

NEW DEVELOPMENTS: LABOR & EMPLOYMENT LAW

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WHAT'S NEW

- Contractors
- Arbitration
- Miscellaneous
- Consumer Privacy
- Wage & Hour

AB 5

1. Codifies *Dynamex* ABC Test
2. Creates exceptions
3. What should employers do?



- A. Free from control and direction
- B. Work outside usual course of hirer's business
- C. Engaged in independently established trade, occupation, or business



A

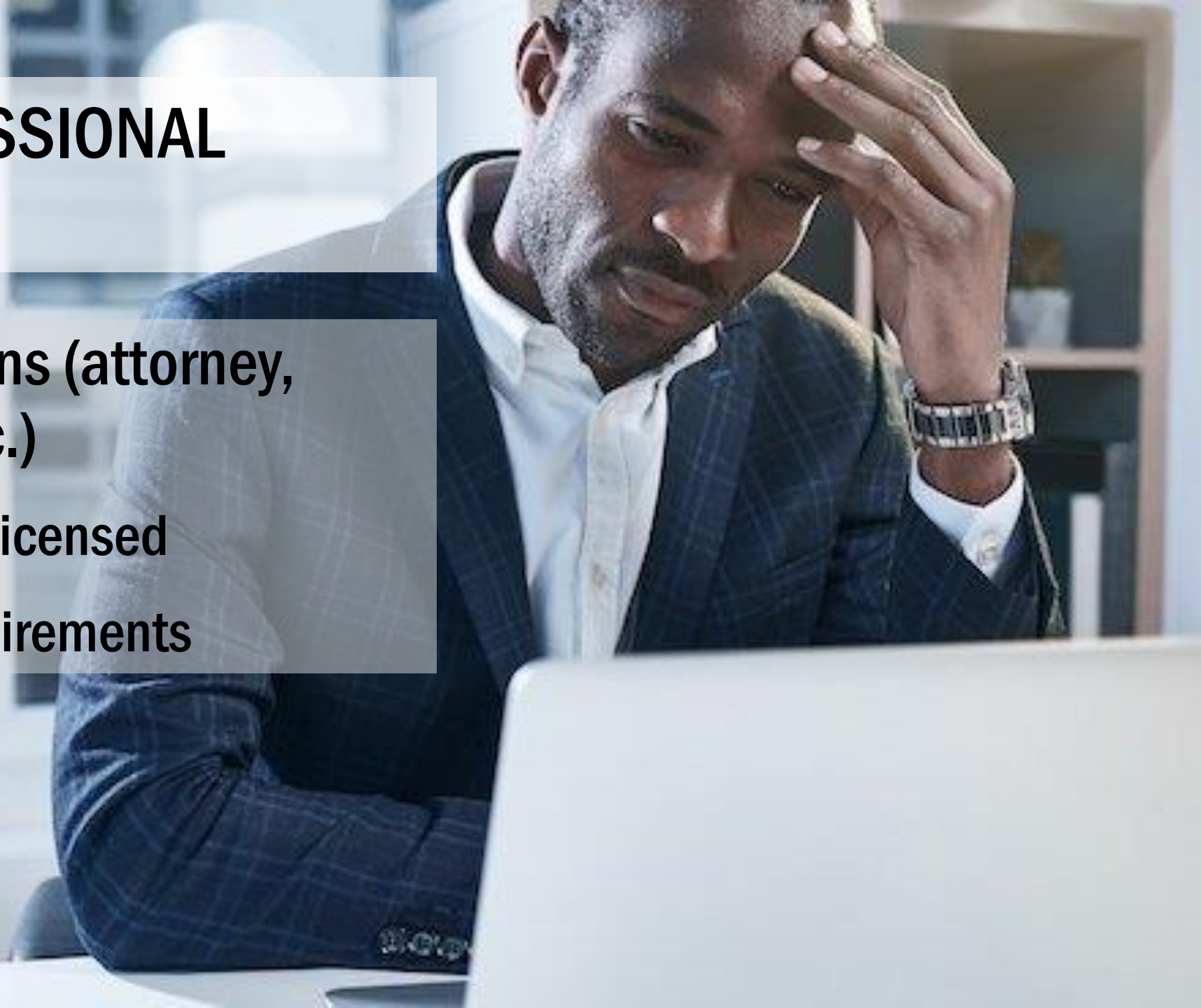
B

C

LICENSED PROFESSIONAL EXCEPTION

**Specified occupations (attorney,
doctor, engineer, etc.)**

- **Typically must be licensed**
- **Various other requirements**



PROFESSIONAL SERVICES EXCEPTION



- “Professional services”
- Six other requirements

BUSINESS TO BUSINESS EXCEPTION

- “Bona fide business-to-business contracting relationship”
- Must be a business, not an individual
- 12 other requirements



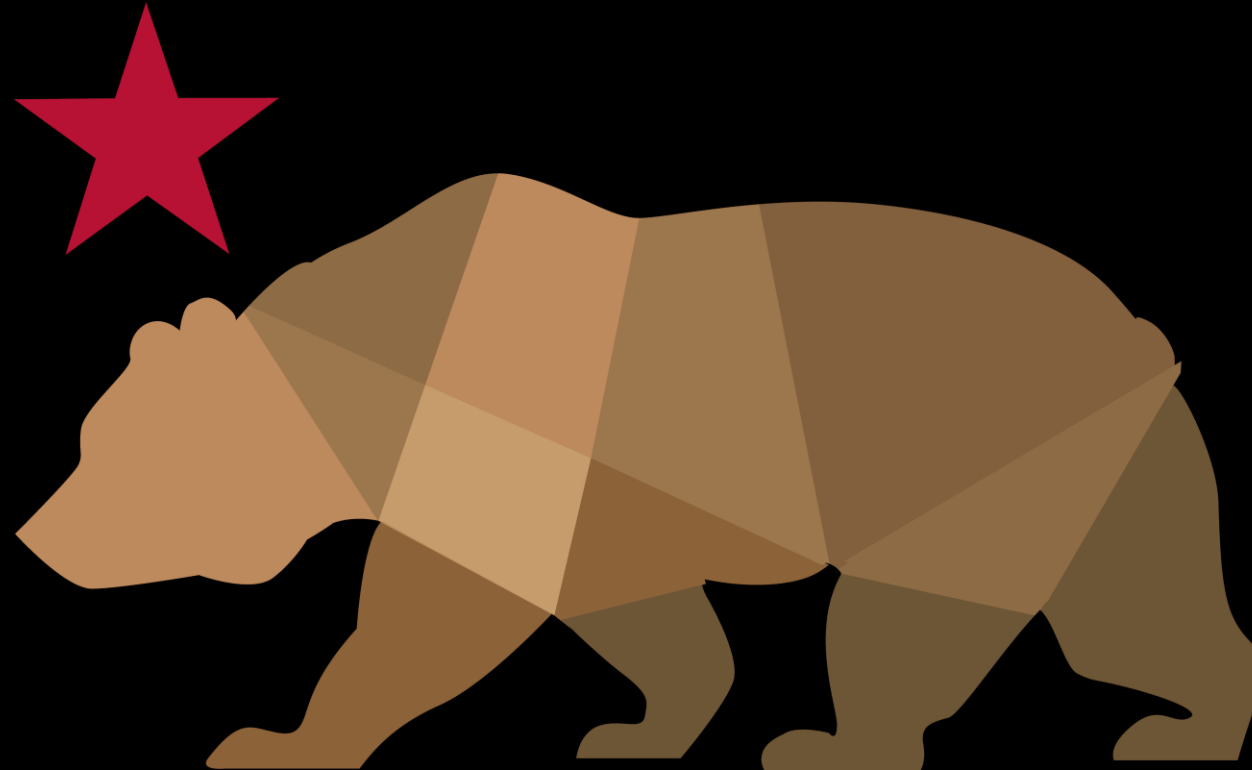
AB 5: WHAT SHOULD EMPLOYERS DO?

- Review existing contractor and business partner relationships
- Consider including warranty clause in standard business contracts



AB 51: EMPLOYERS MAY NOT REQUIRE ARBITRATION AGREEMENTS AS CONDITION OF EMPLOYMENT

- Violation is a misdemeanor
- Validity under federal law is unclear
- Goes into effect January 1, 2020



Ryze Claim Sols., LLC v. Super. Ct. of Contra Costa County, et al. (Cal. App.)

Labor Code section 925:

- Applies to contracts entered into, modified, or extended after January 1, 2017
- Such contracts may not require California-based employees to litigate outside of California





SCOTUS

Limits Class Arbitration

Lamps Plus, Inc. et al. v. Varela (U.S.)

A court cannot compel class arbitration unless the arbitration agreement clearly permits it



**CALIFORNIA'S PRIVACY LAW GOES
INTO EFFECT ON JANUARY 1**

**ARE YOU
READY?**

Who does it cover?

- \$25M+
- 50,000+ consumers, devices, households
- 50%+ of revenue

What does it cover?

- Consumers
- Personal information

What does it do?

- Notice
- Disclosure
- Deletion
- Private right of action

AB 25: LIMITED EXEMPTION FROM CCPA

- Exempts employment information from deletion and broad disclosure provisions
- Does not exempt from private civil action, limited disclosure, or certain notice provisions



Gilberg v. California Check Cashing Stores, LLC
(9th Cir.)

Combining federal and state disclosures in one document violates the Fair Credit Reporting Act (FCRA)



MORE STALE FEHA CLAIMS?

- **AB 9: Extends deadline to file DFEH charge to three years**
- **Does not revive already lapsed claims**
- **What should employers do?**

TRAINING RELIEF

- **SB 778:** New deadline for sexual harassment training is January 1, 2021
- **SB 530:** New deadline to train temporary employees is January 1, 2021



SB 142: LACTATION ACCOMMODATION

- **Suitable room with specific amenities**
- **Failure to provide lactation break equals missed rest break**
- **Employers must develop lactation policy**





THE Crown ACT

CALIFORNIA SENATE BILL 188

Help us make hair discrimination
illegal. Sign the petition now
at TheCROWNAct.com.

SB 188: THE CROWN ACT

- “Race” = “Traits historically associated with race”
- Includes “hair texture and protective hairstyles,” *e.g.*, braids, locks, and twists

SETTLEMENT AGREEMENTS MAY NOT RESTRICT FUTURE EMPLOYMENT

- **AB 749 applies to all agreements to settle pending employment claims**
- **Effective January 1, 2020**
- **Carve out for severance agreements and those found to have engaged in sexual harassment**



WAGE AND HOUR CHECK-UP



MINIMUM SALARY FOR WHITE COLLAR EXEMPT EMPLOYEES IN CALIFORNIA

	per week	per year
2019	\$960	\$49,920
2020	\$1,040	\$54,080
2021	\$1,120	\$58,240
2022	\$1,200	\$62,400

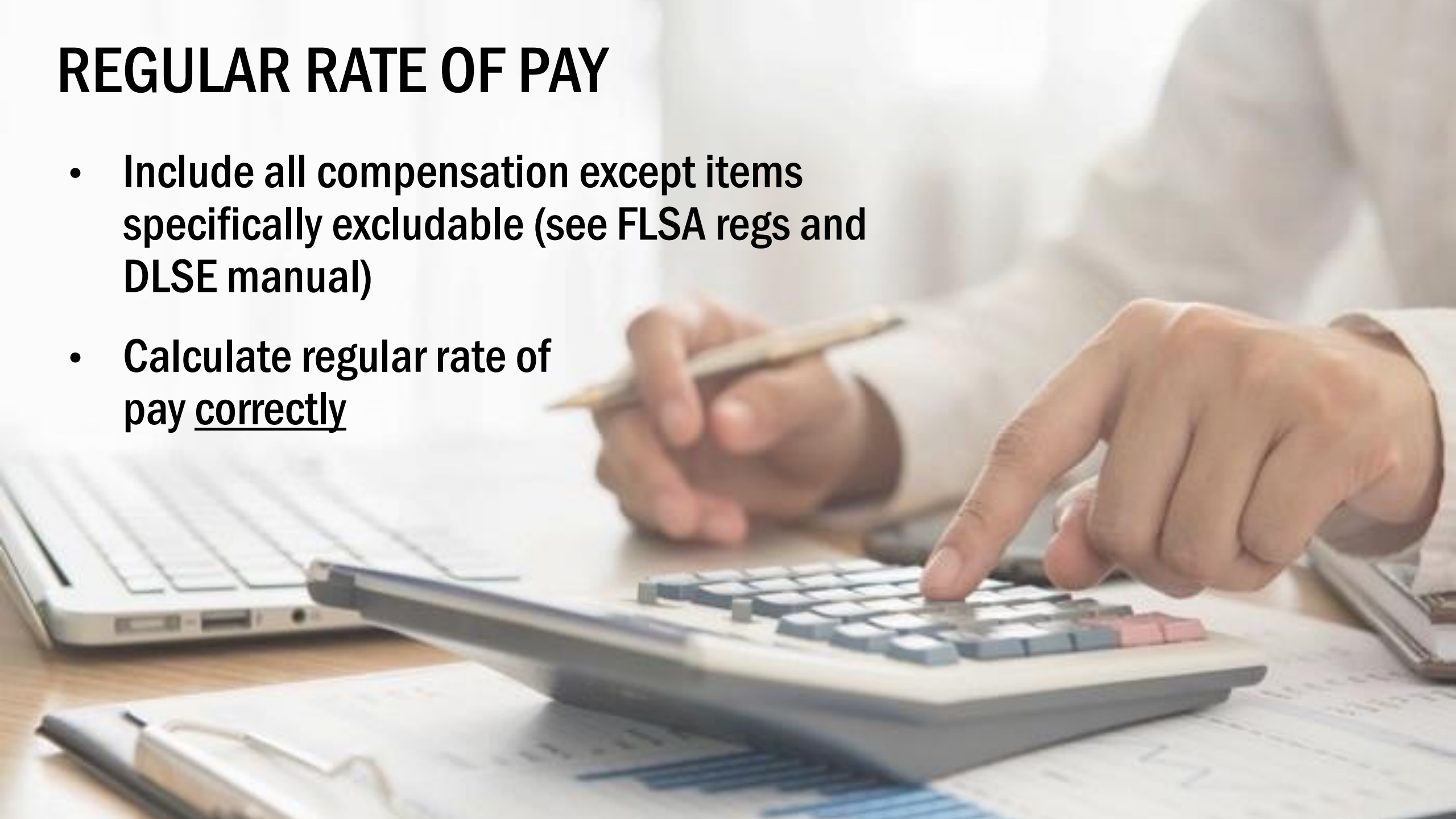
A man with short dark hair and glasses, wearing a light blue button-down shirt, is sitting at a wooden desk in an office. He is holding a slice of pizza in his right hand and looking towards the camera. In front of him on the desk is an open pizza box containing a whole pizza with various toppings. The background is slightly blurred, showing office furniture like a white desk, a black office chair, and a bookshelf filled with books. A bicycle is also visible in the background.

MEAL PERIOD QUESTIONS UNDER CONSIDERATION BY CALIFORNIA SUPREME COURT

- 1. Must an employer establish a formal policy on meal and rest breaks?**
- 2. Does an employer's failure to keep records for meal and rest breaks taken by employees create a rebuttable presumption that meal and rest breaks were not provided?**

REGULAR RATE OF PAY

- Include all compensation except items specifically excludable (see FLSA regs and DLSE manual)
- Calculate regular rate of pay correctly




CALCULATION OF OVERTIME ON FLAT-RATE BONUSES

FLSA method rejected; California DLSE method adopted:

1. Divide bonus by total *non-overtime* hours worked
2. Apply a multiplier of 1.5

Alvarado v. Dart Container Corp. of California
(Cal. Sup. Ct.)



NO ON-CALL REST BREAKS

Augustus v. ABM Security Services, Inc.
(Cal. Sup. Ct.)

FLSA *DE MINIMIS* RULE NOT A DEFENSE TO CALIFORNIA WAGE CLAIMS

Troester v. Starbucks Corporation
(Cal. Sup. Ct.)



BEST PRACTICES TO AVOID OFF-THE-CLOCK WORK

- Record and pay for all hours worked
- Account for delays in clocking in/out
- Avoid Time Rounding



thank you

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PP
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