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It All Begins in California

New Laws in 2024 and What May Be Coming to Your State Soon

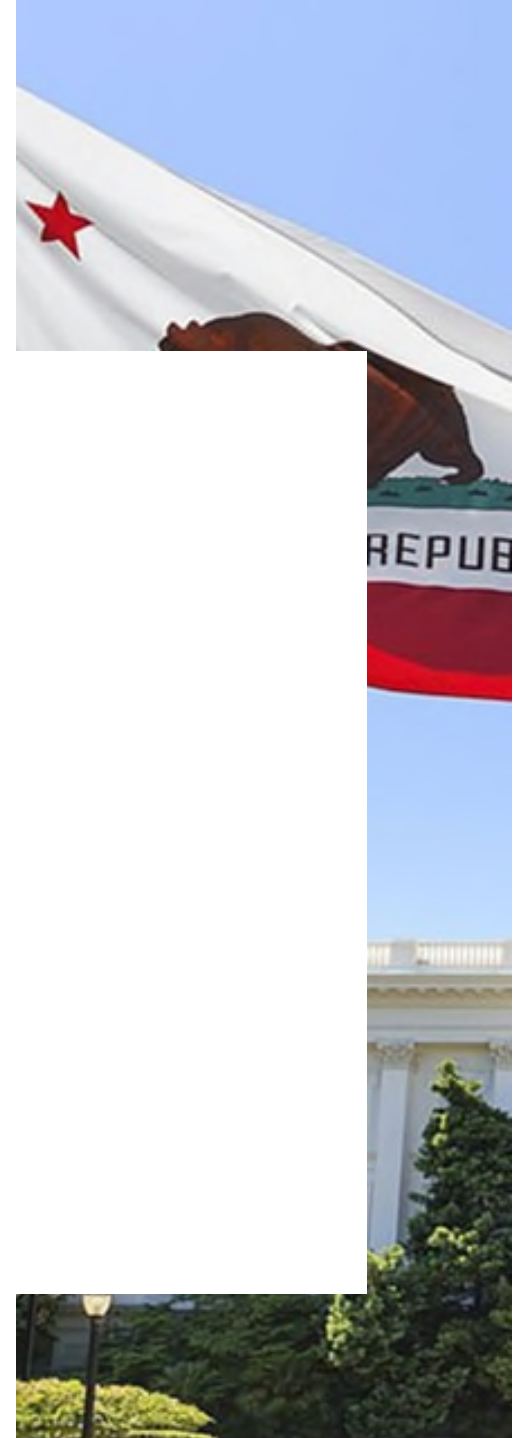
December 5, 2023



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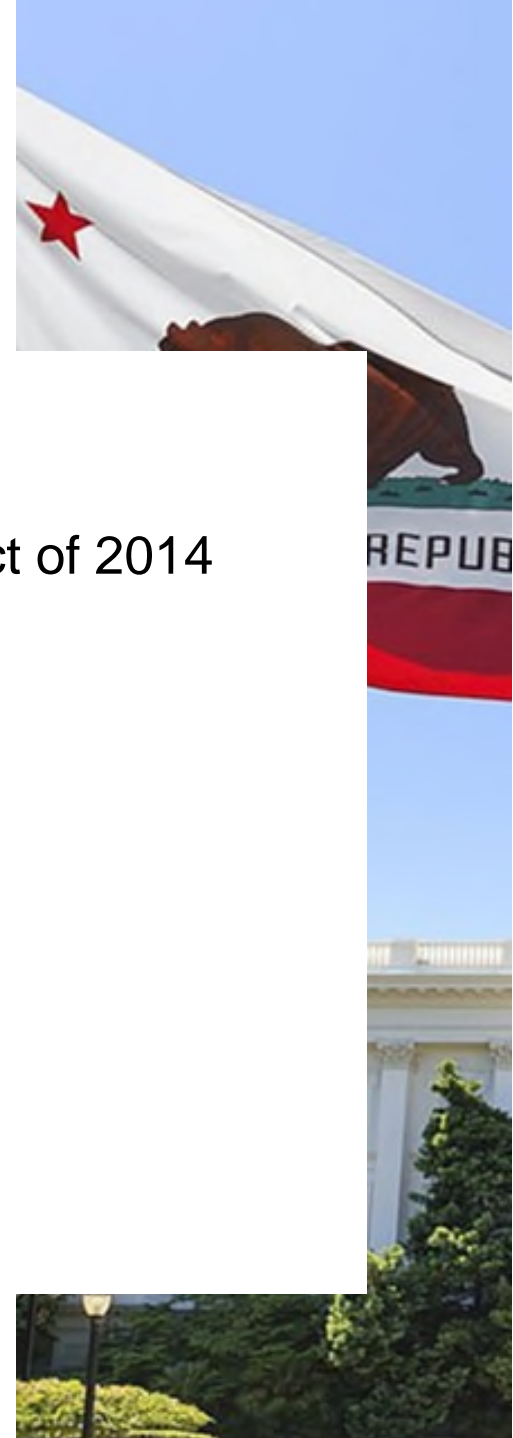


Policy/Document Updates

Policy/Document Updates

- **SB 616**

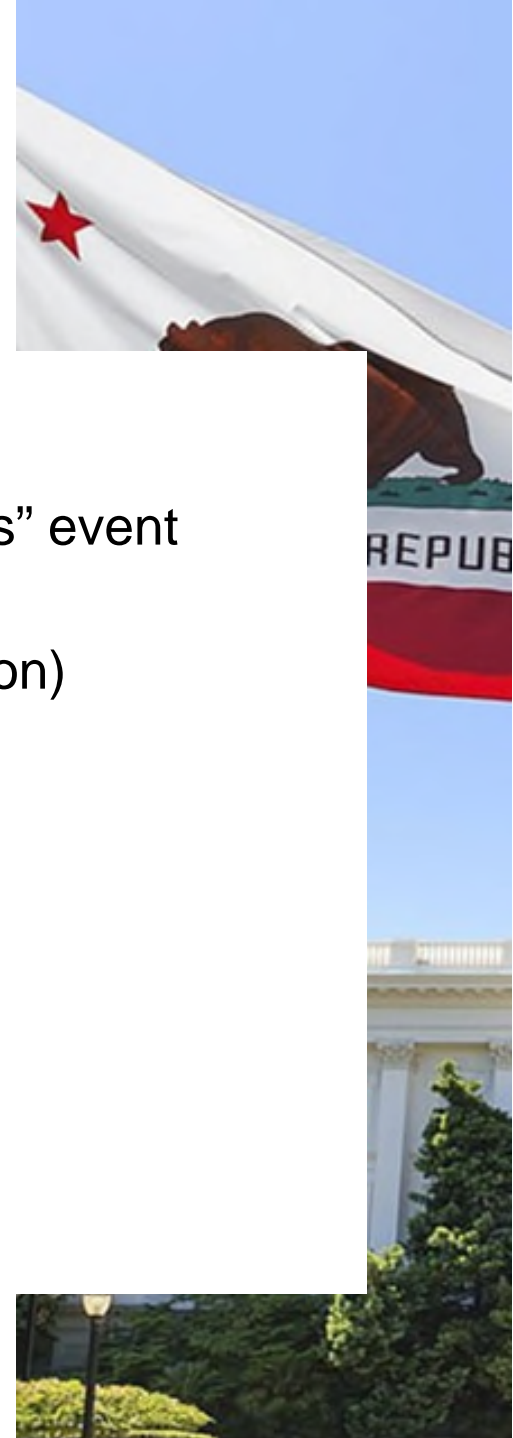
- Expands sick leave entitlements under Healthy Workplace Healthy Family Act of 2014
 - 40 hours or five days of paid sick leave
 - Raises cap on accrual from six days or 48 hours to 10 days or 80 hours
 - Increases amount of carry over to five days or 40 hours
- Employees covered under a valid collective bargaining agreement
- Preemption of local laws?
- Effective January 1, 2024



Policy/Document Updates (cont.)

■ SB 848

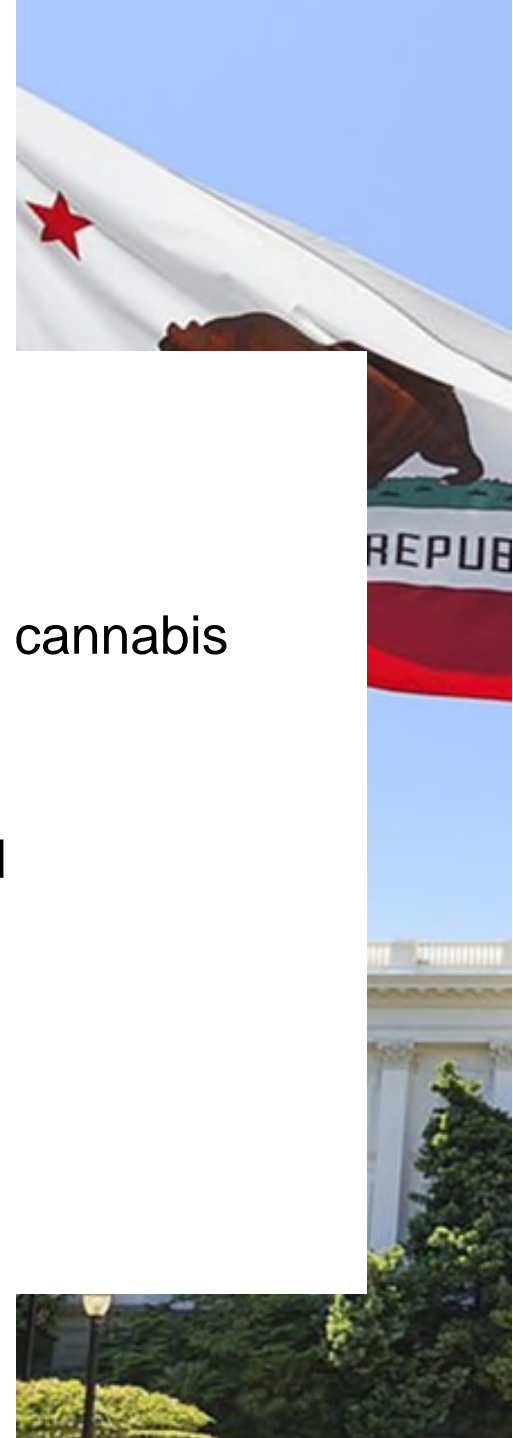
- Five days of unpaid leave for employees who experience a “reproductive loss” event
 - defined as a miscarriage, stillbirth, failed surrogacy, failed adoption, or an unsuccessful assisted reproduction (embryo transfer or artificial insemination)
- Covers employers with five or more employees
- Employees who have completed at least 30 days of employment
- Must be taken within three months of event (or other forms of leave)
- Birthing status not relevant
- Documentation requests not permitted
- Effective January 1, 2024



Policy/Document Updates (cont.)

- **AB 2188 and SB 700**

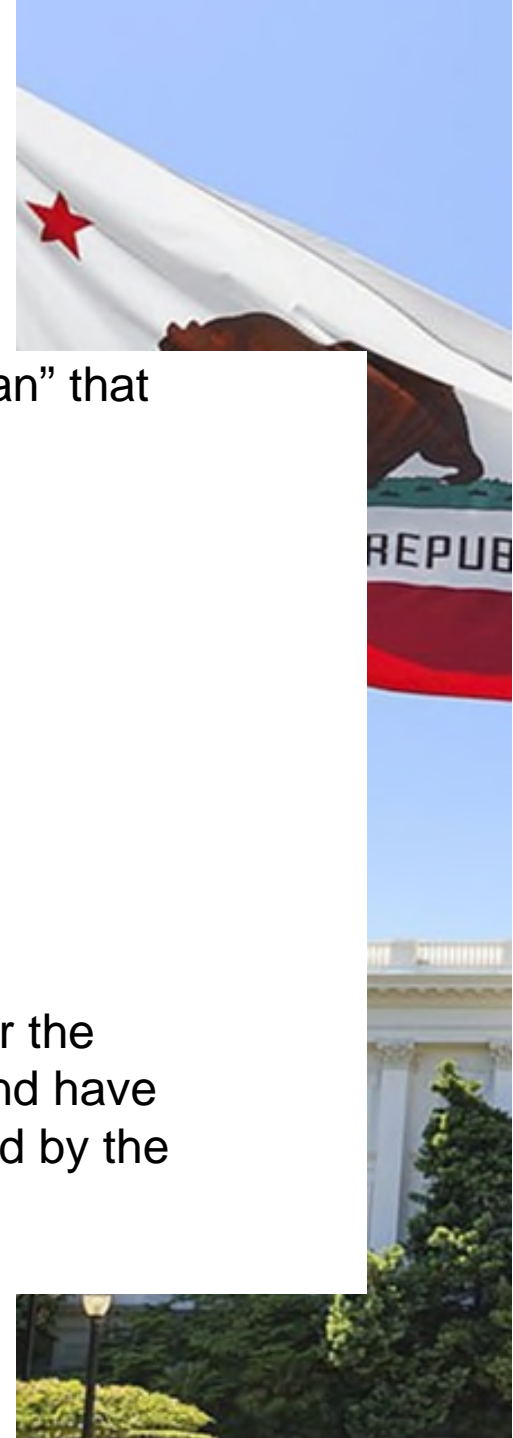
- Amends Fair Employment and Housing Act (FEHA)
- Unlawful to discriminate against employees or applicants because of off-duty cannabis use
 - Exempted job positions
- Drug tests measuring “non-psychoactive cannabis metabolites” not permitted
- Applies to recreational cannabis use as well as medicinal use
- Questioning applicants regarding prior use of cannabis not permitted
- Effective January 1, 2024



Policy/Document Updates (cont.)

- **SB 553**

- Requires employers to develop and implement a “Workplace Violence Prevention Plan” that includes several requirements, including but not limited to:
 - Designating persons responsible for implementation of WVPPs;
 - Conducting employee trainings;
 - Distributing anti-retaliation policies;
 - Periodic inspections for workplace violence hazards; and
 - Post-incident investigation procedure
- Recordkeeping requirements
- Applies to nearly all California employers and employees with limited exceptions:
 - existing workplace violence prevention plans, teleworking from a location not under the employer’s control, places of employment which are not accessible to the public and have fewer than 10 employees, certain law enforcement agencies, and facilities operated by the Department of Corrections and Rehabilitation.
- Effective July 1, 2024



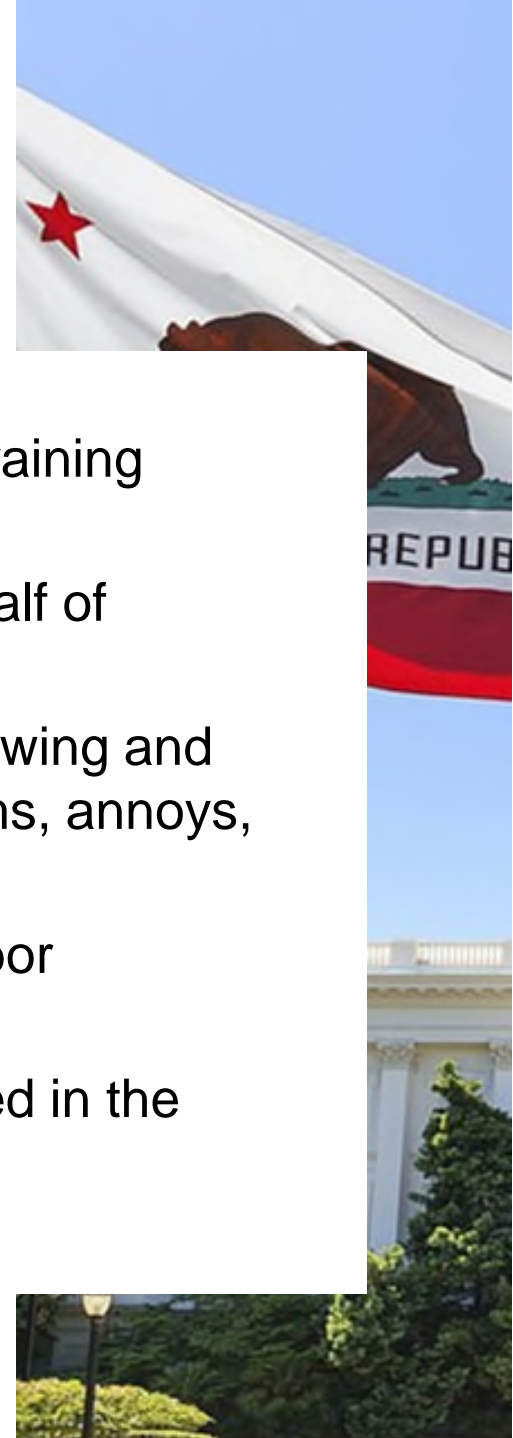
Policy/Document Updates (cont.)

■ SB 428

– Counterpart to SB 553, which amends existing law regarding temporary restraining orders:

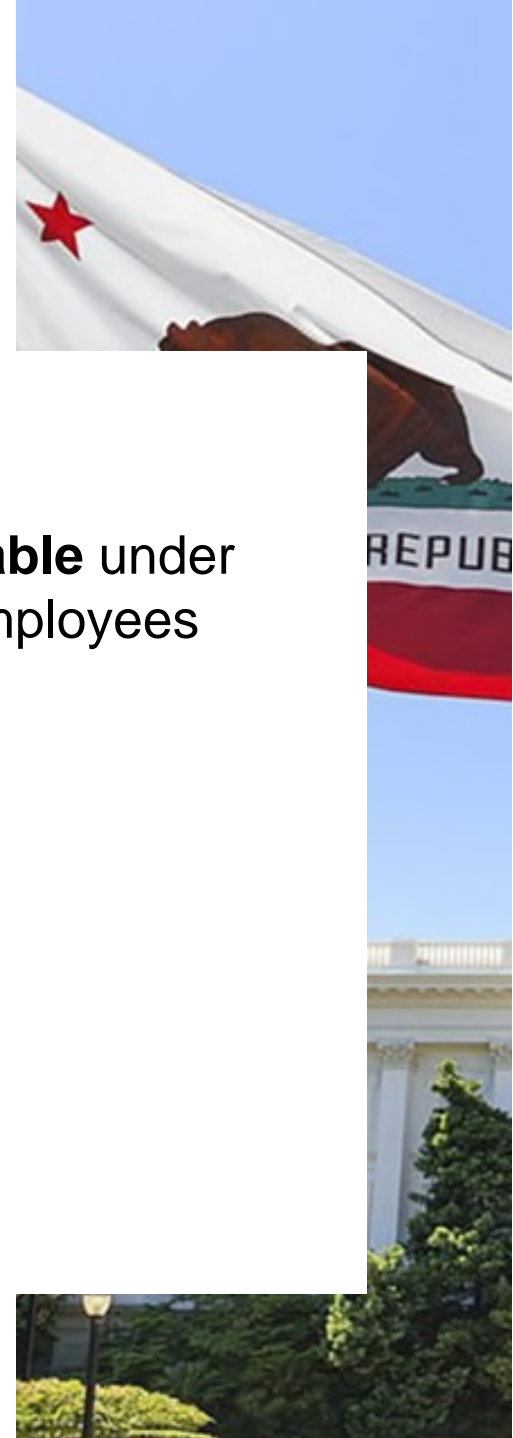
- Employee’s collective bargaining representative can seek a TRO on behalf of employee covered by a valid collective bargaining agreement;
- “Harassment” can serve as a basis for seeking a TRO (defined as “a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose”);
- Affords protection to speech or conduct protected under the National Labor Relations Act and similar California labor laws; and
- Gives an employee for whom a TRO is sought the choice to not be named in the TRO action

– Effective January 1, 2025



Policy/Document Updates (cont.)

- ***Raines v. U.S. Healthworks Medical Group*, 28 F.4th 968 (9th Cir. 2023)**
 - The Court held an employer’s business-entity agents can be held **directly liable** under the FEHA for employment discrimination (when the agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer)
 - Carefully review indemnification agreements





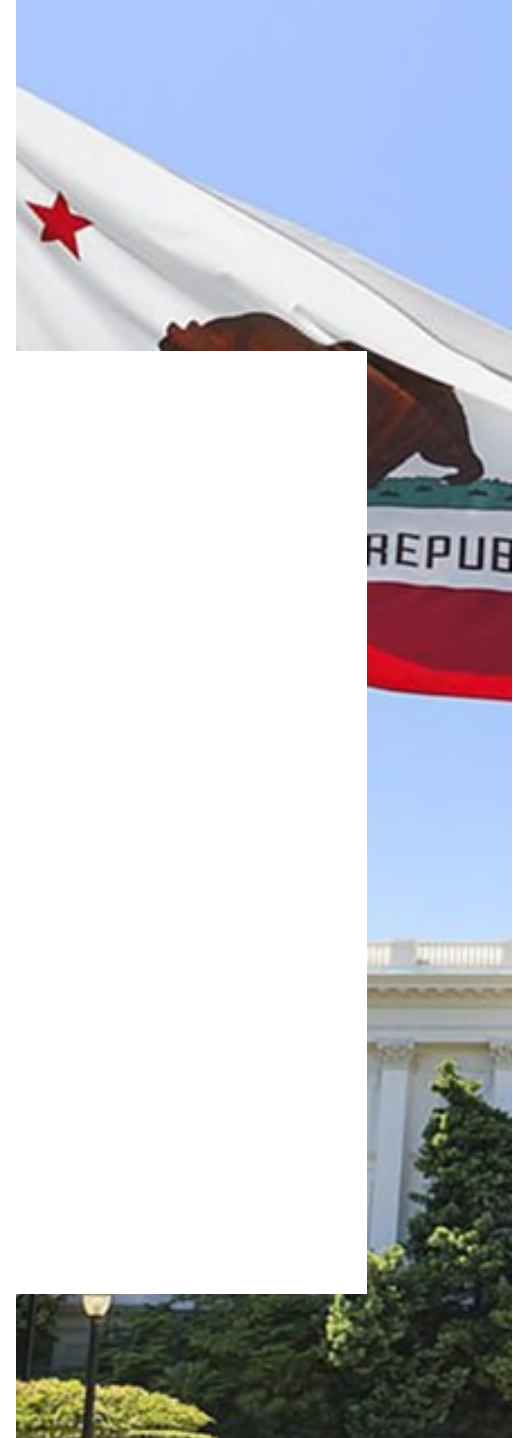
Wage & Hour



Wage & Hour

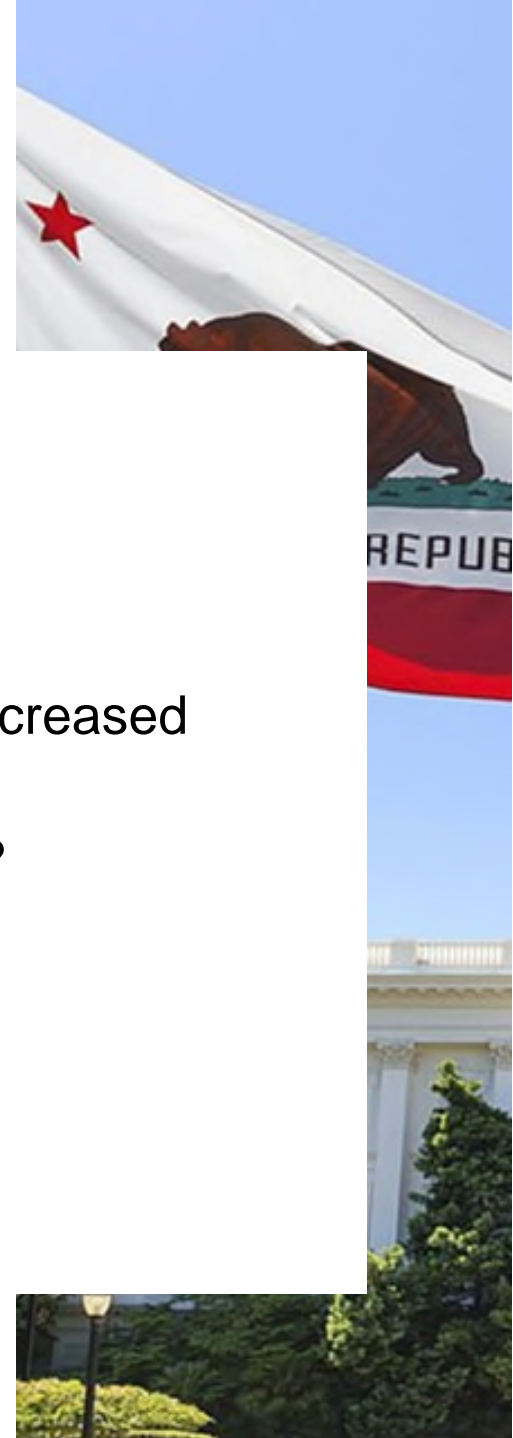
- **Minimum Wage**

- Fast Food Workers: \$20/hour (April 1, 2024)
- Healthcare Workers: New Minimum Wage Schedules (June 1, 2024)
- \$16/hour for all workers (January 1, 2024)
- New Minimum Salary for Exempt Workers: \$66,560 (January 1, 2024)



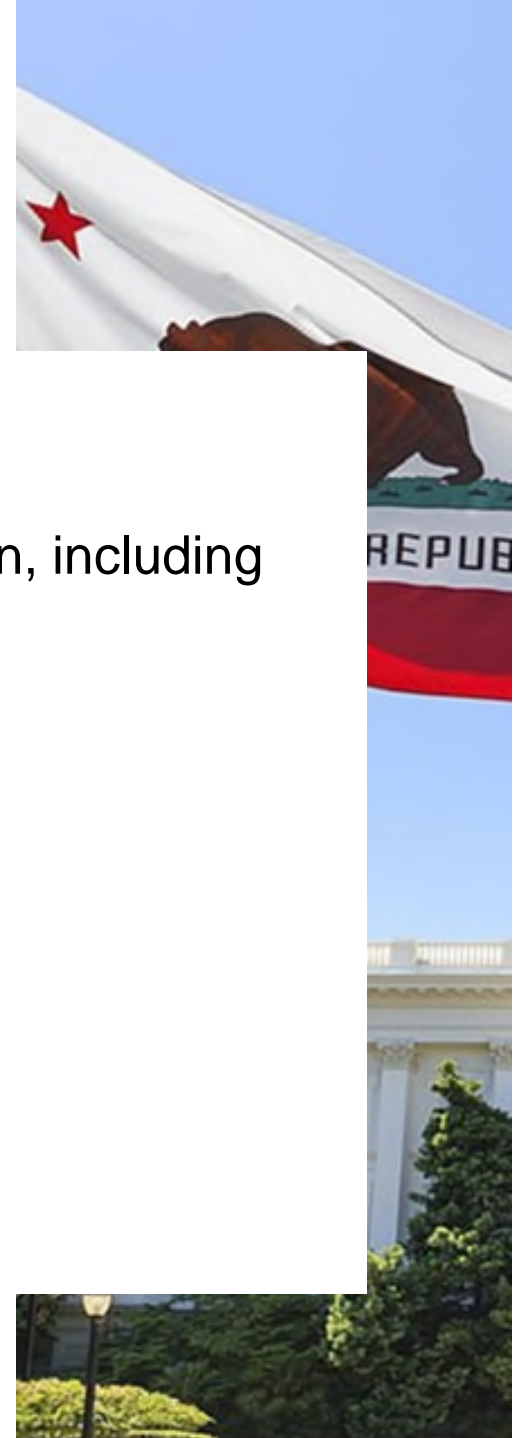
Wage & Hour (cont.)

- **Time Rounding (*Woodworth v. Loma Linda/Camp v. Home Depot*)**
 - What is time rounding?
 - Why do it?
 - Precedent upholding rounding policies that are “fair and neutral” are under increased scrutiny
 - Outdated practice with technological advancements for precise timekeeping?



Wage & Hour (cont.)

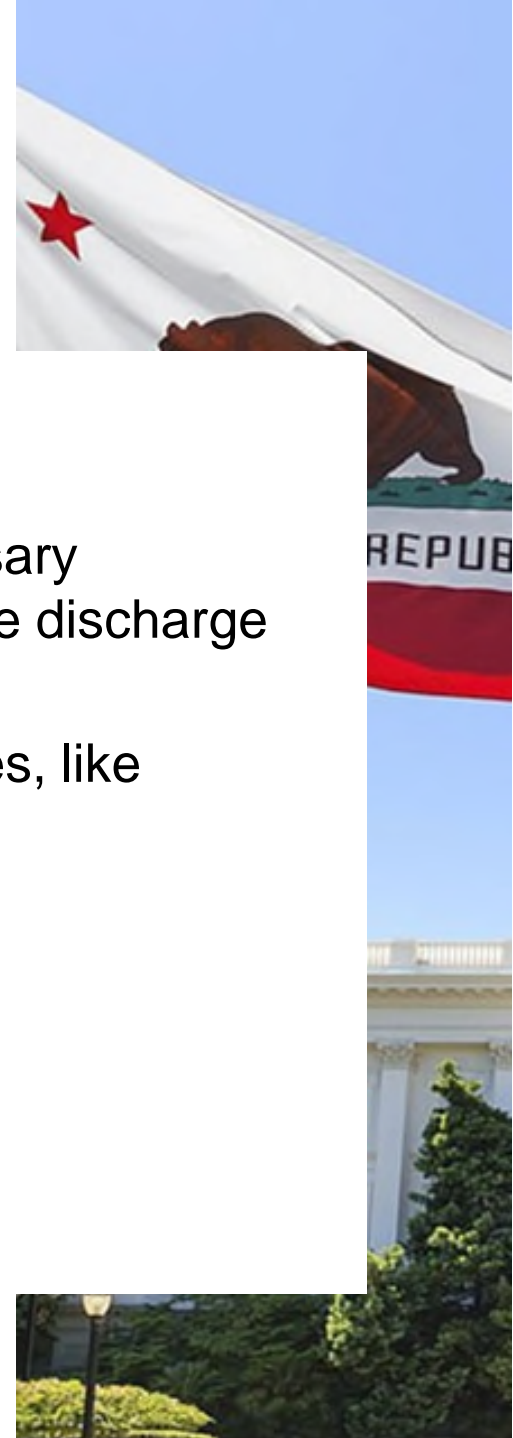
- **Payment of Accrued Vacation Time (Temporary Layoff/Furlough)**
 - Labor Code requires prompt payment of accrued wages at time of termination, including accrued and unused vacation/PTO
 - What to do during short term layoff or furlough?
 - According to the Ninth Circuit: PAY IT!



Wage & Hour (cont.)

■ Work from Home Expenses

- Labor Code 2802 requires employers to reimburse employees for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”
- When do employers have to pay for an employee’s work from home expenses, like home office equipment, home internet, supplies, and utilities?
 - Remote positions
 - Hybrid?
 - Voluntary?
 - Government mandated shutdowns (*Thai v. IBM*)





Restrictive Covenants

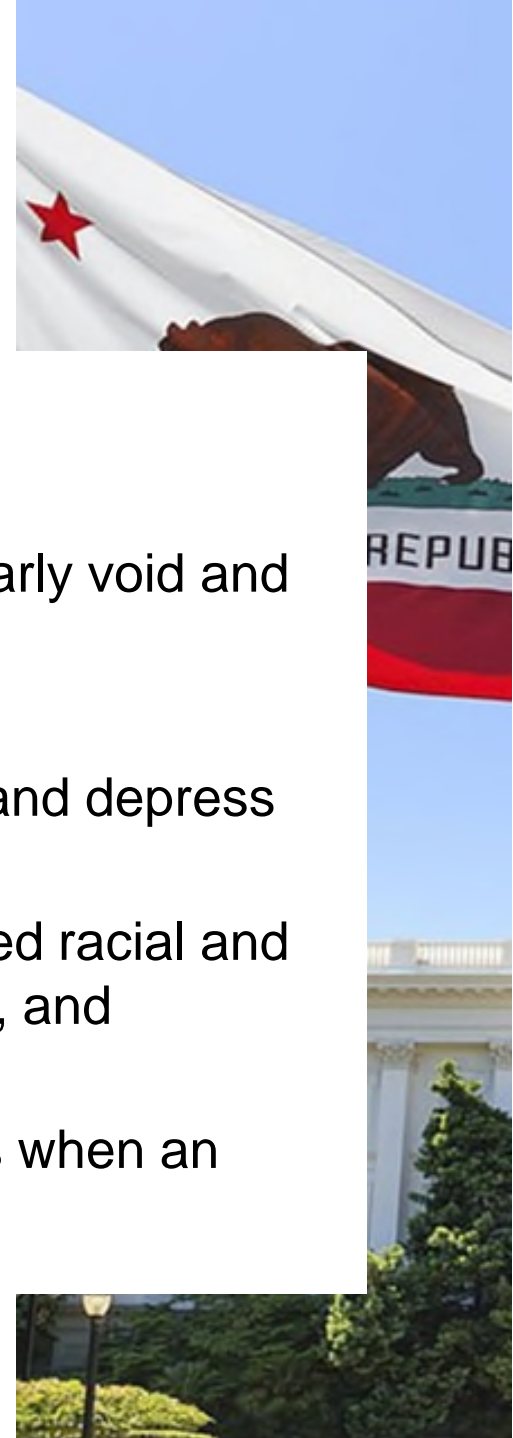


Restrictive Covenants

- **SB 699**

- Basis of the law:

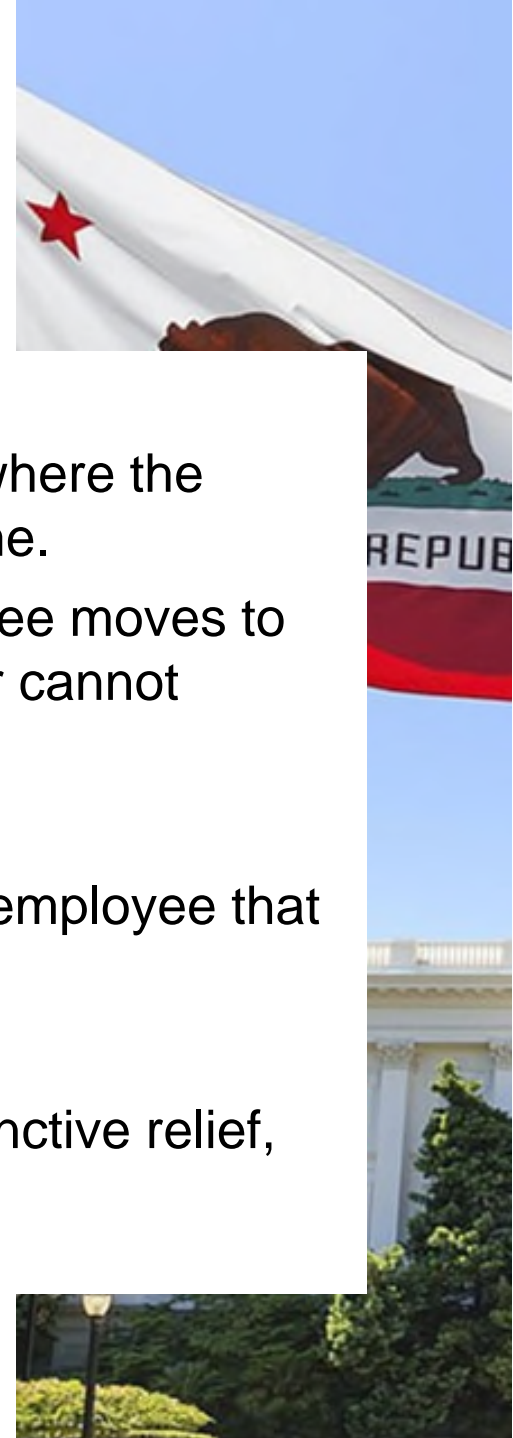
- California employers have employees sign noncompete clauses that are “clearly void and unenforceable under California law.”
- This creates a “chilling effect on employee mobility.”
- “Noncompete clauses stifle economic development, limit firms’ ability to hire and depress innovation and growth.”
- “Noncompete clauses are associated with suppressed wages and exacerbated racial and gender pay gaps, as well as reduced entrepreneurship, job growth, firm entry, and innovation.”
- California’s public policy against restraint of trade law trumps other state laws when an employee seeks employment in California.



Restrictive Covenants (cont.)

- **SB 699 specifics:**

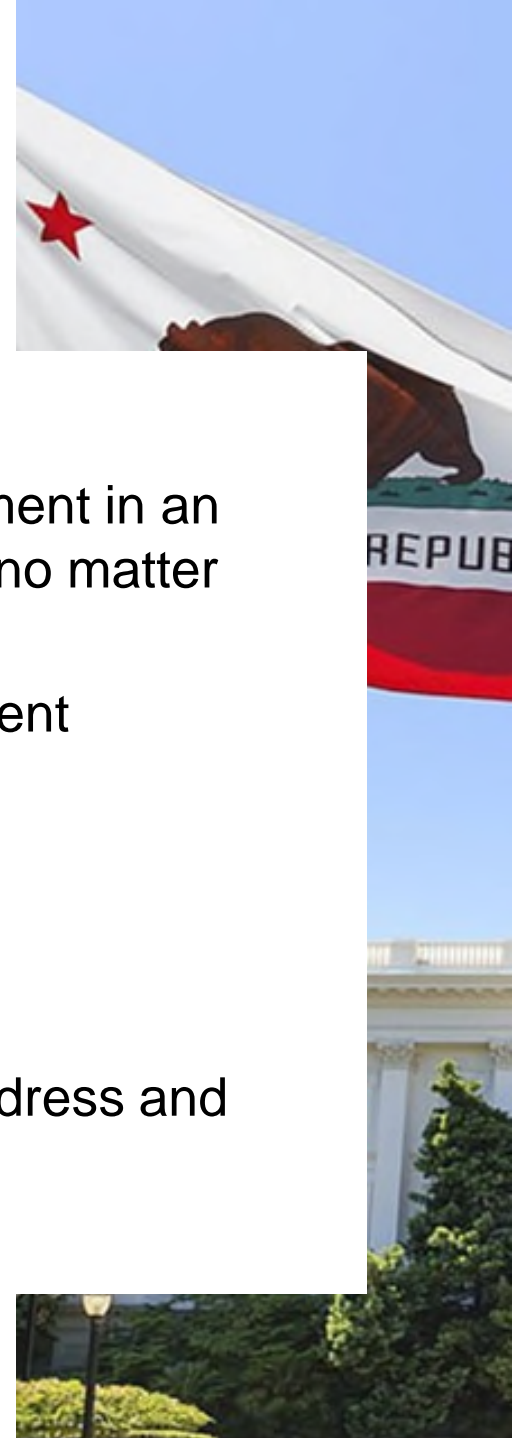
- Prohibits employers from attempting to enforce noncompetes regardless of where the contract was signed and regardless of where the employee worked at the time.
 - Ex: Texas company has Texas employee sign non-compete. Texas employee moves to California and accepts position in violation of noncompete. Texas employer cannot enforce noncompete.
 - Is the reverse true?
- An employer shall not enter into a contract with an employee or prospective employee that includes an unenforceable noncompete.
 - No more “preventative” noncompetes.
- Violation = former, current, or prospective employee may sue and obtain injunctive relief, actual damages, and attorneys’ fees.



Restrictive Covenants (cont.)

■ AB 1076

- Codifies existing case law to “void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored.”
- It is unlawful to include an unenforceable noncompete clause in an employment contract or to require an employee to sign an unenforceable noncompete
- Requires notice **by February 14, 2024**, to:
 - All current employees
 - Former employees employed after January 1, 2022
- Written individualized communication must be delivered to the last known address and the email address of the employee or former employee





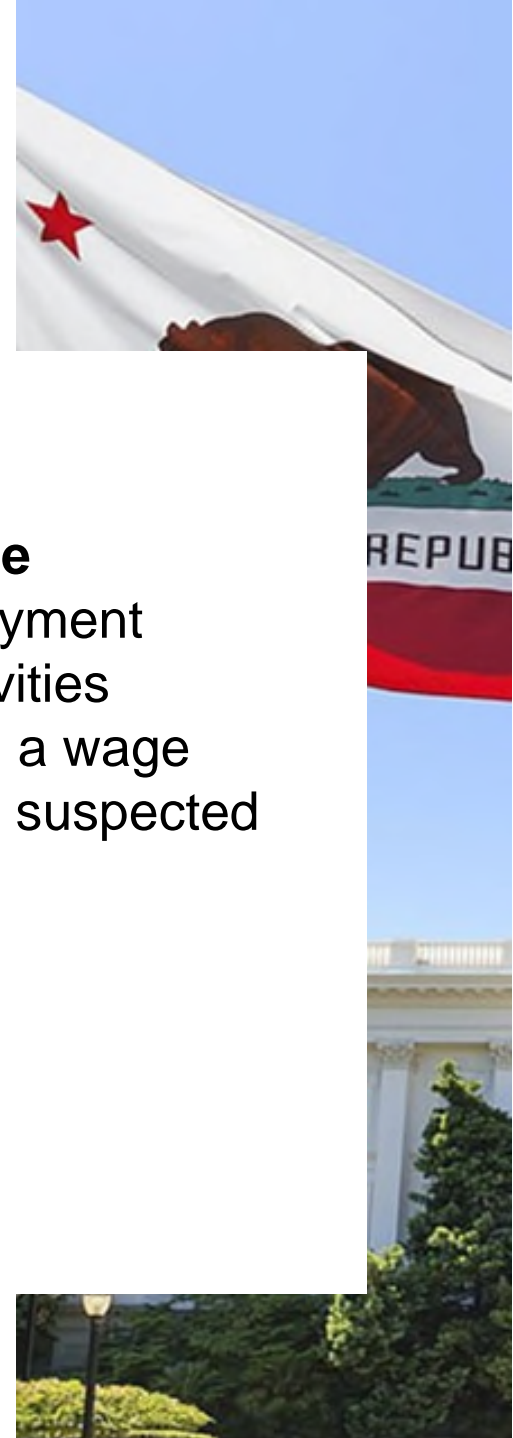
Workplace Conduct



Workplace Conduct

- **SB 497**

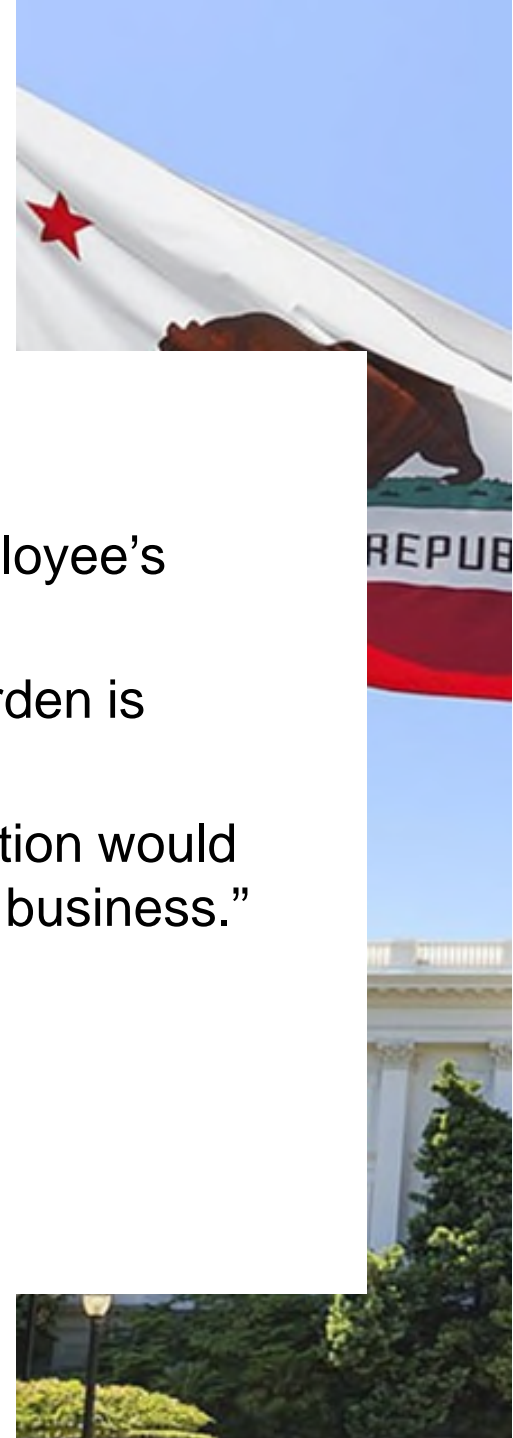
- Amends Labor Code sections 98.6, 1102.5, and 1197.5 to create a **rebuttable presumption** of retaliation for employees who experience an adverse employment action (such as a termination or demotion) within 90 days of engaging in activities protected under the Labor Code or California’s Equal Pay Act (including filing a wage complaint with the Labor Commissioner or disclosing information regarding a suspected violation of law to a government or law enforcement agency)
- Expansion of civil penalties
- Effective January 1, 2024



Workplace Conduct (cont.)

- ***Groff v. DeJoy*, 600 U.S. 447 (2023)**

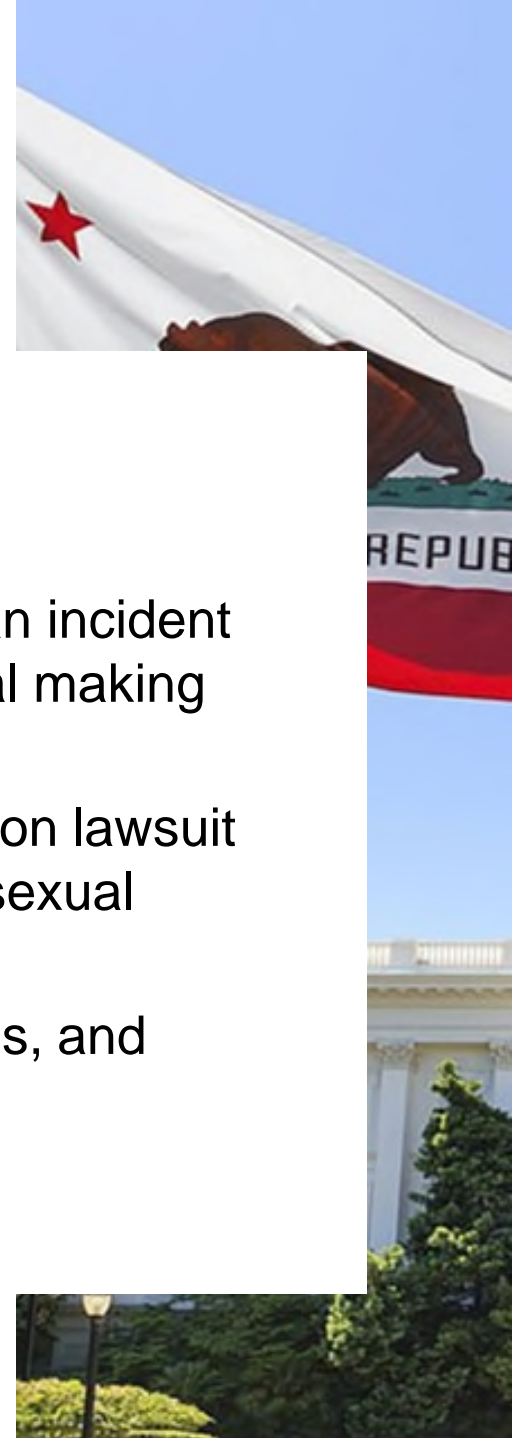
- U.S. Supreme Court addressed an employer’s duty to accommodate an employee’s religious beliefs
- Clarified existing definition of “undue hardship” by stating it exists when a burden is “substantial in the overall context of an employer’s business.”
- This requires employers to “show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business.”
- Individualized case-by-case basis
- Potential impact on future religious accommodation requests?



Workplace Conduct (cont.)

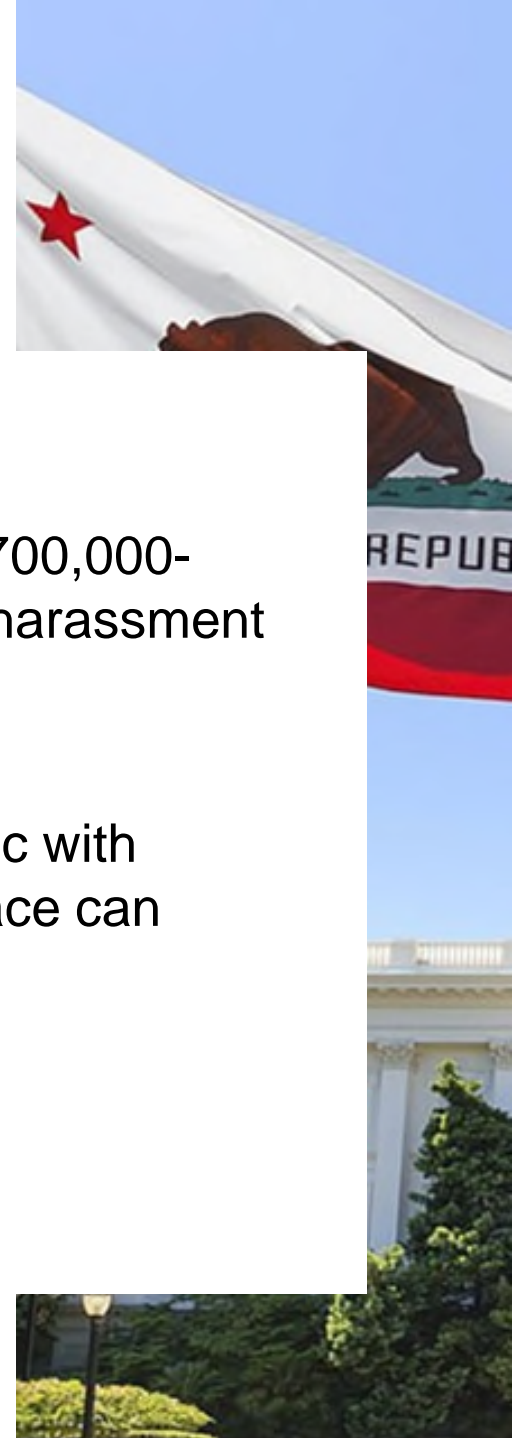
- **AB 933**

- Will allow defendants in defamation lawsuits to claim a privilege defense for communications made without malice about **factual information** related to an incident of sexual assault, harassment, or discrimination experienced by the individual making the communication.
 - Ex. Individual defendant in sexual harassment lawsuit who brings defamation lawsuit against an employee after successfully defending against the employee's sexual harassment claims.
- Defendants claiming the privilege can recover attorneys' fees, treble damages, and punitive damages if they prevail.



Workplace Conduct (cont.)

- ***Sharp v. S&S Activewear, L.L.C.*, 69 F.4th 974 (9th Cir. 2023)**
 - Ninth Circuit held that sexually explicit music played over loudspeakers in a 700,000-square-foot warehouse could give rise to a hostile work environment sexual harassment claim under Title VII of the Civil Rights Act of 1964.
 - Did not matter that the music was offensive to all genders.
 - This ruling aligned with several other circuit courts which have held that music with sexually derogatory and/or violent lyrics played publicly throughout a workplace can foster a hostile work environment.
 - All it takes is one offended employee!



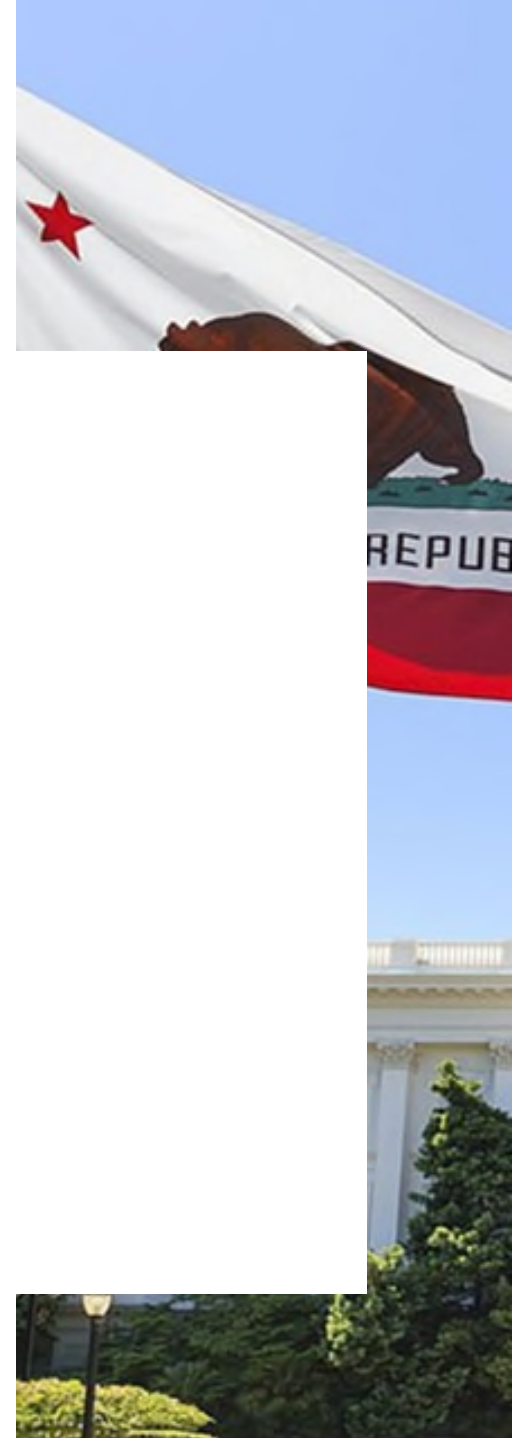


Arbitration



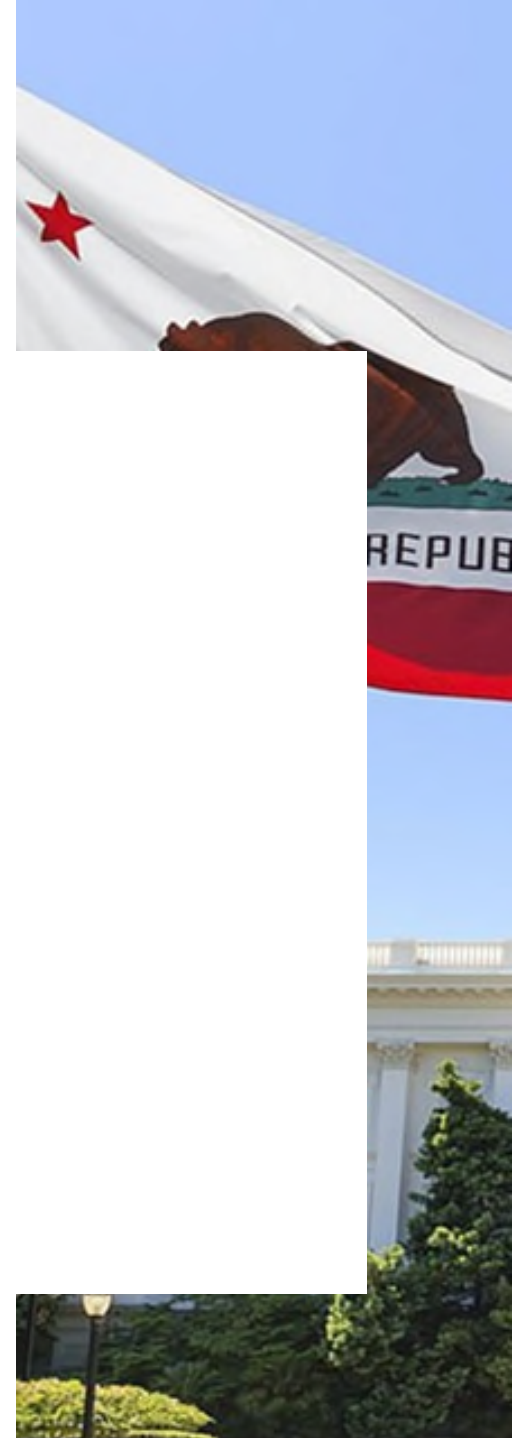
Arbitration

- ***Uber v. Adolph***
 - *Viking River*
 - Individual arbitration, then representative action in court
 - Updating arbitration agreements



Arbitration (cont.)

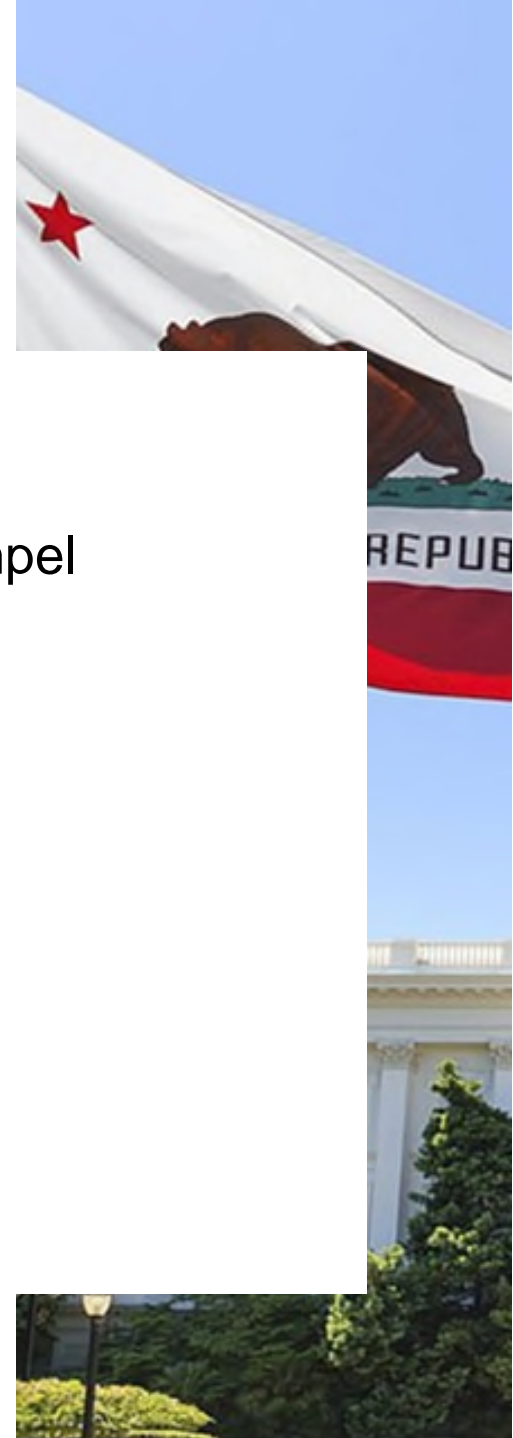
- ***Doe v. Superior Court***
 - Timely payment strictly enforced
 - Postmark date insufficient
 - Consequence = waiver of right to arbitrate



Arbitration (cont.)

- **SB 365**

- Trial court proceedings typically stayed pending order denying motion to compel arbitration
- SB 365 revokes automatic stay
- Likely to be challenged
- Arguably preempted by Federal Arbitration Act



About Foley

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