



interactive dialogue

Top 10 Employment Law Essentials In California

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why pick this topic?

- **California often marches to its own drum. What is safe under Federal law may be a problem in California.**
- **Employment cases have commonly recurring claims. These ten topics reflect the areas often at issue.**



One – Jury Pools

- **Employees and jury pools have high expectations – leading to high verdicts!**



Two – Sick leave

- **California imposes mandatory paid sick leave requirements**
- **Applies to employers regardless of size**
- **Various methods for awarding Paid Sick Leave**
 - Accrual vs. Lump Sum



Three – PAGA!

- **PAGA claims! PAGA provides employees with a private right of action against an employer in order to collect penalties on behalf of the state.**
- **PAGA claims must be preceded by the employee's written notice to the LWDA and their employer detailing the alleged Labor Code violations before the employee can pursue civil penalties.**
- **Employers have a limited (and time sensitive!) right to cure certain violation between the time that an employee provides notice to the LWDA and before filing a lawsuit.**



Four – Equal Pay

- **California’s Fair Pay Act does not compare apples to apples.**
- **Employees can be compared even if they do not hold the “same” or “substantially equal” jobs.**
- **Burden is on employers to demonstrate that any pay differences are based on a limited number of factors**



Five - Reimbursements

- **Is that “necessary”? Reimbursements are a tricky issue.**
- **Under Labor Code 2802(a), the employer must indemnify the employee “for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties....”**
- **Don’t assume the Courts will take a narrow view of “necessary expenditures.”**



Six – Hours Worked

- **California law's definition for “hours worked” differs from the FLSA, does not include an exemption similar to the Portal-to-Portal Act.**
- **In California, compensable work time is all time that an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work (even if not required to do so).**
- **Under this definition, an employee who is subject to an employer's control does not have to be working during that time to be compensated.**



Seven - Exemptions

- **Exempt Status. Exemptions under California are similar to those under the FLSA, but there are important differences. The numbers matter:**
- **For “white collar” exemptions, exempt employees in California generally must earn a minimum monthly salary at least two times the state minimum wage for full-time employment.**
- **Under Federal law, the duties test looks at the employee's "primary" job duties. California law requires that an exempt employee must actually perform exempt duties more than 50% of the time.**



Eight – Non-Competes?

- **Non-competition clauses are against the public policy of the state.**
- ***Even* if the restrictions are so very minimal.**
- **How about restricting the employee’s post-employment access to clients/customers? Totally different?**
- **What if the non-competition agreement is governed by another state’s law?**



Nine - Breaks

- **California takes uninterrupted meal and rest breaks seriously.**
- **Under California Labor Code section 226.7, “An employer shall not require an employee to work during a meal or rest or recovery period.”**
- **Policies are very important, even if the non-California workforce is subject to different rules.**



Ten - Leaves

- **Disability and Leave Issues.**
- **FEHA provides greater protection from disability discrimination than the ADA.**
- **Failure to engage in a good-faith interactive process with an employee requesting accommodation is a separate wrong actionable under the FEHA.**
- **FMLA and CFRA don't always run concurrently: E.g., Pregnancy is not a disability under the CFRA; covered under the PDLL.**



Concluding Thoughts

- **Issue-spotting common practices and company-wide policies for California differences is an ongoing exercise, and can protect you from an array of penalties.**



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