California Employment Law Primer
Back to Basics – California Employment Law 101

Prepared for:

Association of Corporate Counsel – Arizona Chapter

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## Presentation
- Back to Basics: California Employment Law 101  

## Comparison of AZ-CA Employment Laws
Arizona vs. California

Arizona law is generally more employer-friendly than California law

Presentation will highlight California employment law basics and identifying significant differences between the states

Employment Application

- "Ban the Box": California Labor Code § 432.9 prohibits a state or local agency from requiring a job applicant to disclose information regarding his or her criminal history until the agency has determined the applicant meets minimum employment qualifications for the position
- California law also prohibits any employer from asking an applicant for information concerning an arrest or detention that did not result in a conviction
- As of January 1, 2014, an employer may not ask an applicant to disclose information concerning a conviction that has been judicially dismissed or ordered sealed
Employment Application

- Arizona does not prohibit questions about an applicant's criminal history on the application or during the interview.
- EEOC Guidance: Using criminal history to exclude applicants may result in discrimination (disparate impact).
- According to the EEOC, African Americans and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population.

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Employment Application

- EEOC Guidance:
  - "The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.
  - In contrast, a conviction record will usually serve as sufficient evidence that a person engaged in particular conduct."

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Immigration/E-Verify

- The Employment Acceleration Act of 2011 (Cal. Labor Code §§ 2811 et seq.) prohibits the state of California and any of its cities counties or special districts from requiring an employer (other than a government entity) to use E-Verify as a condition of receiving government contract, applying for or maintaining a business license or as a penalty for violating licensing or other similar laws.
- Employers allowed to use E-Verify on a voluntary basis.
Immigration/E-Verify

- Arizona requires employers to verify eligibility of employees through the E-Verify Program (A.R.S. §§ 23-211 et seq.)

Discrimination/Harassment

California's Fair Employment and Housing Act ("FEHA") provides broader protection of employee classes than federal discrimination laws:
- Prohibits employment discrimination, harassment and retaliation based on all federally protected classes,
- Also prohibits employment discrimination based on:
  - Medical condition
  - Genetic information
  - Gender, gender identity, gender expression and sexual orientation (heterosexuality, homosexuality, and bisexuality).
  - Military and veteran status (recent addition)

Discrimination/Harassment

California's FEHA also requires mandatory harassment training for supervisors:
- Employers with 50 or more employees must provide at least two hours of classroom or other interactive training and education regarding sexual harassment to all supervisory employees within six months of assuming a supervisory position.
- Thereafter, those employers must provide such training once every two years.
- All employees must be educated on the seriousness of sexual harassment policy violations.
Minimum Wage

California minimum wage = $8.00 per hour
Scheduled increases
- $9.00 per hour effective July 1, 2014
- $10.00 per hour effective January 1, 2016

Arizona minimum wage = $7.90 per hour

Overtime

California Labor Code §§ 500 et seq. requires employers to pay overtime compensation, which is determined on a daily basis and weekly basis.
- Required for all hours worked in excess of 8 hours per day or 40 hours in a workweek
- 1½x Regular Rate of Pay for overtime hours worked in excess of 8 hours per day through the 11th hour
- 2x Regular Rate of Pay for overtime hours worked in excess of 12 hours per day
- Must also pay overtime compensation for all hours worked in excess of 6 days per week

Wage Payment

- California requires wages (with some exceptions) be paid at least twice during each calendar month on days designated in advance
  - California Labor Code § 204: Payroll periods, including but not limited to weekly or biweekly (every two weeks), or semimonthly (twice per month) must be paid within seven (7) calendar days of end of payroll period from which wages were earned.
  - Upon discharge, an employee must be paid all wages due, including accrued vacation, immediately at time of termination.
Wage Payment

- Arizona

- Discharged employees must be paid all wages due all wages due, including accrued vacation, within seven working days or the end of the next regular pay period, whichever is sooner.

- Employees who resign must be paid all wages due no later than the regular payday for the pay period during which the termination occurred. If requested by the employee, such wages shall be paid by mail.

Meal and Rest Periods

California Labor Code § 512 requires employers to provide non-exempt employees:

- One-half (½) hour unpaid meal period for every shift lasting five (5) hours or more hours, and

- Ten (10) minute break for every four (4) hours of work or major fraction thereof.

- No meal or rest periods required by Arizona law.

Family and Medical Leave

California's Family Rights Act (Cal. Gov. Code §§ 12945.1 et seq., referred to as the CFRA) provides leave entitlements to employees similar to the FMLA.

Arizona law does not provide family and medical leave entitlements.
"Kin Care" Leave

California Labor Code § 233 requires employers who provide sick leave for employees to allow an employee to use any accrued and available sick leave entitlement to attend to an illness of a child, parent, spouse, or domestic partner of the employee.

Arizona law does not provide "Kin Care" leave.

Pregnancy Disability Leave

California Government Code § 12945 requires employers to provide pregnancy disability leave to employees disabled by pregnancy, childbirth, or a related medical condition.

- Requires employers to transfer employees affected by pregnancy or a related medical condition to a less strenuous or hazardous position or to less strenuous or hazardous duties, if such transfer is medically advisable
- Also requires employers to provide a reasonable accommodation for conditions related to pregnancy, childbirth, or a related medical condition if requested by employee with the advice of a health care provider
- No similar statute in Arizona

Organ and Bone Marrow Donor Leave

The Michelle Maykin Memorial Donation Protection Act (Cal. Labor Code §§ 1508 et seq.) requires employers with 15 employees or more to provide paid leave periods for organ and bone marrow donations.

- Maximum leave periods per year
  - 5 business days for bone marrow donations
  - 30 business days for organ donations
Organ and Bone Marrow Donor Leave

• The "per year" is a rolling twelve month period running from the date the employee's last leave began. This leave can be taken intermittently.

• Donor leave is in addition to the 12 weeks provided for qualifying employees under FMLA and CFRA.

• No similar statute in Arizona

School Leave

California Labor Code § 230.7 prohibits employers from discharging or discriminating against an employee who is the parent or guardian of a pupil for taking time off to appear in the school of a pupil pursuant to a request made under Section 48900.1 of the Education Code.

• Employee must give reasonable notice to the employer that he or she is requested to appear in the school prior to taking the time off.

School Leave

California Labor Code § 230.3 prohibits employers with 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody, of one or more children in kindergarten or grades 1 to 12 or attending a licensed child day care facility for taking off up to 40 hours each year to participate in activities of the school or licensed child day care facility of any of his or her children, if the employee gives reasonable notice to the employer of the planned absence of the employee prior to taking the time off.
School Leave

• Leave may not exceed eight hours in any calendar month of the year

• Employees are required to utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence

• Employees also may utilize time off without pay for this purpose, to the extent made available by his or her employer

• No similar statute in Arizona

Jury Duty Leave

• California Labor Code § 230 provides that an employer may not discharge, discriminate, or retaliate against an employee for taking time off to serve as required by law on an inquest jury or trial jury or to comply with a subpoena or other court order as a witness in any judicial proceeding

Jury Duty Leave

• Employee must give reasonable notice to the employer that he or she is required to serve prior to taking the time off.

• An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment.

• Arizona provides similar leave for jury duty.
Victim/Witness Leave

California Labor Code § 230 provides that an employer may not discharge, discriminate, or retaliate against an employee for taking time off to serve as required by law to comply with a subpoena or other court order as a witness in any judicial proceeding.

- Employee must give reasonable notice to the employer prior to taking the time off.

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Victim/Witness Leave

An employer may not discharge, discriminate, or retaliate against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

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Victim/Witness Leave

- Employee required to give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible

- When an unscheduled absence occurs, the employer cannot take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer.

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Victim/Witness Leave

Arizona laws providing leave to victims applies to employer with fifty or more employees
- Allows for time off for victim to exercise right to be present at specified proceedings
- Allows time off for victim to obtain an order of protection, injunction against harassment or other injunctive relief to help ensure health, safety or welfare of the victim or victim’s child
- Prohibits dismissal because employees exercises leave right

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Victim/Witness Leave

- Arizona employers are not required to compensate an employee for taking leave to attend proceedings
- Employee may elect to use or employer may require employee to use employee’s accrued paid vacation, personal leave or sick leave
- Employers may limit leave if employee’s leave creates an undue hardship to the employer’s business

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Alcohol and Drug Rehabilitation Accommodation

California Labor Code §§ 1025 et seq. requires employers with 25 or more employees to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, as long as the accommodation does not impose an undue hardship on employer.
Alcohol and Drug Rehabilitation Accommodation

Employer not required to provide time off with pay but employee is allowed to use any sick leave entitlement to enter and/or participate in an alcohol or rehabilitation program.

No similar statute in Arizona

Lactation Accommodation

California Labor Code §§ 1030 et seq. requires all employers to provide reasonable accommodations to employees who wish to express breast milk at work, which may include increased break time unless the break time would seriously disrupt the operations of the employer.

• Employer must make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

Lactation Accommodation

• No similar statute in Arizona

• FLSA was amended by Affordable Care Act and now requires employers to provide reasonable break time for an employee to express breast milk for nursing child for one year after child's birth each time employee has need to express breast milk.

• FLSA also requires employers to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and public, which may be used by an employee to express breast milk.
Literacy Accommodation

Employee Literacy Education Assistance Act (Cal. Labor Code §§ 1040 et seq.) requires private employers with regularly employing 25 or more employees to reasonably accommodate and assist any employee who reveals a problem of illiteracy and requests employer assistance in enrolling in an adult literacy education program, as long as the accommodation does not impose an undue hardship on the employer.

No similar statute in Arizona

Voting Accommodation

- In accordance with California Elections Code §§ 14000-14003, if a voter does not have sufficient time outside of working hours to vote at a statewide election, the employer must allow up to two hours of paid time to the employee to go vote.
- The time off is to be at the beginning or end of the regular working shift of that employee

Voting Accommodation

- Arizona allows employees to take leave from work to vote if there are less than three consecutive hours between the opening of the polls and the beginning of the employee's regular workshift or between the end of his/her regular workshift and the closing of the polls. (A.R.S. § 16-402)
- May take leave period at the beginning or end of the employee's shift that, when added to the time difference between workshift hours and the opening or closing of the polls, will provide a total of three consecutive hours.
Voting Accommodation

- Arizona employers cannot penalize employee or make any deduction in the employee's usual salary or wages for taking time off to vote in accordance with the statute.
- Employee must request voting leave prior to the day of the election. The employer may specify the hours during which employees may take leave.
- A person who refuses to provide an employee with the rights conferred by the statute may be found guilty of a class 2 misdemeanor.

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Questions?

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About the Speakers

Gina Haggerty Lindell is a partner with the firm’s Employment practice group. Her practice focuses on litigation, which includes defending employers in a variety of legal claims including wrongful termination, discrimination, harassment, wage and hour matters, employee classifications issues, retaliation, breach of contract, worker’s compensation and other related employment matters. Ms. Lindell regularly provides counseling to employers on a variety of personnel issues, including hiring, termination, leaves, overtime compensation, and disability.

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About the Speakers

Deanna Rader is a partner in the Employment practice group at Gordon & Rees. Her practice emphasizes advising clients in a wide variety of matters, including risk assessment, company investigations, discrimination, employment contracts, sexual harassment, disability, retaliation, misappropriation of trade secrets, enforcement and defense of post-employment restrictive covenants, policy development, employee training, reductions in force, wage-and-hour disputes, and compliance issues, including FMLA, FLSA, ADA, ADEA, and Title VII. Ms. Rader is an experienced litigator, representing and defending employers in state and federal court.
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BRIEF COMPARISON OF SELECTED EMPLOYMENT LAWS FOR ARIZONA AND CALIFORNIA

Generally, Arizona law is more employer-friendly than California law. Although both states have some statutes that are similar, Arizona’s statutes are typically more favorable to employers. Also, Arizona law does not provide many rights to leave and other protections provided by California law.

This chart highlights some of the significant differences between Arizona and California employment laws generally applicable to private employers whose employees are not subject to the terms of collective bargaining agreements. This chart is not intended to explain all statutes referenced nor is it intended to provide a comprehensive summary of all statutes pertaining to employers in Arizona and/or California. For specific information and advice regarding whether these laws are applicable to your company, please contact a licensed attorney.

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<thead>
<tr>
<th>EMPLOYMENT LAW</th>
<th>ARIZONA</th>
<th>CALIFORNIA</th>
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<tbody>
<tr>
<td>Discrimination</td>
<td>The Arizona Civil Rights Act (A.R.S. §§ 41-1401 et seq.) provides protections substantially equivalent to federal discrimination laws, including Title VII of the Civil Rights Act of 1964, Pregnancy Discrimination Act, Age Discrimination in Employment Act, and the Americans with Disabilities Act of 1990. - Covers employers with 15 or more employees - Prohibition on sexual harassment applies to all employers who have 1 or more employees - Does not place statutory cap on damages</td>
<td>California’s Fair Employment and Housing Act (Cal. Gov. Code §§ 12900 et seq., referred to as the FEHA) provides broader protection of employee classes than federal discrimination laws. - Prohibits employment discrimination, harassment and retaliation based on all federally protected classes, as well as medical condition, genetic information, gender, gender identity, gender expression, sexual orientation (heterosexuality, homosexuality, and bisexuality), and military and veteran status. - Covers employers with 5 or more employees but prohibits sexual harassment regardless of number of employees</td>
</tr>
<tr>
<td>Minimum Wage</td>
<td>Minimum wage = $7.90 per hour Unlike the federal Fair Labor Standards Act (&quot;FLSA&quot;), very few exemptions from minimum wage requirements.</td>
<td>Minimum wage = $8.00 per hour Scheduled increases - $9.00 per hour effective July 1, 2014 - $10.00 per hour effective January 1, 2016</td>
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<td>Overtime</td>
<td>Arizona employers are subject to the FLSA, which requires that overtime compensation be determined on a weekly basis.</td>
<td>California Labor Code §§ 500 et seq. requires employers to pay overtime compensation, which is determined on a daily basis and weekly basis.</td>
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<td>• Required for all hours worked in excess of 40 hours per week (Fair Labor Standards Act)</td>
<td>• Required for all hours worked in excess of 8 hours per day or 40 hours in a workweek</td>
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<td>• 1 ½ x Regular Rate of Pay for all overtime hours</td>
<td>• 1½ x Regular Rate of Pay for overtime hours worked in excess of 8 hours per day through the 11th hour</td>
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<td>• 2 x Regular Rate of Pay for overtime hours worked in excess of 12 hours per day</td>
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<td>• Must also pay overtime compensation for all hours worked in excess of 6 days per week</td>
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<td>Meal and Rest Periods</td>
<td>No state statutes requiring meal or rest periods.</td>
<td>California Labor Code § 512 requires employers to provide non-exempt employees a one-half (½) hour unpaid meal period for every shift lasting five (5) hours or more hours, and a ten (10) minute break for every four (4) hours of work or major fraction thereof.</td>
</tr>
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<td>Family and Medical Leave</td>
<td>No state statutes governing family and medical leave; the federal Family and Medical Leave Act (“FMLA”) applies.</td>
<td>California’s Family Rights Act (Cal. Gov. Code §§ 12945.1 et seq., referred to as the CFRA) provides leave entitlements to employees similar to the FMLA.</td>
</tr>
<tr>
<td>“Kin Care” Leave</td>
<td>No state statutes governing use of sick leave to attend to an illness of a child, parent, spouse, or domestic partner.</td>
<td>California Labor Code § 233 requires employers who provide sick leave for employees to allow an employee to use any accrued and available sick leave entitlement to attend to an illness of a child, parent, spouse, or domestic partner of the employee.</td>
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</table>
| Pregnancy Disability Leave | No state statutes governing pregnancy disability leave. | California Government Code § 12945 requires employers to provide pregnancy disability leave to employees disabled by pregnancy, childbirth, or a related medical condition.  
- Requires employers to transfer employees affected by pregnancy or a related medical condition to a less strenuous or hazardous position or to less strenuous or hazardous duties, if such transfer is medically advisable.  
Also requires employers to provide a reasonable accommodation for conditions related to pregnancy, childbirth, or a related medical condition if requested by employee with the advice of a health care provider. |
| Organ and Bone Marrow Donor Leave | No state statutes requiring leave for organ or bone marrow donors. | The Michelle Maykin Memorial Donation Protection Act (Cal. Labor Code §§ 1508 et seq.) requires employers with 15 employees or more to provide paid leave periods for organ and bone marrow donations.  
- Maximum leave periods per year  
- 5 business days for bone marrow donations  
- 30 business days for organ donations  
- The “per year” is a rolling twelve month period running from the date the employee’s last leave began. This leave can be taken intermittently.  
Donor leave is in addition to the 12 weeks provided for qualifying employees under FMLA and CFRA. |
School Leave

No state statutes require an employer to allow time off to attend school meetings.

California Labor Code § 230.7 prohibits employers from discharging or discriminating against an employee who is the parent or guardian of a pupil for taking time off to appear in the school of a pupil pursuant to a request made under Section 48900.1 of the Education Code, if the employee gives reasonable notice to the employer that he or she is requested to appear in the school prior to taking the time off.

California Labor Code § 230.8 prohibits employers with 25 or more employees working at the same location from discharging or discriminating against an employee who is a parent, guardian, or grandparent having custody, of one or more children in kindergarten or grades 1 to 12 or attending a licensed child day care facility for taking off up to 40 hours each year to participate in activities of the school or licensed child day care facility of any of his or her children, if the employee gives reasonable notice to the employer of the planned absence of the employee prior to taking the time off.

- Leave may not exceed eight hours in any calendar month of the year
- Employees are required to utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence

Employees also may utilize time off without pay for this purpose, to the extent made available by his or her employer.
| Jury Duty Leave | A.R.S. § 21-236 prohibits an employer from refusing to permit an employee to serve as a juror or dismiss or in any way penalize any employee because the employee serves as a grand or trial juror.  
- Employers cannot require or request an employee to use annual, vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process, or actually serving on a jury.  
Employers are not required to compensate an employee when the employee is absent from employment because of jury service. | California Labor Code § 230 provides that an employer may not discharge, discriminate, or retaliate against an employee for taking time off to serve as required by law on an inquest jury or trial jury or to comply with a subpoena or other court order as a witness in any judicial proceeding, if the employee gives reasonable notice to the employer that he or she is required to serve prior to taking the time off.  
An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment. |
| Victim/Witness Leave | A.R.S. § 8-420 and § 13-4439 require employers with fifty or more employees are required to allow an employee who is a victim of a crime and/or juvenile offense to leave work to:  
Exercise the employee's right to be present at specified proceedings.  
- Obtain or attempt to obtain an order of protection, an injunction against harassment or any other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child.  
Employers cannot dismiss an employee who is a victim of a crime because the employee | California Labor Code § 230 provides that an employer may not discharge, discriminate, or retaliate against an employee for taking time off to serve as required by law to comply with a subpoena or other court order as a witness in any judicial proceeding, if the employee gives reasonable notice to the employer prior to taking the time off.  
- An employer may not discharge, discriminate, or retaliate against an employee who is a victim of domestic violence, sexual assault, and stalking for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child. |
| Victim/Witness Leave (cont.) | exercises the right to leave to attend proceedings.  
- Employers are not required to compensate an employee who is a victim of a crime when the employee leaves work to attend proceedings.  
- Employee may elect to use or an employer may require the employee to use the employee's accrued paid vacation, personal leave or sick leave.  
Employers may limit the leave provided under this section if the employee's leave creates an undue hardship to the employer's business. | Employee required to give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible  
- When an unscheduled absence occurs, the employer cannot take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. |
| Alcohol and Drug Rehabilitation Accommodation | Not required by Arizona Law | California Labor Code §§ 1025 et seq. requires employers with 25 or more employees to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, as long as the accommodation does not impose an undue hardship on employer.  
- Employer not required to provide time off with pay but employee is allowed to use any sick leave entitlement to enter and/or participate in an alcohol or drug rehabilitation program. |
| Immigration/ E-Verify | A.R.S. §§ 23-211 et seq. (Employer Sanctions Law) prohibits employers from knowingly employing an alien who does not have the legal right or authorization under federal law to work in the United States.  
  - Also prohibits employer from using a contract, subcontract or other independent contractor agreement to obtain the labor of an alien  
  - Employers required to verify eligibility of employees through the E-Verify program.  
  - A.R.S. § 41-4401 prohibits government entities from awarding contracts to any contractor or subcontractor that fails to verify employee eligibility through the E-Verify program. | The Employment Acceleration Act of 2011 (Cal. Labor Code §§ 2811 et seq.) prohibits the state of California and any of its cities, counties or special districts from requiring an employer (other than a government entity) to use E-Verify as a condition of receiving a government contract, applying for or maintaining a business license, or as a penalty for violating licensing or other similar laws. Employers allowed to use E-Verify on a voluntary basis. |
| **Lactation Accommodation** | No state statutes require accommodations for lactation but the FLSA, which was amended by the Patient Protection and Affordable Care Act, requires employers to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child’s birth each time such employee has need to express the milk. Employers are also required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. | California Labor Code §§ 1030 et seq. requires all employers to provide reasonable accommodations to employees who wish to express breast milk at work, which may include increased break time unless the break time would seriously disrupt the operations of the employer.  
- Employer must make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee’s work area for the employee to express milk in private. |
| **Employee Literacy Accommodation** | No state statutes require accommodations related to employee literacy. | Employee Literacy Education Assistance Act (Cal. Labor Code §§ 1040 et seq.) requires private employers with regularly employing 25 or more employees to reasonably accommodate and assist any employee who reveals a problem of illiteracy and requests employer assistance in enrolling in an adult literacy education program, as long as the accommodation does not impose an undue hardship on the employer. |
| Voting Accommodation | A.R.S. § 16-402 allows employees to take leave from work to vote if there are less than three consecutive hours between the opening of the polls and the beginning of the employee's regular workshift or between the end of his/her regular workshift and the closing of the polls.  
- May take leave period at the beginning or end of the employee's shift that, when added to the time difference between workshift hours and the opening or closing of the polls, will provide a total of three consecutive hours.  
- Employers cannot penalize employee or make any deduction in the employee's usual salary or wages for taking time off to vote in accordance with the statute.  
- Employee must request voting leave prior to the day of the election. The employer may specify the hours during which employees may take leave.  
A person who refuses to provide an employee with these voting rights may be found guilty of a class 2 misdemeanor. | In accordance with California Elections Code §§ 14000-14003, if a voter does not have sufficient time outside of working hours to vote at a statewide election, the employer must allow up to two hours of paid time to the employee to go vote. The time off is to be at the beginning or end of the regular working shift of that employee. |
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