

California Employment Law: Ten Top Issues for 2026



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Today's Program:

- **Pay to Stay**
- **Freelance Workers Protection Act**
- **Independent Contractors**
- **AI in the Workplace**
- **Immigration Protections**
- **Discrimination and Shifting Enforcement Priorities**
- **Wage and Hour Developments/Issues**
- **PAGA/Arbitration**
- **Pay Equity**
- **Leave – Paid Family Leave Changes**



Employee Mobility: Prohibitions on Stay or Pay Agreements



AB 692

- Adds Section 16608 to the Business and Professions Code and Section 926 to California Labor Code
- Makes it unlawful to include in any employment contract or require an employee to execute, as a condition of employment, a contract that requires an employee to pay an employer, training provider, or debt collector for a debt if employment terminates, with limited exceptions.
- Applies to contracts entered after January 1, 2026
- Applies to all California employers.
- Employees may bring action on behalf of themselves or others.
- Liability of actual damages or \$5,000 per worker, plus injunctive relief and attorney's fees and costs.

Exceptions to AB 692

- Contract related to the repayment of the cost of tuition for a **transferable credential** that meets the following requirements:
 - Contract is separate from any employment contract
 - Contract does not require obtaining transferable credential as a condition of employment.
 - Contract specifies repayment amount before worker agrees to contract.
 - Repayment amount does not exceed the cost to the employer.
 - Contract provides for prorated repayment amount during any required employment period that is proportional to the total repayment amount and the length of the required employment.
 - Does NOT require an accelerated payment
 - Does NOT require repayment unless the employee is terminated for misconduct

Exceptions to AB 692

- Contract for receipt of **discretionary or unearned monetary payment at the outset of employment that is not tied to job performance**, providing the following requirements are satisfied:
 - Contract is separate from any employment contract
 - Employee is notified of the right to consult an attorney regarding the agreement.
 - Employee provided a reasonable time of no less than 5 business days to review with counsel
 - Any repayment is not subject to interest accrual
 - Any repayment is prorated based on the remaining term of any retention period.
 - Retention period cannot exceed two years from receipt of payment.
 - Option to defer receipt of payment to the end of a fully served retention period without any repayment obligation.
 - Separation from employment is at the sole election of the employee or for misconduct.

AB 692 – Best Practices and Unanswered Questions

- Review policies and agreements
- Create **separate agreements (including for a sign-on bonus)**
- Ensure agreements are signed.
 - Consider issues related to electronic signatures.
- Review for accelerated payment provisions
 - Question: Are accelerated payments allowed for sign-on bonuses/other similar payments?
- Ensure Human Resources/Management understands that repayment can only be required for a voluntary resignation or termination for misconduct.
- Ensure Human Resources/Management understands proration requirement.
- What about repayment obligations that occur during employment?

Freelance Workers Protection Act



Freelance Worker Protection Action Act

☐ SB 988:

- **Minimum requirements** between a hiring party and a “freelance worker”
 - “Freelance Worker” is a person or organization composed of no more than one person, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than \$250
 - Note: The professional services listed in California Labor Code Section 2778(b)(2) services being referred to in the FWPA are defined in Labor Code section 2778(b)(2) and include various categories of freelance-style work, including marketing, human resources, graphic design, photography, videography, estheticians, and others.
- Requires a **written contract** be provided to the freelance worker, **containing at a minimum:**
 - Name and mailing address of each party
 - Itemized list of all services to be provided, including the value and rate of such services and method of compensation
 - When the hiring party must pay the compensation or the mechanism by which the date of payment is determined, or if unspecified, no later than 30 days after completion of services
 - When the freelance worker must submit a list of services to the hiring party to meet any internal processing deadlines for timely payment

Independent Contractors



DOL Proposal

February 26, 2026:

- **DOL proposes rule to rescind the 2024 Biden-era independent contractor guidelines and replace them with a more employer-friendly standard.**
 - Reduces the focus on a “totality of circumstances” and re-emphasizes two “core” factors: the nature/degree of control over work, and the worker’s opportunity for profit or loss based on initiative or investment.
 - If the two core factors are uncertain, other factors are considered: permanence of the relationship, worker skill level, and if the work is an integrated unit of production.
- **Applies to the FLSA and is proposed for the Family and Medical Leave Act (FMLA) and Migrant and Seasonal Agricultural Worker Protection Act (MPSA).**
- **60-day comment period closes on April 28, 2026.**
- **Impact:** If adopted, will provide greater flexibility for using independent contractors.

California Status:

ABC Test:

- **A worker is presumed to be an employee unless the company can prove that the worker:**
 - A. Is free from control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in actually doing the work;
 - B. Performs work that is outside the usual course of the hiring entity's business; and
 - C. Is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.
- There are many exceptions to the ABC test for various industries and professions. If an exception applies, then courts and agencies will apply the test specified in the statutory exception, usually the common law control test also known as sometimes called the "Borello test."

Tip: CONSULT LEGAL COUNSEL!

AI in the Workplace



- ***Mobley v. Workday, Inc. (2024):***

- On May 16th, 2025, the Court granted conditional certification for the case to proceed as a nationwide collective action under the Age Discrimination in Employment Act (ADEA)
- The Court rejected Workday's argument that it is just a software provider and does not make the hiring decisions, finding Workday sufficiently involved in the hiring process to be held potentially liable as an 'agent' of the employers

- ***Harper v. Sirius XM Radio, LLC (2025):***

- On August 4, 2025, plaintiff filed a class action complaint alleging that Sirius' use of a commercial AI hiring tool that screens and analyzes resumes resulted in racial discrimination against him and other similarly situated African American applicants.



California Civil Rights Council Regulations

Effective 10/1/2025

- **What employers do these regulations apply to?**
 - Employers of 5 or more people, employment agencies, unions, apprentice programs
 - Includes PT employees, employees on leave; inside/outside California
 - Employer Agents - any person acting on behalf of an employer, directly or indirectly, to exercise a function traditional exercised by the employer- are also an “employers.”
- **What is an Automated-Decision Systems (“ADS”)?**
 - An ADS is “[a] computational process that makes a decision or facilitates human decision making regarding an employment benefit,” including processes that “may be derived from and/or use artificial intelligence, machine-learning, algorithms, statistics, and/or other data processing techniques.”

Civil Rights Council Regulations (cont'd)

Examples of ADS Use In Employment Settings

- Using computer-based assessments or tests, such as questions, puzzles, games, or other challenges to:
 - Make predictive assessments
 - Measure skills, dexterity, reaction-time, and/or other abilities or characteristics;
 - Measure personality traits, aptitude, attitude, cultural fit;
 - Screen, evaluate, categorize, make recommendations
- Screening resumes for particular terms or patterns
- Directing job advertisements or other recruiting materials to targeted groups
- Analyzing facial expression, word choice, and/or voice in online interviews
- Analyzing employee or applicant data acquired from third parties



Civil Rights Council Regulations (cont'd)

- **What Conduct is Targeted?**

- Using ADS or selection criteria (including a qualification standard, employment test, or proxy) to discriminate based on a protected class.
- Using ADS to engage in unlawful recruitment practices (e.g., to restrict, exclude, or classify individuals on a protected trait; to engage in unlawful preemployment inquiries, including criminal history).
- Using ADS to screen based on disability, uncorrected vision or hearing, unless:
 - The standard, test, or selection criteria is job related and consistent with business necessity.
 - There is no less effective discriminatory standard, test or other selection criteria.
- Expressing a preference for or advertising employment availability or benefits in a manner intended to discriminate based on a protected trait.
- To conduct an unlawful “medical or psychological examination”
- To aid or abet unlawful employment discrimination.

Civil Rights Council Regulations (cont'd)

- **Who Can Be Responsible?**

- Employers, whether they use their own AI tools or use a third parties AI tools.
- Third parties that design or implement such AI tools may also be held liable under the FEHA's prohibition on aiding and abetting unlawful employment practices .

- **Are there New Recordkeeping requirements?**

- Yes. Employers must keep for **four years** all automated-decision system data created or received by the employer or other covered entity dealing with any employment practice and affecting any employment benefit of any applicant or employee.
 - Keep for four years (up from two) from the date of the making of the record or the date of the personnel action involved, whichever occurs later.
 - Includes all applications, personnel records, membership records, employment referral records, California employment information reports, selection criteria, automated-decision system data, and other records created or received by the employer or other covered entity dealing with any employment practice and affecting any employment benefit of any applicant or employee.

Civil Rights Council Regulations (cont'd)

- **What you need to do:**

- Identify all AI and ADS tools used in the employment relationship and audit to ensure compliance with antidiscrimination laws.
- Review vendor relationships and make sure contracts include requirements for transparency, bias testing, data retention and cooperation with audits.
- Update policies and processes and integrate AI governance as appropriate
- Ensure that all ADS-related systems include mechanisms for applicants to request accommodations for disabilities, religious practices, or medical conditions.
- Update retention policies to ensures that all ADS-related employment data is retained for the required four years.
- Train HR, managers, recruiters and others on AI and the new regulations.

STAY INFORMED AND UP-TO-DATE

Wage and Hour Developments/Issues



SB 648: Tips and Gratuities

- **Amends Labor Code Section 351 effective January 1, 2026**
- **Labor Code Section 351**
 - **Tips and gratuities are the sole property of employees**
 - **Employer cannot deduct credit card processing fees**
 - **Credit card tips must be paid by next scheduled payday**
 - **Employers cannot credit tips against wages due**
- **SB 648 Amendments**
 - **Labor Commissioner authorized to issue citations or file civil actions**
 - **Labor Code Section 1197.1 penalties apply**
 - **Recovery of unpaid tips**
 - **\$100 penalty for initial violation; \$250 penalty for subsequent violations**

CRST Expedited, Inc. v. Superior Court, 114 Cal. App. 5th 1077 (2025)

- “Headless” PAGA actions permitted
 - Plaintiff seeks PAGA penalties only for violations suffered by other employees
 - Avoids arbitration of “individual PAGA claims”
- Contrary holdings by other CA appellate courts
- CA Supreme Court granted review & further proceedings on hold
- The issue is currently before the California Supreme Court
 - *Leeper v. Shipt, Inc.*, 107 Cal. App. 5th 1001 (2024)
 - Holdings: headless PAGA actions are not permitted
 - Stay tuned...

Iloff v. LaPaille, 18 Cal. 5th 551 (2025)

- **Maintenance employee lived rent free but received no wages**
 - **Trial and appellate courts rejected independent contractor status**
- **Issues on appeal:**
 - **Liquidated damages for failure to pay minimum wages**
 - Employer good-faith defense cannot be based on ignorance of the law
 - Employer must show reasonable attempt to determine legal requirements
 - **Claim for paid sick leave that was not provided**
 - **Can be raised on an appeal of a Labor Commissioner ruling**
 - The Labor Code authorizes trial de novo of paid sick leave claims
 - Paid sick leave claims may be raised on appeal for the first time

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

- Labor Code section 512(a)
 - Meal periods may be waived for shifts between 5 and 6 hours
- Employee signed a prospective meal period waiver
- Waiver applied throughout employee's employment
- Waiver was revocable by employee
- Appellate court affirmed summary judgement in favor of employer
 - No evidence that waivers were unconscionable or unduly coercive
 - Procedural irregularities could have resulted in a different outcome
- Holding: Revocable, prospective (written) waivers are enforceable

Discrimination and Shifting Enforcement Priorities



Intersectionality

- **Senate Bill 1137: Intersectional Discrimination**
 - “Intersectionality is an analytical framework that sets forth that different forms of inequality operate together, exacerbate each other, and can result in amplified forms of prejudice and harm.”
 - Clarifies that the Fair Employment and Housing Act bars discrimination not only on the basis of individual protected characteristics, but on a combination of two or more protected traits.
 - E.g., Black/Asian + Women
 - Although federal courts are split on the subject of intersectional discrimination, the EEOC recognizes that discrimination motivated by two protected characteristics can violate Title VII (e.g., Black Women, Old Women)
 - Also applies to the Unruh Civil Rights Act and provisions of the Education Code

Bias Mitigation Training – SB 303

- An employee's assessment, testing, admission, or acknowledgment of their own personal bias, when made in good faith and solicited or required as part of a bias mitigation training, does not, by itself, constitute unlawful discrimination.
- Goal is to encourage employers to conduct bias mitigation training
- Affirms that conducting a bias mitigation training does not, by itself, constitute unlawful discrimination

Key Case Law Developments

- **Kruitbosch v. Bakersfield Recovery Services, Cal. Ct. App. (Sep. 2025)**
 - Off-site, nonwork-related sexual harassment by a coworker is not, by itself, imputable to the employer under FEHA
 - Court affirmed there must be a nexus between offsite co-worker conduct and work activity.
 - But an employer's response (or lack thereof) to an employee's complaint about nonsupervisory off-site nonwork-related harassment itself can create an actionable hostile work environment.
- **Carranza v. City of Los Angeles, Cal. Ct. App. (2025)**
 - Jury awarded \$4 million to LAPD Captain for sexual harassment connected to nude images that were widely circulated that were falsely represented to be the Captain.
 - Chief took very little action to address.
 - Court rejected idea that employee needed to experience direct, face-to-face harassment to support sexual harassment claim.

Key Federal Case Law Developments

- **Ames v. Ohio Dept. of Youth Services, 2025 WL 1583264 Case No. 23-1039**
 - Court unanimously rejected a longstanding rule applied by the Sixth Circuit and other circuit courts that imposed a heightened evidentiary burden on majority-group plaintiffs bringing claims for discrimination under Title VII of the Civil Rights Act.
 - Such plaintiffs are not required to demonstrate “background circumstances” suggesting discrimination to establish a *prima facie* case of discrimination under the *McDonnell Douglas* framework.
- **State of Louisiana v. EEOC, 2025 WL 1462583 (W.D. La. May 21, 2025)**
 - Vacated final rule of PWFA regulations to the extent it includes elective abortion as a condition for which employers are required to make accommodations.
 - But this did not impact rules that limit an employer’s ability to seek medical documentation related to request.



Federal Policy: Trump 2.0

- **Leadership Changes**

- Andrea R. Lucas appointed as Acting EEOC Chair.
- *“Consistent with the President’s Executive Orders and priorities, my priorities will include rooting out unlawful DEI-motivated race and sex discrimination; protecting American workers from anti-American national origin discrimination; defending the biological and binary reality of sex and related rights, including women’s rights to single-sex spaces at work; protecting workers from religious bias and harassment, including antisemitism; and remedying other areas of recent under-enforcement.”*

- **Policy Reversals on Gender Identity**

- EEOC dismissed gender identity discrimination cases.
- Rescinded previous guidance protecting LGBTQ+ employees.
- Emphasized “biological and binary reality of sex.”

February 26, 2026: Andrea R. Lucas' Reminder of Obligations Under Title VII of the Civil Act of 1964 as They Relate to DEI

- On February 26, 2026, EEOC Chair Andrea R. Lucas issued a letter to hundreds of large employers reminding them that Title VII anti-discrimination laws prohibit employment decisions based on race and sex, regardless of whether such initiatives are labeled “DEI” or similar terminology.
- Lucas highlighted that the EEOC has regained a quorum and is prepared to use its full range of enforcement tools, including “systemic cases; pattern and practice lawsuits; and other large-scale litigation,” to address what it characterizes as unlawful DEI-related discrimination.
- It signals heightened federal scrutiny and encourages employers to reassess current or past DEI initiatives to ensure compliance with federal law.

EEOC Guidance – “DEI Discrimination”

- Diversity, Equity and Inclusion (DEI) is a broad term that is not defined in Title VII of the Civil Rights Act of 1964 (Title VII).
- Reminds employees they must file a charge of discrimination with the EEOC before they can file a lawsuit.
- Title VII protections apply equally to all workers.
- The EEOC does not require a higher showing of proof for so-called “reverse” discrimination claims.
- Cannot take employment action because of a client or customer preference.
- When is a DEI program or initiative unlawful?
 - Under Title VII, an employer initiative, policy, program, or practice may be unlawful if it involves an employer or other covered entity taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic
- What about employee affinity or resource groups?
- What about DEI training?

EEOC and DOJ Guidance - “DEI Discrimination”

- EEOC and DOJ released guidance entitled: What To Do If You Experience Discrimination Related to DEI at Work
- Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee’s race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise “balancing” a workforce by race, sex, or other protected traits.
- Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.
- Encourages individuals who believe they have been subject to DEI-discrimination to contact the EEOC.

EEOC Enforcement Priorities (2026)

- **Under the current administration, EEOC priorities include:**
 - Investigating DEI programs that allegedly create discrimination.
 - Increased enforcement of religious discrimination.
 - Greater focus on national origin discrimination.
 - Emphasis on the “biological definition of sex” in some agency guidance
- **However, Title VII protections remain unchanged.**

Supreme Court Update: Ames v. Ohio Department of Youth Services (2025)

- The U.S. Supreme Court ruled on June 5, 2025 that majority-group plaintiffs do not need to satisfy a higher evidentiary burden in Title VII discrimination claims.
- Previously some courts required majority plaintiffs to prove “background circumstances” showing discrimination.
- The Court held:
 - Title VII applies equally to all individuals.
 - No special evidentiary burden exists for majority-group discrimination claims.
- Impact for Employers:
 - Reverse discrimination lawsuits may increase.
 - DEI-related employment decisions will face greater scrutiny.
 - Employers must ensure decisions are based on qualifications and merit.

PAGA/Arbitration



Hohenshelt v. Sup. Ct., 18 Cal. 5th 310 (2025)

- **Cal. Code Civ. Proc. Section 12981.98 – arbitration fees to be paid within 30 days**
- **Employer failed to pay fees in a timely basis**
- **FAA preemption?**
 - **Cal Supreme Court Holding: No**
 - **BUT: Contract principles apply**
 - **Relief from forfeiture if:**
 - Breach is excusable (i.e., no fraud, excusable neglect, etc.)
 - Lack of prejudice

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

- **Arbitration Agreement Unenforceable**
- **Procedural Unconscionable**
 - **Contract of adhesion = non-negotiable**
 - **Presented agreement along with 30 other documents**
 - **Little time to review and consider**
 - **Misrepresented terms and nature of agreement**
- **Substantive Unconscionability**
 - **Unfairness of contract terms**
 - **Not 'inexpensive, speedy, informal' resolution of claims**
 - **Adoption of civil rules of procedure favored employer**
 - **Impacted by degree of procedural unconscionability**
 - **Less severe procedural unconscionability could have saved agreement**

Pay Equity



Pay Equity Enforcement Act

- **SB 642**
- **New “pay scale” definition under Labor Code Section 432.3**
 - **Old Definition:** the salary or wage range that the employer expected to pay “for the position” generally.
 - **Amended Definition:** a “good faith estimate” or the salary or wage range “upon hire.”
- **Expanded definition of “sex” and “wages”**
 - “opposite sex” >> “another sex”
 - “wages”>> “all forms of pay, including bonuses, stock, stock options, cleaning or gas allowances, hotel accommodations and reimbursements”
- **Statute of limitations extended to three years**
- **Recovery period increased to up to 6 years**

Leave – Paid Family Leave Changes



Changes to Paid Family Leave

- **SB 590:**
- **California's Paid Family Leave (PFL), administered by the Employment Development Department, provides wage replacement benefits to workers who take time off to:**
 - Care for a covered family member with a serious health condition;
 - Bond with a minor child within one year of the birth, adoption or foster care placement of the child with the employee; or
 - Participate in qualified exigency leave related to the active duty or call to active duty of certain family members.
 - Currently 8 weeks of PFL available
- **Expands the definition of "family member" to include a "designated person": any care recipient related by blood or whose association with the employee is the equivalent of a family relationship.**
- **Attestation under penalty of perjury required**
- **Effective Date: July 1, 2028**

Thank You