LABOR & EMPLOYMENT ROUNDTABLE DISCUSSION

What Business Owners and Executives Need to Know

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THE INSIDE THE VALLEY Team has once again turned to some of the leading employment attorneys and experts in the region to get their assessments regarding the current state of labor legislation, what changes have come to the labor law landscape in light of recent challenges, the new rules of hiring and firing, and the various trends that they have been observing, and in some cases, driving. Here is a series of questions Inside The Valley posed to these experts and the unique responses they provided.

California just enacted a new law (SB 988) further expanding protections for freelance workers. What do employers need to know?

HREN: Under the new law, which took effect on January 1, 2025 an agreement with certain freelance workers must be in writing and contain the following provisions: the parties' names/addresses; an itemized list of services to be provided, including how much is being charged and the method of compensation; the date the freelance worker must be paid for services rendered (if no date is specified, payment must be made within 30 days after completion of services); and the date the freelance worker must submit a list of services rendered. "Freelance worker" is defined as a person or organization composed of no more than one person, that is brought on as a bona fide independent contractor to provide professional services for $250 or more. The law prohibits a hiring party from requiring freelance workers to accept lower compensation than what is in the contract, provide additional goods/services than what is in the contract, or grant extra intellectual property rights as a condition for timely payment.

LIGHT: Put all independent contractor (IC) agreements in writing. Include payment terms and timing. Be specific about the work to perform. Don't overdo who falls into the IC category. California's ABC test doesn't favor IC status. Make sure each of you has a copy, and save it for at least four years. The law doesn't apply to individuals who engage a freelancer for themselves, their family members, or their "homestead."

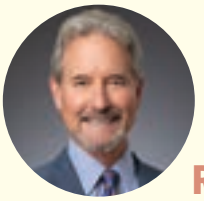
What should employers know about mediation in the context of employment disputes?

SWEISS: Mediation is often recommended (and sometimes required) in employment disputes for various reasons. Employers should know if that mediation is not binding. It is a voluntary process involving a neutral third party. The mediator is not there to make a determination on the merits, but rather assist the parties in reaching an agreeable resolution. Even if the matter does not resolve, mediation is an opportunity to hear the other side's arguments and fact-gather.

LIGHT: Expect to pay a $50,000 or more settlement payout about 95% of the time. Very few mediations end with less. "Even the dog cases are commanding such amounts these days," one mediator told my team recently. If you can negotiate your way to a lower settlement number with a mediator up front, do so. Otherwise, the formal mediation process will set you back at least $20,000 before settlement when factoring in the mediator's fee, the cost to prepare your attorney's mediation brief, and the cost of your attorney to attend the typically all-day mediation.

What are some of the latest developments in minimum wage?

KANTOR: Starting January 1, 2025, California's statewide minimum wage increased to $16.50/hr for all employers, regardless of size. Likewise, the minimum salary threshold for overtime exemptions for administrative, executive and professional employees rose to $68,640 annually (two times the state minimum wage). Higher rates are also now in effect for qualified computer professionals and licensed physicians. Further, municipalities are allowed to set even higher minimum wages than the state for employees who perform services in their jurisdictions – and some updated local minimum wage rates effective January 1, 2025 include: Los Angeles: $17.28/hr; and West Hollywood: $19.65/hr. There are also different rates for certain hospitality employees in particular municipalities. Employers should make sure they have updated payroll to reflect new minimum wage rates and adjust exempt employee salaries to reflect the new minimum. Employers should also maintain accurate records, display updated wage posters and provide copies of same to remote employees.



"EMPLOYERS ARE REQUIRED TO REIMBURSE EMPLOYEES FOR USE OF PERSONAL EQUIPMENT. IF THE POSITION IS STRICTLY REMOTE, THE EMPLOYER LIKELY MUST REIMBURSE FOR A HOST OF CATEGORIES.

–JONATHAN FRASER LIGHT

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> **EMPLOYERS SHOULD MAKE SURE THEY HAVE UPDATED PAYROLL TO REFLECT NEW MINIMUM WAGE RATES AND ADJUST EXEMPT EMPLOYEE SALARIES TO REFLECT THE NEW MINIMUM.**
>
> –STEPHANIE KANTOR

LIGHT: The minimum wage will be higher. No surprise there: $16.50/hour for 2025 even though Proposition 32 did not pass, which would have put it at $18. Local cities or counties may have a higher rate. The California exempt salary test is based on two times the state minimum, not a local higher minimum. This applies to all California businesses except for certain exceptions that may now apply to health care and fast food employers.

What are the most common mistakes businesses make in complying with California's complex wage and hour laws, such as overtime and meal/rest break requirements?

KAMM: California's wage and hour laws are challenging to comply with and constantly changing, leading to often unintentional mistakes. Key issues include failing to properly calculate non-exempt employees' effective rates — including overtime, meal and rest break premiums and sick pay and non-compliance with meal and rest break rules. For example, many employers fail to provide uninterrupted 30-minute meal breaks before the end of the fifth hour of work or rely on practices like automatic time deductions, which are non-compliant and increase liability.

SWEISS: Accurate timekeeping is another area that employers often fail in compliance, by failing to require employees to clock in and out for meal breaks or rounding time. To mitigate risks, employers should regularly audit policies and practices, train managers on compliance, and use reliable timekeeping systems that avoid auto-deductions and rounding. Proactively addressing these areas helps ensure compliance and minimizes liability.

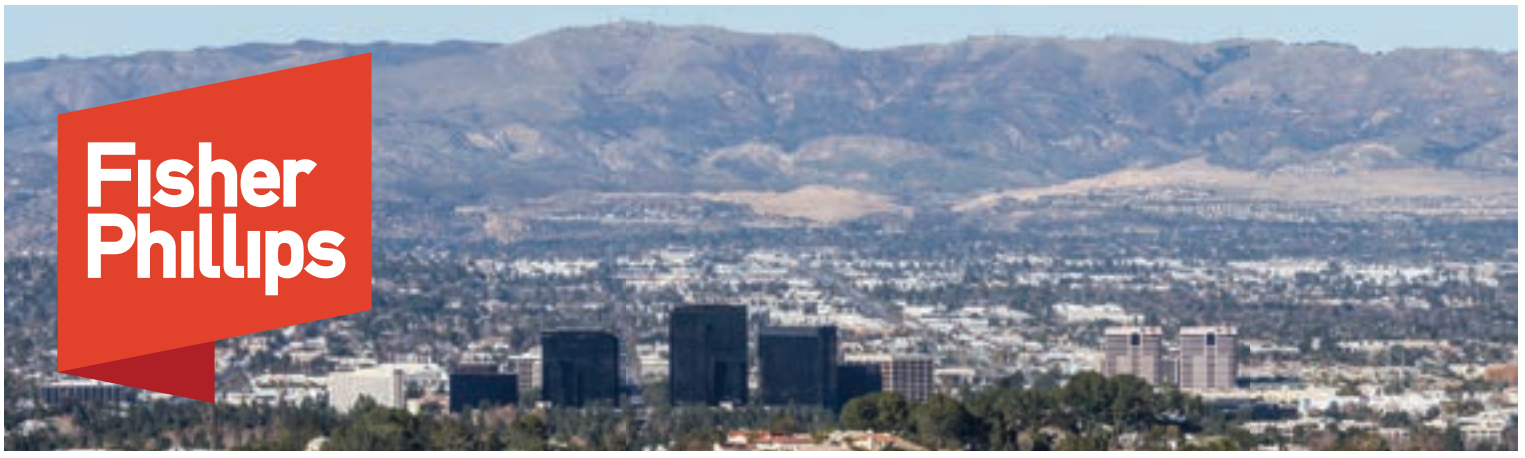
LIGHT: I refer to these mistakes as "The Big Five." They appear in almost every class action or PAGA case: 1) Meal breaks too short, late or not recorded; 2) Rest breaks not handled properly; 3) Rounding time, which should never happen with electronic timekeeping, and should be avoided with handwritten timesheets; 4) Failure to reimburse for use of personal equipment, such as phone apps to record time; and 5) Failure to gross up the value of non-discretionary bonuses for overtime, PTO/sick time and meal/rest premiums.

What unique challenges do California businesses face in managing remote employees, particularly regarding reimbursements, privacy and wage compliance?

HREN: Managing remote employees poses very unique employment issues, many of which result in litigation. California employers still need to ensure that remote workers are keeping track of actual hours worked and meal periods. Employers must also reimburse employees for any "necessary" expenses incurred while working from home, which might include reasonable costs for internet, phone and home office supplies. This is true even if the remote employee has the option to work at the employer's physical location other than their home. In addition, California workers' compensation laws apply to remote workers and employers should ensure that their insurance policies extend to remote workers. Employers should also be aware that, offensive conduct within a virtual work environment, such as on a company zoom or teams video meeting, company email, or company slack could potentially be considered to contribute to a hostile work environment. Employer policies on timekeeping, reimbursement, and harassment prevention should take these remote work considerations into account.

LIGHT: Employers are required to reimburse employees for use of personal equipment. If the position is strictly remote, the employer likely must reimburse for a host of categories including equipment, internet, air conditioning, heating, dent in the couch, etc. We had several such broad claims during COVID. Include the list with the total dollar amount of the reimbursement. If the employer makes absolutely clear that remote work is the employee's choice, then reimbursement for most, if not all, categories may not be necessary.

KAMM: One challenge is accurate time tracking and wage compliance. Employers must ensure non-exempt remote employees record and are paid for all hours worked. This requires reliable systems to track work hours accurately and policies that discourage working off-the clock or unauthorized overtime while still compensating employees for all time worked. Another challenge is expense reimbursements. Employers are required to reimburse remote employees for necessary business expenses, such as internet, phone usage, office supplies and other costs incurred while working from home. Regularly reviewing and updating reimbursement policies is essential to ensure compliance with California law. Employee privacy is also a challenge. Balancing productivity monitoring with employees' privacy rights presents a challenge. Employers must use monitoring tools in a way that complies with California's stringent privacy laws, avoiding overly intrusive



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practices that could lead to legal risks. By implementing clear remote work policies, robust time-tracking systems, and transparent communication about reimbursements and privacy, businesses can navigate these challenges effectively and maintain compliance.

What should California businesses know about complying with state and federal laws regarding immigrant workers and verifying employment eligibility?

LIGHT: Check I-9 documentation carefully. Consider using E-verify to ensure compliance although California is among most states that don't require the use of E-verify. A few do, such as Florida. Employers are not required to retain documents they review, unless they use E-verify. Employers in high-risk industries, such as janitorial, agriculture and landscape maintenance, should have a contingency plan for hiring new workers if the new administration's promised site raids begin.

What are the latest trends and legal requirements for implementing effective anti-discrimination and harassment policies in the workplace?

SWEISS: To implement effective anti-discrimination and harassment policies, employers must stay current on legal requirements and avoid common pitfalls in complaint handling and investigations. Thoroughly investigate all complaints. Employers are legally obligated to investigate all complaints, even informal or offhand remarks. For instance, if an employee mentions inappropriate behavior without formally filing a complaint, supervisors should promptly escalate the matter to HR for investigation. Ignoring such comments can lead to liability. It is also important to conduct comprehensive investigations. Investigations must be robust and detailed. Common errors include failing to interview key witnesses or neglecting to gather supporting documentation. A superficial or incomplete investigation can undermine the credibility of the process if challenged in litigation. Also key is follow up and document outcomes. Employers often overlook the critical step of closing the loop with the complainant. After the investigation concludes, the alleged victim should receive a written summary of the findings and the resolution. This demonstrates transparency, ensures compliance and reinforces trust in the process. By fostering a culture of accountability, training supervisors to recognize and address complaints, and ensuring investigations are thorough and well-documented, employers can create a workplace environment that prioritizes compliance and employee well-being.

What are the key considerations for businesses when terminating an employee to minimize the risk of wrongful termination lawsuits?

LIGHT: Strongly consider having the former employee sign a release in return for receiving some severance. Clients wonder why they should "reward" a crummy employee. That's not the point, however. It's ensuring peace when disengaging from that employee. Classic example: Terminated crummy employee goes to a plaintiff's attorney and says, "I was wrongfully terminated, what are my rights?" The attorney says, "No claim for wrongful termination, but let's see how you were paid and whether you are going to be the lead plaintiff in a wage and hour class action." Then, bad things happen. With a simple (and then signed) release, the employee has little or no incentive to go to an attorney.

How should businesses approach compliance with California's pay transparency laws and address pay equity in their organizations?

KAMM: Arbitration agreements remain a widely used tool for employers, but their application has evolved due to recent legal developments. Many employers continue to implement mandatory pre-dispute arbitration agreements, often including class action waivers, as a way to manage potential legal claims efficiently and reduce the risks and costs associated with jury trials. However, the federal law passed in 2022, which prohibits arbitration for claims related to sexual harassment and sexual assault, has impacted their use. This legal shift has led to an increase in employees bringing sexual harassment claims directly to court, bypassing arbitration agreements. Employers must carefully review and update their arbitration agreements to ensure compliance with this federal law and other state-specific requirements. While arbitration can offer benefits such as confidentiality, faster resolution, and reduced litigation costs, it is not without drawbacks. Critics argue it may limit employees' access to justice and transparency. Employers should weigh these factors and consider whether arbitration agreements align with their organizational values and risk management strategies. Additionally, clear communication about the terms and scope of arbitration agreements can help build trust and mitigate potential disputes over enforceability.

LIGHT: Employers should conduct equal

pay audits among employees based on similar credentials, time at the company, time in the industry, etc. Copy the employer's attorney to maintain privilege. Keep in mind that pay equity is relatively easy to establish. It is pay "equality" that's often more subtly problematic, such as hidden (and not so hidden) bias in promotion and training that may inhibit advancement and result in lower salaries for women and people of color.

What are the most significant challenges businesses face in adhering to California's workplace safety regulations, especially post-pandemic?

KANTOR: In light of the recent fires, employers should be aware of the California Division of Occupational Safety and Health (Cal/OSHA) regulations to protect workers from unhealthy air caused by wildfire smoke. Under these regulations, certain employers are required to monitor the Air Quality Index (AQI) for particulate matter using tools like the US Environmental Protection Agency's AirNow website. If the AQI reaches certain thresholds, employers would become obligated to provide N95 respirators for voluntary or mandatory use. Employers must ensure proper mask fit and verify employees' medical ability to wear respirators, plus provide training and instruction. Employers must comply with these rules unless one of the following applies: The worksite is a fully enclosed building/vehicle with mechanical ventilation, and windows and doors remaining closed except for necessary entry/exit; employee exposure is limited to one cumulative hour or less during their shift; or employee is a firefighter engaged in wildland firefighting.

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How can businesses effectively manage the overlapping requirements of state and federal leave laws, such as CFRA and FMLA?

LIGHT: There is much confusion about the interplay of the leave laws, especially with pregnancy and baby bonding. Employers must navigate PDL, PFL, SDI, CFRA, FMLA and perhaps reasonable accommodation. In most situations, however (but not pregnancy/baby bonding), CFRA and FMLA run concurrently. One important misstep I often see: An employee goes on workers' compensation (WC) leave and the employer forgets to give the FMLA/CFRA notice concurrently at the outset. Months later the employer contacts me to find out when the employer can stop paying its share of health insurance premiums. It could have stopped at 12 weeks because WC doesn't require it. Without the notice, the employer must then give the notice and let the 12 weeks run out. Lastly, don't require the use of vacation or PTO during leave.

What accommodations must an employer offer to employees who are parents of school age children if there is an unexpected school closure?

HREN: This is unfortunately a timely question as many schools closed due to the raging fires throughout California over the last several weeks. Under Labor Code 230.8, an employer who has 25 or more employees, has to allow its employees who are parents of children in K-12 to take up to 40 hours each year if needed to address a school emergency such as a school closure or a natural disaster like a fire, if the employee gives notice to the employer. "Parent" means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child. Also, if the employer asks, the employee has to provide documentation from the school proving that the employee engaged in child-related activities on the specific dates and times at issue, but documentation just means whatever written verification the school deems appropriate and reasonable. If an employer terminates or in any way discriminates against an employee for using this time, the employee could ultimately be entitled to reinstatement and lost wages and the employer subject to penalties.

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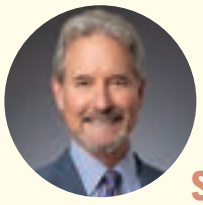
What are your views on using arbitration agreements as an alternative to employment litigation?

LIGHT: I'm a huge proponent of arbitration



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agreements for two reasons: avoiding class action cases (but not PAGA; unavoidable in court) and not having to present the employer's case to a jury. I do hesitate occasionally when small employers do not have employment practices liability insurance (EPLI). Small employers typically won't be subject to a class action, given their size. Juries are still a risk, so that's still an issue. EPLI pays for the arbitrator and the law requires that the employer (or its carrier) pay all that expense. An arbitrator can cost as must as $12k-$15k a day; expect a minimum of 4-5 days for the arbitrator's work, including pre- and post-arbitration activities (preliminary hearings, etc). With EPLI in place, however, I would recommend arbitration for any employer.

Does it make sense for businesses to combine their vacation and sick time into a single PTO policy?

KAMM: Following the implementation of mandatory paid sick leave for all employers on a local and State-wide basis, having separate vacation and paid sick leave policies generally benefits the employer. Paid vacation is not required by law, but if provided, accrued vacation is treated like wages and if not used, must be paid out to employees on separation. Unless the policy states otherwise, unused paid sick leave does not need to be paid out on separation. Unlike paid sick leave, employers can require or deny the use of vacation at certain times.

LIGHT: I generally prefer to keep them separate for at least two reasons. First, employers are not required to pay out sick time at departure; they are required to pay out vacation and PTO. Second, an employer may start disciplining for excessive absenteeism sooner when sick time is a separate policy from vacation. Otherwise, employers normally need to wait until the employee has exhausted all PTO, which would take substantially longer given the typically much higher accrual rate for PTO versus sick time as a separate policy.

How have employee handbooks evolved over the last five years?

SWEISS: Employee handbook policies have become more nuanced and consistently evolve based on the changes in the law. There have been changes to wage and hour policies, sick pay policies, leave policies and more. Employers should update their employee handbooks annually to incorporate the changes in the law.

LIGHT: One of the biggest challenges is keeping up with the various edicts from the National Labor Relations Board (NLRB). The NLRB covers both union and non-union workplaces. Its rules significantly impact what language to include in a handbook. The rules have become increasingly restrictive on what employers can and cannot do, but the pendulum likely will swing back in their favor with the new administration in 2025. These changes likely will affect employee complaints, retaliation, inhibiting free speech, etc.

How can employers remain current on the ever-evolving employment law trends?

KAMM: It is important to carefully track applicable employment laws, which sometimes evolve daily. As employment attorneys, it is our full-time job is to stay on top of these changes. Business owners, however, also need to focus on running their business. Having a trusted employment attorney to contact with questions is critical, no matter the size of the company.

SWEISS: Many law firms provide regular legal alerts via email, and it is always a good idea to be on these email lists. Additionally, regularly attending webinars, seminars and other employment law updates is helpful to learn about new laws and how they may impact your business.

How can a law firm specializing in labor and employment differentiate itself from the competition in 2025?

LIGHT: Be extremely responsive. Answer email quickly. Return phone calls the same day. Direct clients to alternative resources in your firm if you aren't going to be available, even for a couple of hours. Sometimes clients can't wait long at all, and they are often extremely frustrated with our profession's response times. At least once a year, often more, I get a new client solely because their previous attorney was non-responsive or habitually late in their replies. I am always amazed when this occurs.

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