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— LLP —

HOT TOPICS FOR CALIFORNIA EMPLOYMENT COMPLIANCE 2024



Katie McCray & Tia Butler
Wilson Turner Kosmo LLP

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PRESENTERS



Katherine M. McCray
Partner

kmccray@wilsonturnerkosmo.com



Leticia "Tia" Butler
Partner

lbutler@wilsonturnerkosmo.com

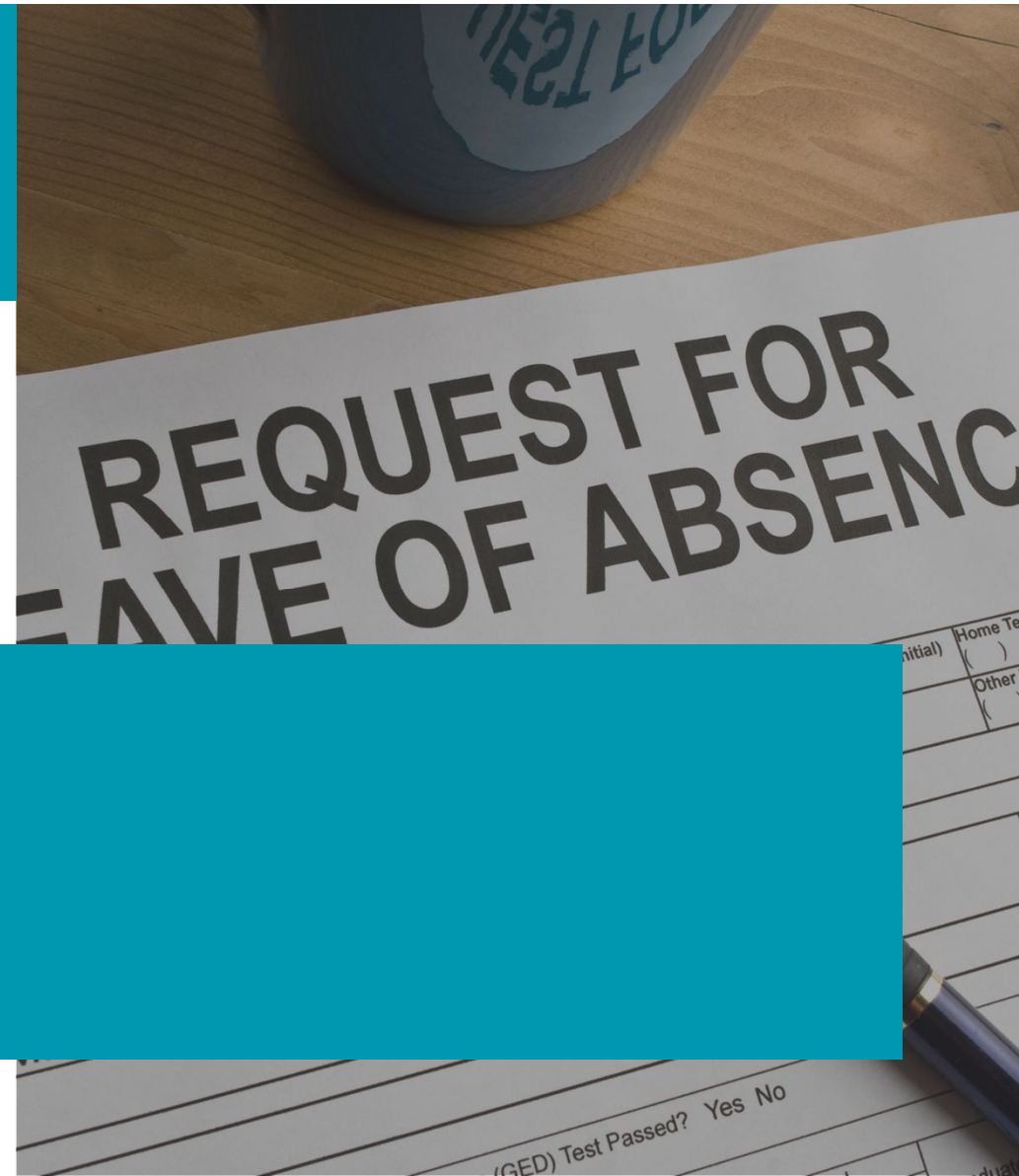
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AGENDA

- Leaves of Absence
- Non-Compete and Non-Solicitation Agreements
- Workplace Violence Prevention Plans
- Additional Compliance Issues

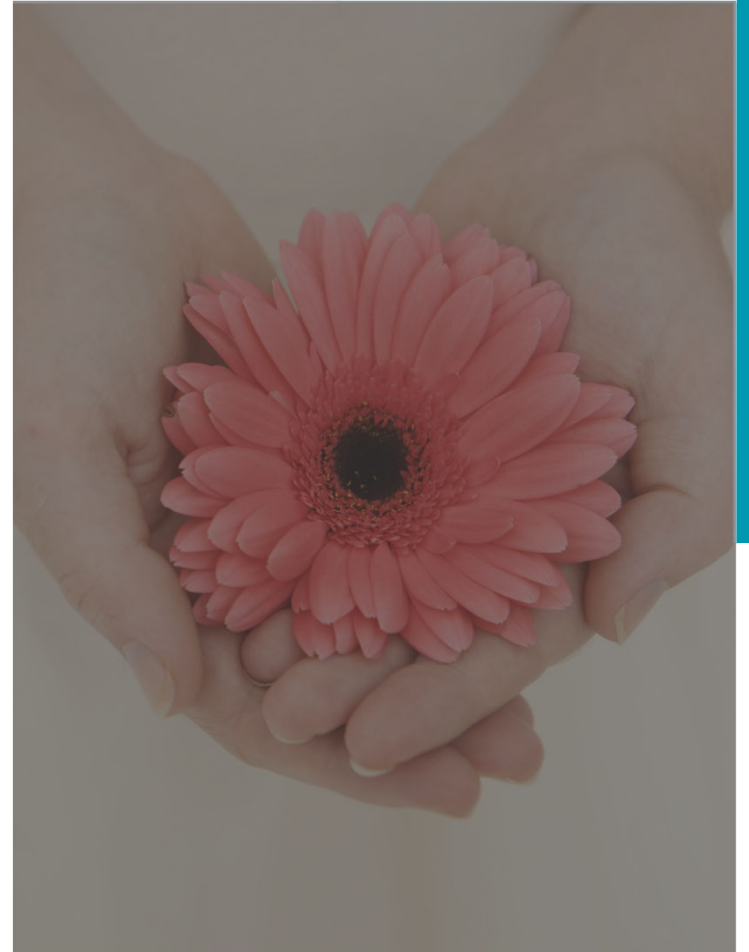


LEAVES OF ABSENCE



REPRODUCTIVE LOSS LEAVE [SB 848]

- **Prior Law:** Covered employees entitled to 5 days of bereavement leave
- **New Law:** Employees may take up to 5 days of leave following a “reproductive loss event”



REPRODUCTIVE LOSS LEAVE

ELIGIBILITY

- Applicable to employers with 5 or more employees.
- Employees are eligible if they have been employed at least 30 days.
 - Any person who would have been a parent is entitled to leave.
- Reproductive Loss Event means failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction (as defined in the statute).



REPRODUCTIVE LOSS LEAVE

POLICY DETAILS

- Leave may be unpaid, but:
 - Employees must be allowed to use accrued/available vacation, personal leave, sick leave, or other PTO.
- Five days need not be consecutive, but most be taken within three months.
- Leave may be capped at 20 days per 12-month period.
- Employers are not authorized to request documentation.
- Requests for leave and related info must be kept confidential.

PAID SICK LEAVE INCREASES

[SB 616]

Prior Law:

- Employers must provide 24 hours (3 days) of paid sick leave per year
- Accrual may be limited to 48 hours (6 days)

New Law:

- Paid sick leave increased to 40 hours/5 days per year
- Accrual limits increased to 80 hours/10 days
- Use may be limited to 5 days/40 hours per year



Sick leaves



PAID SICK LEAVE INCREASES *ACCRUAL METHOD*

- Accrue 1 hour of sick leave per 30 hours worked
- Alternative accrual methods may be used if employees have:
 - 24 hours of accrued leave by 120th calendar day; and
 - 40 hours of accrued leave by the 200th calendar day
 - or in each calendar year or 12-month period
- With the accrual method, sick leave must carry over from year to year

PAID SICK LEAVE INCREASES *FRONTLOAD METHOD*

- Frontloading is still allowed!
- Employees get their entire amount of PSL at the beginning of each year.
- No need to worry about tracking accrual.
- No need to worry about carrying time over year to year.



PAID SICK LEAVE INCREASES *CBAS, LOCAL ORDINANCES AND POLICY UPDATES*

- Extends sick leave to those covered by collective bargaining agreements
- Partially but not entirely preempts paid local sick leave provisions
- Update your policies to reflect the new requirements
- Helpful FAQs:
https://www.dir.ca.gov/dlse/paid_sick_leave.htm
- Caution re: previous 12-month periods that do not align with calendar year
- Be careful! Violations of PSL law can result in PAGA Penalties

NON-COMPETE AND NON-SOLICITATION AGREEMENTS



PRIOR LAW AGAINST RESTRAINTS ON TRADE

- **Prior Law:** “Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.” (Bus. & Prof. Code § 16600)
 - **Classic Examples:**
 - Agreement that prohibits employee from working for employer’s competitor for 2 years after termination of employment.
 - Agreement that prohibits one company from hiring employees of another company.
- In California, even “narrow restraints” (limited by time/geography) are unenforceable in the employment context. (Edwards v. Arthur Andersen LLP (2008) 44 Cal.4th 937)

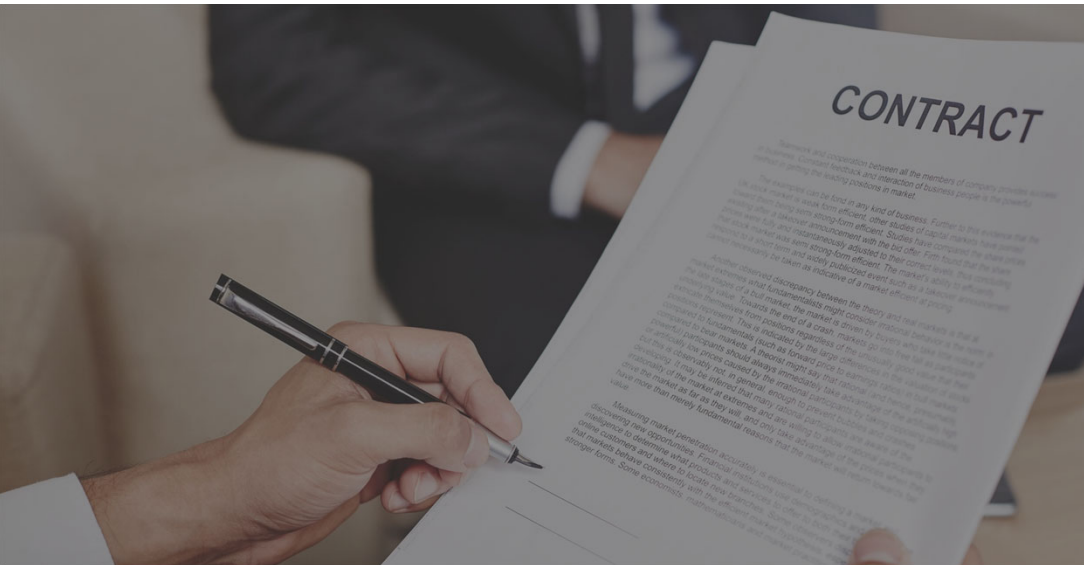




PRIOR LAW AGAINST RESTRAINTS ON TRADE

Very Narrow Exceptions:

- Person selling goodwill of a business;
- Owner of business selling or otherwise disposition of all of their ownership interest;
- Owner of a business that sells all/substantially all of its operating assets and goodwill;
- Partner upon dissolution of the partnership, the partner's withdrawal from the partnership, or disposition of partner's interest.



NEW LIABILITY FOR ENTERING INTO OR ENFORCING VOID AGREEMENTS

[SB 699 AND AB 1076]

New Law:

- Employers are prohibited from entering – or trying to enforce – contracts with void non-compete agreements.
- Employers are subject to civil action for injunctive relief, damages, restitution, and attorneys’ fees and costs for violation.
 - Unfair competition under Business and Professions Code section 17200, et seq. (injunctive relief, restitution, attorneys’ fees and costs)
 - Civil violation with private right of action (actual damages, injunctive relief, attorneys’ fees and costs)

NEW CLARIFICATION OF SCOPE

- Prohibition on restraints on trade shall be read broadly to void non-compete agreements in the employment context, no matter how narrowly tailored, that do not satisfy statutory exception.
- Prohibition on restraints on trade is not limited to contracts where the person being restrained is a party to the contract.
- Void non-compete agreements are unenforceable regardless of where and when signed.



TO DO: REVIEW TEMPLATE AGREEMENTS TO REMOVE VOID PROVISIONS

- Cast a wide net.
- Look for non-compete or non-solicitation provisions in:
 - Offer Letters
 - Confidentiality Agreements
 - Proprietary Information and Inventions Agreements
 - Severance Agreements
 - Settlement Agreements
 - Handbooks
 - Business-to-Business Agreements (e.g., staffing agreements)
 - Anywhere else you may have included them
- Consider consulting counsel – some provisions are in a “grey area.”



POTENTIALLY PROBLEMATIC PROVISIONS

- Prohibition on employee holding any job after conclusion of employment.
- Prohibition on former employee soliciting customers.
- Prohibition on former employee or another company soliciting employees.
- “No re-hire” provisions in settlement agreements.
- Restrictions on “Moonlighting.”
- Overly broad confidentiality agreements.

EXERCISE CAUTION RE: ANTI-MOONLIGHTING POLICIES

- Prohibition on *any* outside employment may be problematic.
 - But employees still have duty of loyalty.
 - And Labor Code § 2863 provides: "An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, shall always give the preference to the business of the employer."
- Remains to be seen how courts will interpret/apply the law to current employees.
- Bottom line: be careful.



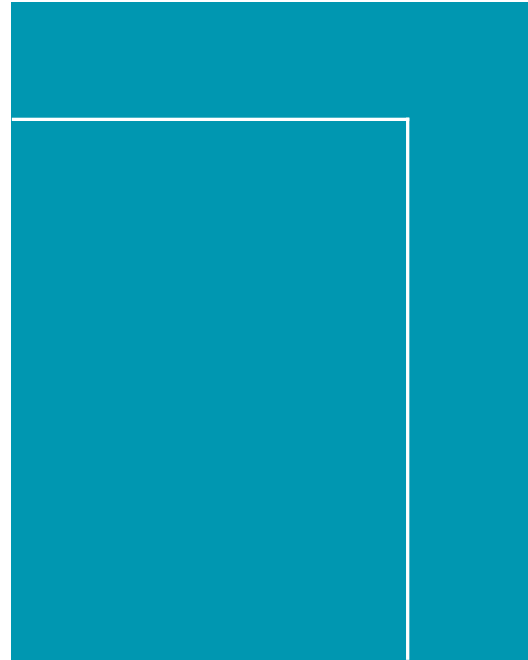


**EXERCISE CAUTION RE:
OVERLY BROAD
CONFIDENTIALITY
AGREEMENTS**

- Can still prohibit use of company's proprietary information and trade secrets.
 - Can still prohibit use of such information (narrowly defined) after termination of employment.
- Be careful about overly broad definition of protected confidential information.
 - If too broad, may be deemed restraint on trade.

CAREFULLY CONSIDER APPLICATION OUTSIDE CALIFORNIA

- Authors apparently intend law to apply at least to:
 - California-based employers with employees performing services in California, regardless of residence.
 - Individuals seeking to work for California companies, regardless of whether company with non-compete is outside California.
- Remains to be seen how courts will interpret this.
- Bottom line: California-based companies may wish to exercise caution about requiring *any* employees to enter agreements that would be void under California law.





TO DO: REVIEW EXISTING AGREEMENTS AND ISSUE NOTICE

- Applicable to:
 - All contracts/agreements with current employees.
 - All contracts/agreements with former employees employed at *any time* after January 1, 2022
- Notice Required for: Non-compete agreements that do not satisfy statutory exception.
 - Must notify employee that the agreement/clause is void.
 - Individualized written communications to last known address and e-mail address.
- Deadline: **February 14, 2024**

WORKPLACE VIOLENCE PREVENTION PLANS





WORKPLACE VIOLENCE PROTECTION PLANS [SB 553]

- **Current Law:** All employers must maintain an Injury and Illness Prevention Plan, and employers in healthcare settings must take steps to address workplace violence.
- **New – starting July 1, 2024:** Most employers must establish, implement, and maintain Workplace Violence Prevention Plan.

WORKPLACE VIOLENCE PROTECTION PLANS *CalOSHA ROLE*

- CalOSHA Guidance?
 - December 1, 2025 = deadline to propose standards
 - December 31, 2026 = deadline to adopt standards
- But no time to wait
- Law is effective July 1, 2024
- Let's dive in!





WORKPLACE VIOLENCE PROTECTION PLANS *APPLICABILITY*

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- **All California employers except:**
 - Employers that comply with healthcare workplace violence regulations (8 Cal. Code Regs. § 3342);
 - Department of Corrections and Rehabilitation facilities and law enforcement agencies.
- **Workplaces except:**
 - Remote work location chosen by employees, not under control of employer; or
 - Workplace with fewer than 10 employees at a time that are not accessible to the public.

WORKPLACE VIOLENCE PROTECTION PLANS *ESTABLISH, IMPLEMENT AND MAINTAIN PLAN*

- Must be:
 - In writing
 - as a separate document or incorporated into an IIPP
 - Available and easily accessible to employees, employee representatives and representatives of CalOSHA
 - In effect at all times, in all work areas, and be specific to hazards and corrective measures in each work area and operation



WORKPLACE VIOLENCE PROTECTION PLANS

WRITTEN PLAN MUST INCLUDE

- Names or titles of all persons responsible for implementing the plan
- Effective procedures to:
 - Obtain active involvement in developing and implementing the plan
 - Implement the plan and ensure understanding/training
 - Respond to reports and to prohibit retaliation against reporters
 - Ensure compliance
 - Communicate with employees regarding reporting and investigation of workplace violence matters



WORKPLACE VIOLENCE PROTECTION PLANS *WRITTEN PLAN MUST INCLUDE (CONT.)*

- Effective procedures to:
 - Respond to actual or potential workplace violence emergencies
 - Develop and provide training
 - Identify and evaluate workplace violence hazards
 - Correct workplace violence hazards in a timely manner
 - Address post incident response and investigation
 - Procedures to review the effectiveness of the plan and revise the plan as needed





WORKPLACE VIOLENCE PROTECTION PLANS
*CREATE AND MAINTAIN VIOLENT INCIDENT
LOG*

- Employer shall log every workplace violence incident in detail including:
 - Date, time, and location of the incident
 - Violence type (as defined in the Code)
 - Whether the offender was a client, customer, friend, stranger, co-worker, etc.
 - Whether the incident involved an attack with or without a weapon, assault, animal attack etc.
 - Consequences of the incident
 - Whether security or law enforcement were involved
 - Actions taken to protect employees from continuing threat



WORKPLACE VIOLENCE PROTECTION PLANS
*CREATE AND MAINTAIN VIOLENT INCIDENT
LOG*

- Information shall be solicited from:
 - Employee(s) who experienced the workplace violence
 - Witness statements
 - Investigation and findings
- Omit personally identifying information of any person involved in a violent incident
- Include name, job title and date of person completing the log

WORKPLACE VIOLENCE PROTECTION PLANS *PROVIDE* *EMPLOYEE TRAINING*

- Training shall be provided:
 - When plan is first established
 - Annually thereafter
- Additional training shall be provided:
 - When new or previously unrecognized workplace hazard is identified; and
 - When changes are made to the plan
 - Additional training may be limited to addressing new hazard or changes made





WORKPLACE VIOLENCE PROTECTION PLANS

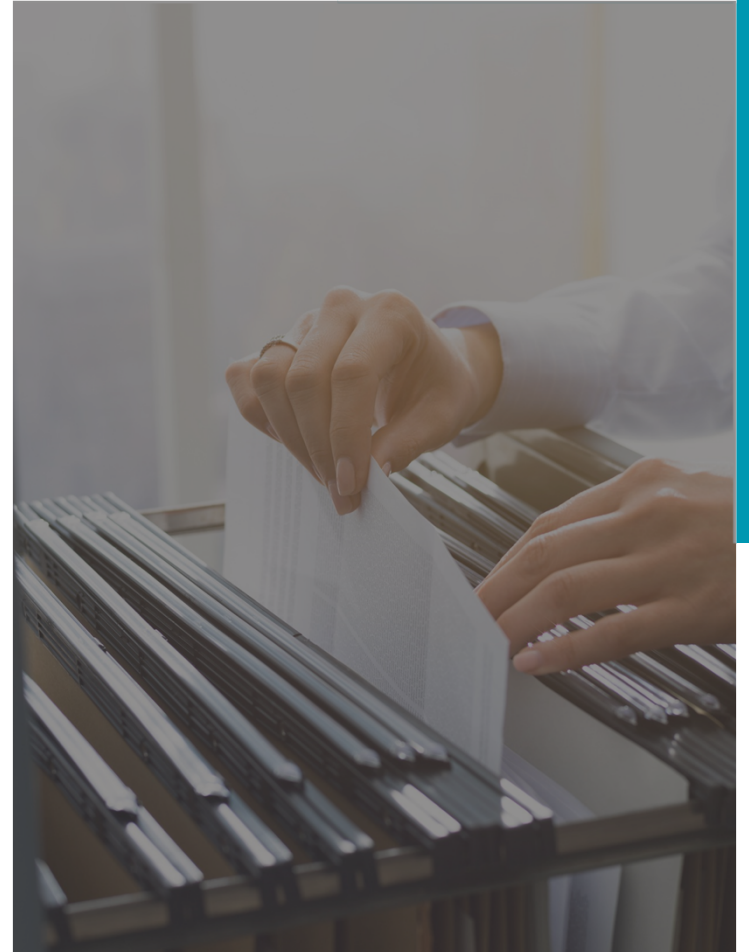
MAINTAIN RECORDS

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- 5 years:
 - workplace violence hazard identification, evaluation, and correction
 - Violent incident logs, including investigations
- 1 year – training records, which must include:
 - Training dates
 - Contents or a summary of training sessions
 - Names and qualifications of persons conducting the training
 - Names and job titles of all persons attending the training

WORKPLACE VIOLENCE PROTECTION PLANS *RECORD REQUESTS*

- All records maintained must be made available to CalOSHA upon request
- Upon request, records must be made available to employees and their representatives, within 15 calendar days
- But employees are not entitled to investigation records



WORKPLACE VIOLENCE PROTECTION PLANS

WHAT NOW?

- If you haven't already started, act now!
- CalOSHA's Model Injury and Illness Prevention Program is a good starting point:
 - https://www.dir.ca.gov/dosh/dosh_publications/iipp-security-model.docx



LIGHTNING ROUND OF ADDITIONAL COMPLIANCE ISSUES



ADDITIONAL CHANGES OF NOTE

- Increased Minimum Wages (statewide and Health Care/Fast Food)
- No Inquiries re: Prior Cannabis Use [SB 700]
- New Regulations re: “Ban the Box”
- Expanded Rehire Requirements [SB 723]
- Rebuttable Presumption of Retaliation [SB 497]
- Extension of Mediation Program for Small Employers [AB 1756]
- Changes to Wage Theft Prevention Act Notice [AB 636]
- Workplace Readiness/Work Permits [AB 800]
- Change to Form I-9 Flexibilities





INDUSTRY-SPECIFIC LAWS

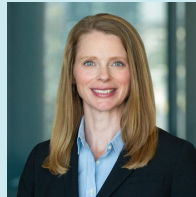
- Change in Control of Grocery Establishment [AB 647]
- Notice of Acquisition of Grocery Stores [AB 853]
- Meal and Rest Period Exemption for Flight Crews covered by CBA [SB 41]
- Compensable Time for Obtaining Food Handling Cards [SB 476]
- Extension of Joint and Several Liability for Property Services to Public Entities [AB 520]
- Payroll Records for Public Works Projects [AB 587]

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QUESTIONS?



CONTACT US



Katherine M. McCray

Partner

kmccray@wilsonturnerkosmo.com

Leticia Butler

Partner

lbutler@wilsonturnerkosmo.com

