sexual harassment training in 2019 do not need to be retrained for another two years (i.e., until 2021), and then every two years thereafter (i.e., 2023, 2025).

Contractor or Employee? How AB 5 will Impact California Employers

While the text of AB 5 is lengthy and complex, it can generally be broken down into three main parts:

it adopts and codifies the "ABC" test established in Dynamex, to determine whether a worker is an employee or an independent contractor;

it expands the reach of the "ABC" test to include the California Labor Code and Unemployment Insurance Code, as opposed to only the Industrial Welfare Commission's Wage Orders; and

it specifically exempts certain occupations, industries, and contractual relationships from the "ABC" test, and instead permits the use of the less-stringent, pre-Dynamex test established in G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal.3d 341, in certain specific circumstances.

Worker Classification

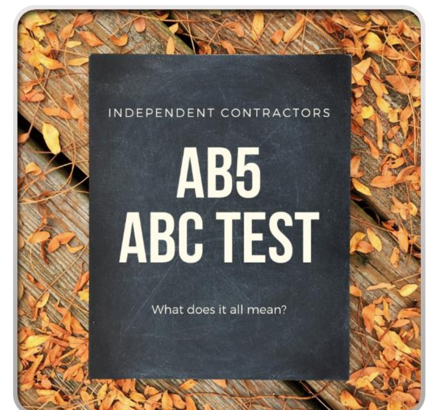
Worker Classification (AB 5): One of the biggest changes for employers next year is AB 5, nicknamed the "gig worker bill."

The bill, however, applies to more than just the gig economy as it targets the misclassification of workers as independent contractors by codifying and expanding the California Supreme Court's landmark 2018 Dynamex decision and its 3-part "ABC" test.

The ABC test— which already applied to numerous minimum labor standard requirements due to the Dynamex decision— states that a worker providing services in California is properly classified as an independent contractor only if the hiring entity can demonstrate that all of the following conditions are satisfied:

ABC Test

Where a worker is not exempt, the "ABC" test applies. The "ABC" test presumes that all workers are employees, and places the burden on the hiring business to establish the following factors in order to classify a worker as an independent contractor:



(A) the worker is free from the control and direction of the hirer in connection with the performance of the work;

(B) the worker performs work that is outside the usual course of the hiring entity's business; and

(C) the worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

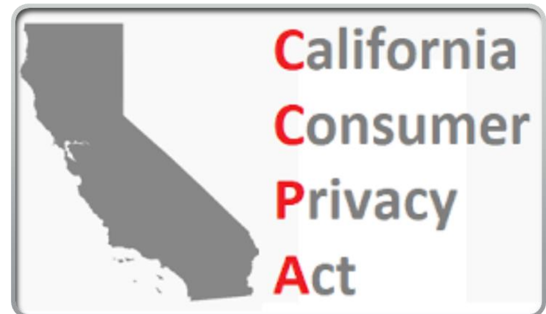
If the hiring business fails to establish any of these factors, the worker will be classified as an employee.

The California Consumer Privacy Act Requirements for Employers

In 2018, the California Legislature passed the California Consumer Privacy Act (CCPA), a law designed to provide consumers with more control over the personal

data that businesses collect on those consumers and to have that data deleted, among others.

Under the prior iterations, the term "consumer" was broadly defined to include employees and job applicants.



Because of this overbroad definition, the California Legislature enacted AB 25, which provides employers with a one-year exemption to come into compliance with the law.

Specifically, covered employers have until January 1, 2021, to meet all of the CCPA's requirements except for two.

First, by January 1, 2020, covered employers must ensure they have implemented reasonable security measures, both physical and electronic, to safeguard the personal information of employees and job applicants.

In the event of a data breach resulting from failure to implement reasonable security measures, an affected employee can file an individual lawsuit or a class action and potentially recover between $100 and $750 per consumer per data breach incident or their actual damages, whichever is greater.

Accordingly, any employer covered by the CCPA should review their electronic and physical security measures to ensure they are appropriately protecting their employees' data.

What Needs to Be Disclosed to Employees & Applicants?

Second, starting January 1, 2020, covered employers must disclose to employees and job applicants the categories of "personal information" collected about them and the purposes for which the information will be used.

The disclosure must be made before or at the time the employer receives the personal information of any employee or job applicant.

For current employees, the disclosure can be made to them as a group in the employee handbook or through a memo to all employees.

Since the CCPA requires the disclosure be made at or before the transaction in which the personal information is collected, the best approach is to include the disclosure with the job application for job applicants or future employees.

Other California Employment Regulations

- Discrimination, harassment, and retaliation
- Wage and hour issues
- Leaves of absence and workplace accommodation
- Workplace training and safety
- Flexible spending accounts
- Limitations on arbitration agreements

- Overtime Changes different than the Department of Labor
- No Rehire
- Salary questions prohibition in hiring
- Ban the Box Enforcement
- Settlement agreements
- Legalized Marijuana in the Workplace

Employers must ensure they are compliant with the regulations and also update their employee handbook and stand-alone policies immediately or suffer the cost of non-compliance. Training will identify the changes in California's employment regulations and will provide the knowledge necessary to mitigate the laws and maintain compliance. Training is the most effective low-cost strategic risk management strategy.

Employee Handbooks go hand in hand with changes in regulations. Moreover, if you have not updated your handbook (or stand-alone policies) since 2018 (which is not so long ago), you might be in violation of regulations and policies put in place in the federal, state and local jurisdictions. More so, if you are an Employer with a multi-state footprint. As an Employer representative, you must have discussions with your leadership to assess their philosophies, policies and practices to ensure you are working towards the same goals.

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- Are your clients interested in having a low cost internal I-9 Audit contact Margie Faulk directly at mfaulk@hrcompliance.net

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