Company Policies and Procedures

2020

Editor’s Notes

The Editor’s Notes reference the page number, subject matter, and the rationale/guidance regarding policy in the 2020 Sample Employee Handbook.

**p. 3 - Subject: Language Requirement**

Editor’s Note: If more than 5% of your workforce has as its first language, a language other than English, you should have the handbook translated into that language(s). Even if you do not have 5%, if you do not have the handbook translated, an employee may argue he/she did not understand it and it may not be enforceable as to that employee. Thus, not having it translated will be at your own risk. If choose not to have it translated, at a minimum, this section itself should be translated into the appropriate language for the employee at issue.

**STARTING THE EMPLOYMENT RELATIONSHIP**

**Page. 9 - Employment Applications -<Optional Policy>**

Editor’s Note 1: **Juvenile Criminal History (AB 1843**):Labor Code section 432.7 restrictions on inquiries regarding criminal history have been expanded to prohibit asking an applicant to disclose juvenile convictions. Additionally, an employer may not: (1) ask an applicant to disclose information related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law; or (2) seek from any source or utilize as a factor in determining any condition of employment any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law. The bill makes a narrow exception for employers at a health facility to permit inquiry into an applicant’s juvenile criminal background if a juvenile court made a final ruling or adjudication that the applicant had committed a felony or misdemeanor relating to certain sex or controlled substances crimes within five years preceding the employment application, although inquiries regarding sealed juvenile criminal records are prohibited. An employer at a health facility seeking disclosure of juvenile offense history under this exception will be required to provide the applicant with a list describing offenses for which disclosure is sought. The law is effective January 1, 2017.

Editor’s Note 2: **Criminal History Inquiries Prohibited Pre-Employment Offer**: Effective January 1, 2018, criminal history inquiries of any kind are prohibited prior to an employment offer for employers with five or more employees. Thus, all criminal history inquiries need to be deleted from employment applications. Such inquiries and checks can now take place only after an employment offer is made with the offer allowed to be contingent upon the results of those inquiries/checks. Further, this law also establishes an individualized assessment and grievance process that must be followed before an employer can take action against an applicant based upon their criminal history. More specifically, once the conditional job offer has been made, if the employer decides to rescind the offer based solely or in part on the applicant’s conviction history, a specific procedure referred to as the “fair chance” process must be followed. Among other things, this process includes justifying the decision, notifying the applicant in a writing that contains certain required information and attaches the conviction history report and giving the applicant at least five business days to respond before you can make a final decision. If the applicant gives written notice that he or she disputes the accuracy of the report and is taking specific steps to obtain evidence supporting that assertion, then the applicant must be given five additional business days to respond. If an employer makes a final decision to withdraw an offer of employment solely or in part because of the conviction history, the employer must notify the applicant in writing of the withdrawal, any procedure the employer has to request reconsideration, and the right to file a complaint with the Department of Fair Employment and Housing. The employer may justify or explain the employer’s reasoning for making the final disqualification from employment. Positions to which the law (such as SEC regulations) requires employers to check criminal history for employment purposes or restricts employment based on criminal history will be exempt from this new law.

Editor’s Note 3: **AB 168: Salary History Questions Banned**: Effective January 1, 2018, all California employers will be prohibited from asking job applicants about their salary history, including both compensation and benefits. AB 168 makes it unlawful for you to seek or rely on salary history information verbally or in writing, either personally or through an agent (such as an employment placement firm). However, applicants may voluntarily and “without prompting” disclose this information. In this case, you are permitted to use the volunteered information when setting the applicant’s starting salary. Also, AB 168 does not apply to salary history information that is disclosable to the public pursuant to federal or state law, such as salary information for public employees that is largely a matter of public record. In addition, the law also requires that, upon “reasonable request,” you must provide a pay scale for a position to an applicant.

Editor’s Note 4: **Salary History Inquiries – Limited Exception (AB 2282):** This new law clears up ambiguities in last year’s AB 168, the ban on salary history inquiries and the requirement to provide pay scales to applicants. The Labor Code will now specify that employers may inquire about an applicant’s salary expectations for the position being applied for. External applicants (not current employees) are entitled to a pay scale upon request, but only after completing an initial interview.]

**Page 9 - Reference Checks - <Optional Policy>**

Editor’s Note: Please note that, as of January 1, 2020, you may no longer have no rehire provisions in settlement agreements with employees/former employees, except for those employees/former employees whom you determined in good faith engaged in sexual harassment or assault or for whom you had a legitimate, non-discriminatory/non-retaliatory reason for terminating the employment relationship or refusing to rehire.

**Page 9 - Background Checks and Consumer Reports** - < **Optional Policy>**

Editor’s Note 1: Please remember that you need a separate authorization and disclosure in order to conduct the background check and/or to obtain a consumer report. Please also see the application section above for new, additional restrictions on criminal checks under AB 1843, AB 1008 and AB 168, which should be also applied with regard to criminal background checks.

Editor’s Note 2:Criminal History Inquiries – Limited Exception (SB 1412):This bill amends Labor Code section 432.7, which limits employers’ ability to conduct criminal history inquiries and to use criminal history information in employment decisions.  Existing law makes an exception for employers who are required by federal or state law to inquire into an applicant’s or employee’s criminal history.  The amendment is intended to tighten the exception to apply only where an employer is required by law to inquire into a “particular conviction” or where an employer cannot by law hire someone with a “particular conviction.”  to make clear that employers may only consider “particular convictions” when assessing criminal history.  “Particular conviction” is defined only to mean “a conviction for specific criminal conduct or a category of criminal offenses prescribed by any federal law, federal regulation or state law that contains requirements, exclusions, or both, expressly based on that specific criminal conduct or category of criminal offenses.”]

**Page 10 - Employee Classifications**

**Part-Time Employees**

Editor’s Note: Such employees are eligible for paid sick leave – the amount will be based upon your policy - if an accrual one, generally such employees are eligible if they work more than 30 hours as paid sick leave generally accrues at the rate of 1 hour for each 30 hours of work or they may be eligible based on a lump sum or other legally permissible accrual plan. Further such employees may be subject to mandatory insurance coverage under applicable law.

**Casual Employees**

Editor’s Note: Such employees are eligible for paid sick leave – the amount will be based upon your policy, if an accrual one, generally such employees are eligible if they work more than 30 hours in a year as paid sick leave generally accrues at the rate of 1 hour for each 30 hours of work or they may be eligible based on a lump sum or other legally permissible accrual plan).

**Exempt Employees**

[Editor’s Note: The new federal exempt salary standards are effective January 1, 2020 and raise the currently federal weekly level from $455 to $684 (equivalent to $35,568 per year for a full-time worker), raise the total annual compensation requirement for “highly compensated employees” from the currently enforced level of $100,000 per year to $107,432 per year;

allow employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the standard salary level, in recognition of evolving pay practices; and revise the special salary levels for workers in U.S. territories and the motion picture industry. Please note that the California State standards remain higher than federal law so the above will not change anything for California employers subject to State law.

**Page 10 - Independent Contractors**

Editor’s Note 1: This is not a legal definition of independent contractor and your classification of a person as an independent contractor does not mean that he/she is legally such. Generally, the more control, direction and supervision you exercise over the person, the more likely they are to be an employee. There are significant penalties for misclassification. Further, it is likely that the language regarding no eligibility for benefits if a court determines they are misclassified is unenforceable. Nevertheless, this language is offered as an option and may have a potential deterrent effect.)

Editor’s Note 2: A recent case, [*Dynamex Operations West, Inc. v. Superior Court of Los Angeles*](https://scocal.stanford.edu/opinion/dynamex-operations-west-inc-v-superior-court-34584)*,* redefined the independent contractor standard for wage order violations, with potentially wider implications and uses an ABC test of which control is only one prong with the other two prongs, the following: the worker performs work that is outside the usual course of the hiring entity’s business; and the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. Each of the 3 prongs must be met or the person is an employee.

Editor’s Note 3: Please be aware that a new law has narrowed the independent contractor classification and more persons may be employees subject to this handbook. AB 5 which amends section 3351 of the Labor Code, adds section 2750.3 to the Labor Code, and amends sections 606.5 and 621 of the Unemployment Insurance Code – imposes sweeping amendments to the California Labor Code and the Unemployment Insurance Code. Most significantly, the law expands and codifies the presumption that workers are “employees” and expressly adopts the “ABC” test for classifying independent contractors that the California Supreme Court articulated in 2018 in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*. Under Dynamex, now codified by AB 5, a worker is presumed to be an employee rather than an independent contractor unless the hiring entity can establish the following conditions are satisfied: (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) The person performs work that is outside the usual course of the hiring entity’s business; (C) The person is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed. Although the law does not automatically change workers’ status when it goes into effect on January 1, 2020, companies should evaluate their workforce and reclassify workers as appropriate. If, after January 1, an employer fails to appropriately classify workers, the employer faces potentially significant consequences from the various enforcement mechanisms included in the bill. In addition to claims from individual workers or through California’s Private Attorneys General Act (PAGA), the new law empowers the State Attorney General and certain city and district attorneys to seek injunctive relief on behalf of workers. Janitorial service workers do not have an exemption under AB 5 and will be subject to the new ABC test. You must evaluate whether you have any independent contractors and, if so, whether the independent contractors are properly classified under the ABC test. If they are employees, they are subject to all provisions of this handbook.

**Page 10- Immigration Reform and Control Act**

Editor’s Note 1: Although California residents may be able to obtain driver’s licenses under State law despite lack of certain federal documentation, such driver’s licenses will contain a phrase mentioning federally limited or limited under federal law or not acceptable for official federal purposes, and cannot be used for I-9 verification purposes. However, if in the future, the person is granted a status that allows him/her to work, then it appears he/she may be able to use the driver's license as proof of identity along with a valid work authorization document, when completing the I-9 form. As the regulations may further develop or change, if this situation arises where a worker seeks to use the federally limited driver’s license for I-9 purposes, before permitting such use of the federally limited driver's license, you should first check with PIASC or legal counsel. Please note that such a federally limited driver’s license cannot be used as a basis to discrimination, harass or retaliate against an employee.

Editor’s Note 2: Voluntary Cooperation With ICE Prohibited: As part of California’s new designation as a “sanctuary state,” effective January 1, 2018 all California employers will be prohibited from voluntarily allowing Immigration and Customs Enforcement (ICE) agents to access non-public areas of their worksite and/or to access, review or obtain their organization’s employment records unless ICE provides a judicial warrant. Known as the Immigrant Worker Protection Act, AB 450 also requires you to provide your workers with notice of certain immigration enforcement actions, such as inspection of I-9 forms and other employment records by an immigration agency, within 72 hours of receiving the federal Notice of Inspection. Penalties for failure to comply with this law range from $2,000 to $10,000 per violation. Note: This law does not apply to I-9 forms and other documents for which a Notice of Inspection has been provided, or instances where federal law requires employers to provide access to records.]

Editor’s Note 3:As of September 18, 2017, all employers must use the updated Form I-9 with the revision date 07/17/17 N. Please also note that there are ongoing efforts to make compliance with E-verify mandatory. As of now, participation in the E-Verify program is voluntary unless required by federal or state/local law. It is required for most federal contractors and for all employers in Arizona, Georgia, Louisiana and Utah, as well as for public employers in Florida and Texas. 28 states have no E-Verify requirement. Please keep in contact with your labor counsel about these requirements.]

Editor’s Note 4: A new law effective 1/1/17 prohibits an employer from doing any of the following: (1) requesting more or different documents than are required under federal law; (2) refusing to honor documents tendered that on their face reasonable appear to be genuine; (3) refusing to honor documents or work authorization based upon the specific status or term of status that accompanies the authorization to work; and (4) attempting to reinvestigate or reverify an incumbent employee’s authorization to work using an unfair immigration-related practice. Complaints can be made to the state labor commissioner and penalties of up to $10,000 can be recovered.

**DISCRIMINATION, HARASSMENT, VIOLATION OF THE LAW**

**Page 11 -** **Non-Harassment Policy**

Editor’s Note 1: As of January 1, 2015, new protected classifications include employees receiving public assistance and employees obtaining a driver’s license under certain defined circumstances. The DMV can issue an original driver’s license to a person who is unable to submit satisfactory proof that the applicant’s presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency. You now cannot discriminate against an employee on the basis of the fact that a driver’s license was obtained under the above process. It is now also a FEHA violation for an employer or covered person to require a person to present a driver’s license, unless possessing a driver’s license is required by the employer and the employer’s requirement is otherwise permitted by law.  An action taken by an employer to comply with any requirement or prohibition under the federal Immigration and Nationality Act is not a violation of law. An employer also cannot take any adverse action against an employee because the employee updates personal information, such as a lawful change of name, Social Security number, or federal employment authorization document. These new bases for protection do not need to be included under the above list of protected classes but employers need to be aware of them. Further, as of January 1, 2016, new protected classifications include those who ask for an accommodation of a disability or religious belief. In addition, as of January 1, 2020, a new basis for protection is that there can be no discrimination or retaliation based upon a refusal of an employee to sign an arbitration agreement.)

**Page 11 -** **Non-Harassment Policy - #9**

Editor’s Note 2:Remove this language if the Company chooses to include option in “Fraternization Policy” restricting managers and supervisors from becoming romantically involved with an employee)

**Page 12 - Companies with 5 or More Employees**

Editor’s Note 3:SB 396 requires that employers with five or more employees post not only the standard DFEH harassment/discrimination poster but also a new poster developed by DFEH on transgender rights which new poster can be found at the following link: <https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/08/DFEH_TransgenderRightsWorkplace_ENG.pdf> .

Employers with 50 or more employees must also update their sexual harassment training to include a component based on gender identity, gender expression and sexual orientation. This training must include “practical examples inclusive of harassment based on gender identity, gender expression, and sexual orientation,” and must be “presented by trainers or educators with knowledge and expertise” in these areas.

Editor’s Note 4: FEHA transgender regulations from earlier this year require employers, as of July 1, 2017, to honor an employee’s request to be [identified by a preferred gender](https://www.calchamber.com/hrcalifornia/hr-library/discrimination/types-of-discrimination/pages/gender-sex-gender-identity-and-expression.aspx#Recording%20and%20Use%20of%20Gender%20and%20Name), name or pronoun, including gender-neutral pronouns, as well as to use restroom facilities that correspond to the employee’s gender identity or expression (and cannot require proof of gender to do so), and require an employer to have gender-neutral signage for single occupancy facilities, to prohibit discrimination based on “transitioning” from one gender to another, to not impose a dress standard inconsistent with an employee’s gender identity or expression, and to not inquire or require documentation on sex, gender, gender identity or gender expression as a condition of employment.]

Editor’s Note 5: FEHA regulations, effective on July 1, 2018, strengthen the protections afforded to applicants and employees, including individuals who are undocumented, on the basis of their national origin. Although the FEHA already prohibits discrimination and harassment on the basis of national origin, these new regulations broaden the definition of “national origin.” Originally defined to encompass “the individual’s or ancestors’ actual or perceived place of birth or geographic origin, national origin group or ethnicity,” these new regulations expand the definition to include an individual’s or ancestors’ actual or perceived: (1) Physical, cultural, or linguistic characteristics associated with a national origin group; (2) Marriage to or association with persons of a national origin group; (3) Tribal affiliation; (4) Membership in or association with an organization identified with or seeking to promote the interests of a national origin group; (5) Attendance or participation in schools, churches, temples, mosques, or other religious institutions generally used by persons of a national origin group, and (6) Name that is associated with a national

origin group. Additionally, the new regulations define what constitutes national origin discrimination to include the following: (1) Language restriction policies, including English-only policies, unless the restriction can be justified by business necessity and is narrowly tailored to further that business interest; (2) Discrimination based on an applicant’s or employee’s accent, unless the employer can show the accent materially interferes with the applicant’s or employee’s ability to perform the job; (3) Discrimination based on English proficiency, unless the employer can show that the proficiency requirement is justified by business necessity; (4) Height and weight requirements (as such may have a disparate impact on the basis of national origin), unless the requirement can be justified by business necessity and the purpose of the requirement cannot be met by less discriminatory means; (5) Recruitment, or assignment of positions/facilities/geographical area, based on national origin; and (6) Inquiring into an applicant’s or employee’s immigration status, or discriminating against an applicant or employee based on immigration status, unless required to do so under federal immigration law.

Editor’s Note 6:There were numerous bills this year which addressed issues pertaining to sexual harassment. Those bills are as follows:

Disclosure of Sexual Harassment (AB 3109): This bill makes void and unenforceable any provision in a contract or settlement agreement that prevents a party to the contract from testifying about criminal conduct or sexual harassment in an administrative, legislative, or judicial proceeding.

Sexual Harassment (SB 224**):** This bill amends section 51.9 of the Civil Code to expand the types of relationships that can be subject to a claim for sexual harassment to include lobbyists, elected officials, directors, producers, and investors.  This statute generally applies to work relationships where one person holds himself out as being able to help someone establish a business or professional relationship directly or with a third party.

Settlement of Sexual Harassment Claims (SB 820): This new law prohibits provisions in settlement agreements entered into after January 1, 2019 that prevent disclosure of factual information pertaining to claims of sexual assault, sexual harassment, gender discrimination or related retaliation that have been filed in court or before an administrative agency.  The new law does not prohibit a provision that prevents the parties to the agreement from disclosing the amount of the settlement.  Additionally, at the claimant’ request, the settlement agreement may include a provision that limits the disclosure of the claimant’s identity or of facts that would lead to the discovery of the claimant’s identity.

FEHA Amendments (SB 1300): This bill amends FEHA in a number of respects, including (1) to add a provision making it an unlawful practice for an employer to require an employee to release a FEHA claim in exchange for a bonus, raise, or continued employment; (2) to make employers liable for any kind of unlawful harassment by non-employees (not just for sexual harassment as under existing law) where the employer knew or should have known of the harassment and failed to take appropriate remedial action; and (3) to add certain statements of legislative intent to make it harder for employers to prevail on harassment claims (e.g. a legislative declaration that harassment cases are rarely appropriate for resolution on summary judgment, and a declaration that a single act of harassment may suffice to support a finding of a hostile work environment). It also provides for optional bystander training.

Sexual Harassment Training (SB 1343): Existing law requires employers with 50 or more employees to provide supervisors with sexual harassment training.  This new law expands the training requirement to employers with 5 or more employees and requires that employers provide at least 2 hours of training to supervisory employees and at least one hour of training to non-supervisory employees by January 1, 2020 and once every two years thereafter.  It also requires the DFEH to develop and post training materials for employers to use for these purposes.

Defamation and Sexual Harassment (AB 2770):This bill amends Section 47 of the Civil Code. The bill should protect both sexual harassment victims and employers against defamation claims from alleged harassers related to reference checks. This bill extends the qualified privilege to include: A complaint of sexual harassment by an employee (without malice) to an employer based upon credible evidence; and Communications between the employer and interested persons (without malice) regarding complaints of sexual harassment. This includes current or former employers’ communications regarding whether the employer would not rehire the alleged harasser due to a determination that he or she engaged in sexual harassment. Although the amendment is a step in the right direction, its impact should not be overstated. This new protection is merely a qualified privilege, which means that harassers can (and probably will) still sue victims and employers for what they will rather effortlessly claim were “false statements” made “with malice.” Such claims may be difficult to get dismissed even at the summary judgment stage.

Sexual Assault; Statute of Limitations (AB 1619):This new law greatly enlarges the statute of limitations for filing a civil action for damages for sexual assault to 10 years after the alleged assault or 3 years after the plaintiff discovered or reasonably discovered injury as a result of the assault, whichever is later.

Gender Composition of Boards of Directors (SB 826): This new law provides for mandatory inclusion of women on corporate boards of directors.  Specifically, by the end of 2019, publicly held domestic or foreign corporations with principal executive offices in California must have a minimum of one female director on its board, and by the end of 2021, these corporations must comply with the following: (1) If its number of directors is six or more, the corporation shall have a minimum of three female directors; (2) If its number of directors is five, the corporation shall have a minimum of two female directors; (3) If its number of directors is four or fewer, the corporation shall have a minimum of one female director.  The new law also requires the Secretary of State to publish certain statistical information in this regard on its website.

SB 778 - Effective in October, 2019, SB 778, which amends section 12950.1 of the Government Code, took effect immediately and extends the original compliance deadline associated with SB 1343 (passed in 2018), which requires all employers with five or more employees to provide two hours of sexual harassment training to supervisory staff and one hour of such training to nonsupervisory staff within six months of hire or promotion into a supervisory role, and every two years after that, from January 1, 2020 to January 1, 2021. In addition, the new law clarifies that an employer who provided sexual harassment training in 2019 need not provide such training again until 2021 (and then every two years thereafter). SB 778 does not change the training timeline for seasonal and temporary workers, which must be provided to such workers within 30 days or 100 hours of employment beginning January 1, 2020. However, a separate bill, SB 530, has also pushed the beginning of this training requirement for seasonal and temporary workers to January 1, 2021. SB 630 extends the deadline for mandatory sexual harassment training for seasonal temporary or other employees hired to work less than six months, to January 1, 2021. Make sure to comply with all required sexual harassment training deadlines.

Editor’s Note 7: AB 9, effective, January 1, 2020, extends the statute of limitations for FEHA claims to 3 years instead of the current one-year standard.

**Page 13 - Equal Employment Policy**

Editor’s Note: for those employers with 100 or more employees, the non-discrimination and retaliation provisions also protect employees on “public assistance”.) (**Editor’s Note**: For any employer subject to FEHA, the nondiscrimination and retaliation provisions also apply to a person who obtains a driver’s license under the circumstances where the employee is unable to submit satisfactory proof that the applicant’s presence in the United States is authorized under federal law but he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency. The law will expand national origin discrimination under FEHA to include discrimination on the basis of the fact that a driver’s license was obtained under the above process. It would also make it a FEHA violation for an employer or covered person to require a person to present a driver’s license, unless possessing a driver’s license is required by the employer and the employer’s requirement is otherwise permitted by law. Also protected against discrimination or retaliation are those employees who request an accommodation of a disability or religious belief. In addition, as of January 1, 2020, a new basis for protection is that there can be no discrimination or retaliation based upon a refusal of an employee to sign an arbitration agreement.

**REASONABLE ACCOMMODATION**

**Page 15 - Pregnancy Accommodation**

Editor’s Note:You must give the employee 15 calendar days to provide this medical certification and can delay the requested accommodation until receipt so long as you regularly require such medical certifications for other accommodation requests.

**Page 15 -** **Lactation Accommodation-**

Editor’s Note 1:Lactation Accommodation (SB 1976):This new law makes changes to existing lactation accommodation law. The existing law requires employers to make reasonable efforts to provide a location other than a toilet stall to be used for lactation. The new law specifies that the location should be something other than a bathroom and further specifies that it generally should be a permanent location but that it can be a temporary location if (1) the employer is unable to provide a permanent location due to operational, financial, or space limitations; (2) the temporary location is private and free from intrusion while being used for lactation purposes; and (3) the temporary location is not used for other purposes while being used for lactation. The new law also provides that an agricultural employer may comply by allowing an employee to use the air-conditioned cab of a tractor or truck. If an employer can prove that it is an undue hardship to comply with these requirements, the employer may be able to provide a location (including a bathroom) other than a toilet stall for the employee to use for lactation purposes**.**

Editor’s Note 2: SB 142, effective January 1, 2020, makes significant changes to an employer’s obligations for lactation accommodation which changes are reflected in the Time for Lactation Accommodation provision in this handbook.

**Page 16 - Service Animals-**

Editor’s Note: If the business is open to the public, you may choose to place this policy after “Lactation Accommodation” in your handbook.

**ARBITRATION**

**Page 16 – Arbitration**

Editor’s Note 1:The arbitration provision which was previously contained in the handbook has been removed and made its own separate document given legal authority that holds that such an employee handbook-included arbitration agreement is not binding, as compared to one contained in its own separate document.

Editor’s Note 2: Arbitration/Other Agreements Venue and Choice of Law (SB 1241): A new law restricts employers from requiring employees who primarily reside and work in California to adjudicate claims outside of California when the claim arose in California, or deprive employees of California law with respect of claims arising in California. Employers should carefully review their arbitration agreements, and any other employment agreement entered into, modified, or extended, on or after January 1, 2017, with California employees to ensure that the agreement does not have a choice of law provision that applies another state’s law to the agreement or require any claims be adjudicated outside of California. The effective date for the law is January 1, 2017.]

Editor’s Note 3:The U.S. Supreme Court determined that mandatory arbitration agreements are enforceable under the FAA. However, California just passed AB51 effective January 1, 2020. This law prohibits mandatory arbitration agreements in employment or those agreements that require an affirmative opt out. AB 51 makes imposing mandatory arbitration agreements, or even those that require an affirmative opt out, a crime, as well as terminating an employee, or taking adverse action against them for refusing to sign an arbitration agreement. In addition to being a crime, violations will be subject to the private right of action under FEHA set forth in Government Code Section 12960. Although this will presumably require an employee to exhaust the administrative remedy under FEHA, this provision will nevertheless expose California employers to another layer of costly litigation related to arbitration agreements. Whether this law will be preempted by the Federal Arbitration Act (FAA) has yet to be determined but we do expect that challenge. In fact, recently, New York attempted to pass a similar law and it was struck down as preempted by the FAA. For any company which has mandatory arbitration agreements in place, you will need to make a choice before January 1: play it safe and strike all mandatory arbitration agreements and instead use a completely voluntary one, or keep the status quo until the inevitable litigation plays out knowing the risks of doing so. You may also take the position the FAA applies if the business at issue works in interstate commerce. Keep in touch with your labor counsel on these issues.

Note also that, effective January 1, 2020, **SB 707**, which amends and adds multiple sections of the Code of Civil Procedure, requires the employer (for an employment-related arbitration agreement) to pay certain fees and costs before an arbitration may proceed. If the employer fails to pay such fees and costs within 30 days after they are due, then the employer is in material breach of the agreement, in default of arbitration and waives its right to compel arbitration. If that occurs, then the employee may withdraw from the arbitration process and proceed in court or compel arbitration in which the employer will be required to pay reasonable attorney’s fees and costs. The law also requires the court or arbitrator to impose monetary sanctions on an employer who breaches an arbitration agreement and authorizes the imposition of additional sanctions. Finally, the new law requires a private arbitration company to collect and report certain aggregate demographic data related to all arbitrators. Make sure to timely pay all arbitration invoices within 30 days after due.

**CONFIDENTIALITY AND CONFLICT OF INTEREST**

**Page 17 -** **Non-Fraternization**-

Editor’s Note: Not every company wants to ban relationships among employees – you can allow them and require the couple inform HR in writing. If so, the following statement can be inserted under this title: “Accordingly, employees are prohibited from fraternizing or becoming romantically involved with each other when their personal relationships create an actual conflict of interest, cause disruption, create a negative or unprofessional work environment, present problems regarding supervision, work performance, attitude, safety, security or morale, or cause other work-related problems.”

**Page 20 -** **Confidentiality and Non-Disclosure**-

Editor’s Note:We would advise that you have a separate confidentiality and non-disclosure policy that is signed by each individual employee and not just this handbook provision.

Editor’s Note, #15: Employers may not prohibit, or discriminate or retaliate against an employee for inquiring about another employee’s wages, disclosing his or her own wages, discussing his or her own wages or the wages of others, or aiding someone else in any of these activities – this does not create an obligation to disclose wages, however.

Editor’s Note, #7: Please know that this last section 7 is not enforceable nor can you prohibit such communications, but it may operate to assist you in knowing about it.

**Page 20 - Identity Theft**

Editor’s Note: the following two sentences are advisable, but do not state those two sentences unless you are committed to implementing those practices.

**ADVANCING WITH THE COMPANY**

**Page 21 - Performance Evaluations**

Editor’s Note: Law permitted exceptions include when an employer can demonstrate that a wage differential is based upon one or more of the following factors, which are applied reasonably and account for the entire wage differential: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; (4) a bona fide factor other than sex such as education, training, or experience.

**HOURS OF WORK/WORKING CONDITIONS**

**Page 22 -** **Pay Day/Paycheck Accuracy**

Editor’s Note 1:Employees generally must be paid by the 26th for work performed between the 1st and 15th of the month and by the tenth day of the following month for work performed between the 16th and end of the previous month. If a weekly, biweekly or semi-monthly pay period is adopted, then the payday must be no more than 7 days from the end of the payroll period. Biweekly is generally best given overtime workweek obligations.]. If payday falls on a holiday recognized by State of California, paychecks are distributed on the **(Options:** previous, next) day.

Editor's Note 2: Choose either the previous, next workday or eliminate the line altogether.

Editor’s Note 3:Keep in mind that on January 1, 2020, the state minimum wage increases to $12.00 per hour for employers with 25 or fewer employees and to $13 per hour for employers with 26 or more employees. This is not a new law — SB 3 was signed in 2016, and this is the next mandatory increase. Also, remember to determine if any local minimum wage ordinances apply to your business which would require an increase above state law and make sure to implement those minimums as well.

**Page 22 - Time Records**

Editor’s Note 1:It is best to get the initials, but, if not practical, I have taken it out of the policy so it does not create a potential presumption of a problem if there are no initials.

Editor’s Note 2: All time worked must be paid. While rounding appears to still be legally permissible, its use may be questioned after the recent [*Troester v. Starbucks Corporation*](https://www.chamberlitigation.com/cases/troester-v-starbucks-corporation) case and it can be the subject of litigation given that, not only must the rounding policy be facially neutral, but, in practice, it must also be neutral and not operate, over time, to deprive the employees of wages. Employers should consult their employment counsel about whether to continue rounding given the risks.

**Page 24 - Overtime Pay**

Editor’s Note: Please note there has been a recent change in how the regular rate of pay for overtime is calculated for bonuses – *Dart v. Alvarado Container*. Please contact your employment counsel for advice on this issue.

**Page 25 – Meal Periods**

Editor’s Note: Please contact your employment counsel for these written meal period waivers.

**Page 26 – Break Periods**

Editor’s Note: To utilize option 2, you must develop a written document or other mechanism to confirm the voluntary nature. Otherwise, you definitely open yourself up to the risk that an employee will claim missing meal period, or taking a late or short meal period was not voluntary and they are entitled to the meal period premium. The more conservative option is No. 1 where you ensure the employees timely get the full 30-minute, duty-free meal period. Also, waivers are not really permitted just because an employee refuses to take a break – the requirements for waiving breaks are very specific and you should check with your attorney before allowing anyone to use a waiver.

**Page 27 - Heat Illness Recovery Periods**-

Editor’s Note 1: This policy must be used by those employers who have employees working in an outdoor environment. If none, it is not needed. If this policy does apply, make sure to review your Heat Illness Prevention program, which must be in writing, to ensure that they are compliant with the Cal-OSHA regulations.  Such programs should provide procedures to provide shade, for employees to request recovery periods, to ensure that recovery periods are provided when appropriate, and that employees and supervisors are timely trained with respect to these and other heat-related safety issues.  Certifications on time cards and in electronic timekeeping systems which verify that all required meal and rest periods have been provided should be updated to address the provision of recovery periods.

Editor’s Note 2: Under SB 1167, by January 1, 2019, the Division is to propose to the Occupational Safety and Health Standards Board (“Board”) for the Board’s review and adoption, a heat illness and injury prevention standard applicable to workers working in indoor places of employment (separate from the already existing outdoor standards. “The standard shall be based on environmental temperatures, work activity levels, and other factors.”

**Page 27 - Loss of Company Property**

Editor’s Note: Deducting from a final paycheck is a very risky approach and we do not advise it. At a minimum, it could result in 30 days of pay as a waiting time penalty. You may wish to keep this policy in, however, as a deterrent.

**Page 27 - Expense Reimbursement**

Editor’s Note 1: Even if receipts are not turned in, if the employer knew, or should have known, of the required and/or necessary expense, then it must be reimbursed to the employee. Also, reimbursements must also be made even if documentation is turned in later than 90 days after the fact – there is no law allowing the employer to cap the amount of time the employee has, although the statute of limitations only allows an employee to go back 3-4 years.

Editor’s Note 2: Be consistent here with your choice regarding the remote off the clock work provision.

Editor’s Note 3: This policy may not be accurate for each employer and you will need to consult legal counsel. These expense reimbursement provisions are ripe with potential liability; you may choose to have a separate policy or the handbook policy, and/or both, but make sure they are consistent and, in all cases, consult with legal counsel to ensure the implementation and practice is consistent with law.

**INSURANCE PROGRAMS REQUIRED BY LAW**

**Page 28 - State Disability Insurance**

Editor’s Note 1: Even though Paid Family Leave does not create any rights or entitlement to time off of work,Companies with 50 or more employees, covered by FMLA/CFRA, may be required to give time off work under the provisions of these laws.

Editor’s Note 2: Paid Family Leave Uses Expanded to Active Duty Situations (SB 1123).  California has a paid family leave program that provides partial wage replacement to employees who take leaves of absence for specified purposes.  This new law expands the program to provide paid family leave benefits beginning January 1, 2021 to employees who take time off for reasons associated with being called to active duty or a spouse, domestic partner, parent, or child being called to active duty.

Editor’s Note 3: Effective 1/1/17, San Francisco has a new Paid Parental Leave Ordinance which require employers to provide supplemental compensation to employees who are receiving California Paid Family Leave for purposes of bonding with a new child. Employers with 50 or more employees are required to comply beginning on January 1, 2017. Employers with 35 or more employees are required to comply beginning on July 1, 2017.  Employers with 20 or more employees are required to comply beginning on January 1, 2018.  See your employment lawyer for more details. More details can also be found at the following link on the paid parental leave ordinance as well as San Francisco’s other ordinances, e.g., sick leave, healthcare, that are applicable to employers in San Francisco: <http://sfgov.org/olse/paid-parental-leave-ordinance>]

Editor’s Note 4:Ordinances: Please note that many cities have enacted their own ordinances in various areas covering topics like, for example, sick leave, minimum wage, other leaves, criminal history inquiries, and the like. Employers should consult with legal counsel regarding whether their city has any such ordinances which will impact them as generally, this handbook will comply with California state law and employers will need to ensure they are also complying with any stricter city ordinances, if any.

**BENEFITS**

**Page 31 -** **Vacation Pay**

Editor’s Note 1: We do not advise vacation advances. With regard to vacation cash outs, a cash out can generally be done without creating a constructive receipt problem (meaning the vacation should have been taxed as earned rather than when used or paid out) when it is done on a mandatory date certain each year. Giving an employee a voluntary cash out option at any time ad hoc will likely result in a constructive receipt problem. If an employer is adamant about providing vacation cash outs, there may be other options but this area is complex and counsel should be consulted. In general, we do not advise permitting cash outs.]

Editor’s Note 2: Re: Accrued Vacation: even if you have accrued vacation on a monthly or other basis besides daily, at the time of termination, you must pay out all vacation earned, but unused as if it were accrued on a daily basis.

**Page 31 - Sick Leave Pay/Kin Care-**

Editor’s Notes 1**:** Please note that California’s sick leave law requires these sick leave benefits to be available starting July 1, 2015. As the recommended 2014 policy already essentially met the requirements, however, we are making changes now to the policy to be compliant. Please also note that the recordkeeping requirements contained in the sick leave law were effective January 1, 2015; thus, as of January 1, 2015, employers must use the new DLSE “Notice to Employee” form, post the new sick leave requirement, and modify pay stubs accordingly.

Editor’s Note 2: **(Option 1, front load method)** This is the front load, lump sum option. If you use this approach of having an amount certain dropped into each employee’s leave bank at the beginning of each year, the amount must be at least 24 hours. Whether this amount can be pro-rated is not clear and the conservative approach is to give each employee at least 24 hours in their banks.

Editor’s Note 3: **(Option 2, accrued method)** All current employees, as of July 1, 2015, will have **(\_\_\_\_\_\_\_)** hours of sick leave available to them. The employee further will have **(\_\_\_\_\_\_\_\_\_\_\_\_\_\_)** hours of sick leave pay available at the beginning of each succeeding July 1st, which can only be used during the following 12 months of employment. Sick leave available for a particular year (July 1 to June 30 the following year), cannot be carried over to future years nor will the remaining available sick leave be paid at the end of employee's current year. Likewise, employees terminating employment will not be paid any unused sick leave still available to them.)

Editor’s Note 3: Employees will accrue paid sick days at the rate of one hour for every 30 hours worked for the Company. An employer may use a different accrual rate so long as it is on a regular basis and the employee earns no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.) New employees are entitled to use accrued paid sick days after completing (90) days of employment. Paid sick leave will carry over to the following year of employment. (Option: All current employees, as of July 1, 2015, will accrue paid sick days at the rate of one hour for every 30 hours worked for the Company. Paid sick leave will carry over to the following July 1st) Employees total accrual of paid sick leave will not exceed 6 days or 48 hours and thus, carry over is limited to 6 days or 48 hours. Regardless of carryover and accrual, employees are limited in their use of paid sick days to 24 hours or three (3) days in each year of employment (Option or for current employees the following July 1st) and no accrued, but unused sick leave will be paid out at termination of employment.

The limitation on use to 24 hours per year is permitted by law, but not required; an employer can choose to eliminate that use limitation or use a different number up to the cap of 48 hours.

Editor’s Note 4:Verification of the employee’s illness*,* or need to attend to an immediate family member or domestic partner who is ill, may be required by the Company in order for payment to be made. You should not request the underlying diagnosis, however. Further, it is not clear under law whether you can require medical documentation; thus, the conservative approach is to only do so when it is permissible under another law, e.g., Family and Medical Leave.

Paid sick leave time is not counted as hours worked for the purpose of computing weekly overtime or for accruing benefits, as applicable.

**More Paid Sick Leave**

**(Option 3)** In lieu of an employer using separate Vacation, Sick, and/or Holiday provisions, an employer can instead choose to use a paid time off (PTO) policy. If an employer chooses to use PTO, some special rules apply including, but not necessarily limited to, the following: (1) the entire amount is accrued and vested, and any accrued, but unused amount must be paid to the employee at the time of separation from employment; (2) you should place a maximum cap on accrual which can be no less than 1.25 the annual accrual amount, but, only where that amount meets the numbers required by the sick leave law of at least 48 hours carried over each year; (3) the amount offered to the employee must comply with the new sick leave law in that the employee will be provided with at least either the accrual or lump sum method amounts of sick leave that are required by law – generally, if you are using PTO, the method used will likely be accrual, and best is that it is more than the sick leave required by law; (4) up to one-half the entire PTO amount must be available as kin care leave, e.g., to attend to the illness of a covered family member. Further, it is not clear whether PTO in its entirety must be paid out at the regular rate of pay similar to sick leave, but that is the conservative position. We would request that employers wishing to utilize PTO, or to make sure they address the new sick leave law in their existing PTO, consult PIASC or their own legal counsel with regard to the specifics of their proposed PTO policy and whether it satisfies all law requirements.

**Additional Editor’s Note**: Sick leave/PTO plans that provide for a different accrual rate than one hour of paid sick leave for each 30 hours of work, are now acceptable: (1) for accrual-based plans that were already in place prior to January 1, 2015, an accrual method different than one in 30 is acceptable provided that accrual is on a regular basis and an employee has no less than one day or eight hours of accrued sick leave or paid time off within 3 months of employment or each calendar year or each 12-month period, and the employee was eligible to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment; (2) for accrual-based plans adopted or revised after January 1, 2015, an accrual rate different than one in 30 is acceptable provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period (this is a slightly accelerated rate of accrual over the one in 30 standard). Please also note that the regular rate of pay used to calculate sick leave now only applies to nonexempt employees and can be calculated for such nonexempt employees in one of two ways: (1) in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time whether or not overtime is worked in that week; or (2) by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment. Paid sick time for exempt employees shall be calculated in the same manners as the employer calculates wages for other forms of paid leave for such exempt employees.

**Second Additional Editor’s Note**: For San Francisco employers, you must use the 1 in 30 accrual method. If there are fewer than 10 employees during a given week, you can cap sick leave at 40 hours; otherwise, there is an accrual and carryover cap of 72 hours, which is a higher cap than allowed by State law. You cannot impose a use limitation of 24 hours in San Francisco. Further, in San Francisco, an employee who has no spouse or registered domestic partner may designate one person for whom the employee may use paid sick leave to provide aide or care. An employer must offer the opportunity to make this designation no later than 30 work hours after the date paid sick leave begins to accrue, and the employee must be able to change the designation on an annual basis, with, in either case, 10 days for the employee to make the designation.

**Third Additional Editor’s Note**: there are several other cities that have now implemented their own sick leave ordinances which are more generous than state law (as well as minimum wage requirements which all employers should also keep abreast of even though the minimum wage does not need to be specified in the employee handbook), and the following link provides a brief summary of those ordinances although you should consult with your employment counsel to ensure accurate information and updates (note that the above policy options will need to be revised if the local law is more generous than the state law which is represented in the above policies): <http://www.abetterbalance.org/web/images/stories/Documents/sickdays/factsheet/PSDchart.pdf> ]

**PAID LEAVES OF ABSENCE**

**Page 33 Bone Marrow**

Editor’s Note: This policy is required only if the Company employs 15 or more employees.

**UNPAID LEAVES OF ABSENCE**

**Page 34 Family and Medical Care Leave of Absence (FMLA)/California Family Rights Act (CFRA)**

Editor's Note:If you have 50 or more employees, you must provide written notification to employees, including a policy statement in the employee handbook, of their rights under the Federal Family and Medical Care Leave (FMLA) and California Family Rights Act (CFRA). Companies with less than 50 employees should remove this policy from their employee handbook. But, please note that, as of January 1, 2018, companies with 20 or more employees will be required to provide employees with 12 weeks of baby bonding leave. A sample policy for such employers follows this general FMLA/CFRA policy.

**Page 38 -** **Personal (Non-Industrial) Medical Leave of Absence**

Editor's Note:This policy statement only applies to companies with **fewer than 50 employees** and should only be included in a handbook for such companies. Companies with **50 or more employees** must instead use the written policy covering the “Federal Family and Medical Care Leave” and California Family Rights Act.

**Page 38 - Length of Leave**

Editor’s Note:You can make this statement in the handbook regarding a maximum, but, please evaluate each case on its own individual basis in terms of whether extending a leave would be a reasonable accommodation under California or federal law and engage in the interactive process (federal law only applies if greater than 15 employees and California law applies to 5 or more employees although harassment based on disability applies if only one employee).

**Page 38 - Compensation and Benefits**

Editor’s Note 1: Companies with less than 50 employees can choose how much time, if any, they wish to pay the Company’s portion of the insurance premium.

Editor’s Note 2:You can make this statement in the handbook regarding no guarantee of reinstatement, but, please evaluate each case on its own individual basis in terms of whether such a leave was a reasonable accommodation under California or federal law and, if so, then reinstatement is guaranteed (federal law only applies if greater than 15 employees and California law applies to 5 or more employees although harassment based on disability applies if only one employee).

**Page 39 - Parental Leave**

Editor’s Note: This leave is required by SB 63, effective January 1, 2018, and only applies to employers with between 20 and 49 employees.

**Page 39 -** **Return from Leave**-

Editor’s Note**:** Provided the DFEH has the necessary funding, it will create a parental leave mediation pilot program. Under the pilot program, an employer may, within 60 days of receipt of a right-to-sue notice, request all parties to participate in the department’s Mediation Division Program. If an employer requests mediation within 60 days of receipt of a right-to-sue notice, an employee shall not pursue any civil action under this section until the mediation is complete. The employee’s statute of limitations, including for all related claims not under this section, shall be tolled upon receipt of the employer’s request to participate in the department’s Mediation Division Program until the mediation is complete. For purposes of this subdivision, a mediation is complete when, at any time after the employer’s request, either party notifies the department’s Mediation Division Program and all other parties that it is electing not to participate in, or is withdrawing from, the mediation or the department notifies the parties that it believes further mediation would be fruitless. This mediation section sunsets on January 1, 2020.

**Pregnancy Disability Leave of Absence**

**Page 40 - Compensation and Benefits**

Editor’s Note 1: Maximum period of time the employer must pay the premium for the employee’s health insurance is 4 months (17 1/3 weeks or 88 workdays]

**OPTION –** must include this language if you have more than 50 employees:If you are CFRA-eligible, you have certain rights to take BOTH PDL and a separate CFRA leave for reason of baby bonding after the birth of your child. Both leaves guarantee reinstatement to the same or a comparable position at the end of the leave, subject to any defense allowed under the law.

Editor’s Note 2: Please note that you must provide employees with notice of their rights under the new pregnancy disability regulations.

**Industrial Medical Leave of Absence**

**Page 41 - Compensation and Benefit**

Editor’s Note:Companies with less than 50 employees can elect how much time, if any, they wish to pay the Company’s portion of the insurance premium. It is strongly recommended the amount of time elected to pay the insurance premium under the same terms and conditions as if actively employed for an Industrial Leave be equal to the maximum for the Company’s Personal (Non-Industrial) Medical Leave or Pregnancy Childbirth Leave of Absence **whichever is greater**)

**Page 42 -** **Leave Of Absence For Emergency Service for Fire, Law Enforcement, or Emergency Rescue Training-**

Editor’s Note:Mandatory policy for employers with 50 or more employees only.

**Page 43 - Domestic Violence, Sexual Assault, or Stalking**

Editor’s Note 1:The following list of 4 items for time off must also be included in this policy if the employer has 25 or more employees. Certification may be required to document the need for a reasonable accommodation.

Editor’s Note 2:The reasonable accommodation obligation applies to all employers.

Editor’s Note 3: Please note that a new law requires employers of 25 or more employees to provide written notice to employees of their rights under the domestic violence protections under CA law. The California labor commissioner has developed a notice which can be found at the following link: <http://www.dir.ca.gov/dlse/Victims_of_Domestic_Violence_Leave_Notice.pdf>. This notice must be provided to all new hires and to other employees who ask for it.

**Page 44 - School Activities Leave**

Editor’s Note:This policy is required only if the Company employs 25 or more employees at the same location.)

**Page 44 - Literacy Education Time Off**

Editor’s Note:This policy is required only if the Company employs 25 or more employees at the same location.

**Page 45 - Alcohol and/or Drug Rehabilitation Leave of Absence**

Editor’s Note:Mandatory policy for California employers with 25 or more employees.

**Page 46 - Military Spouse Leave**

Editor’s Note:Applies to all Employers with 25 or More Employees.

**PERSONNEL AND OTHER EMPLOYMENT RECORDS**

**Page 47 - Personnel Records**

Editor’s Note: The request for inspection or copying can also be made by an employee’s authorized representative. Employees need not use the Company’s form to make a valid written request. If an employee is required to inspect or receive a copy at a location other than the place where he or she reports to work, no loss of compensation to the employee is permitted because of the time needed for the employee to travel from the site where the employee normally reports to work. Employers have the right to redact the names of any non-supervisory employee from the records being copied and produced. If a former employee seeking to inspect his or her personnel records was terminated for a violation of law, or an employment-related policy, involving harassment or workplace violence, an employer may comply with the request by doing one of the following: (a) making the personnel records available to the former employee for inspection at a location other than the workplace that is within a reasonable driving distance of the former employee's residence; or (b) providing a copy of the personnel records by mail. Please note that the changes noted above do not apply to employees covered by a valid collective bargaining agreement (CBA), if the CBA expressly provides for all of the following: (a) the wages, hours of work, and working conditions of employees; (b) a procedure for the inspection and copying of personnel records; (c) premium wage rates for all overtime hours worked; and (d) a regular rate of pay of not less than 30 percent more than the state minimum wage rate. Further, you are not required to comply with more than 50 requests for a copy of the records described in this statute (seeking 50 separate employee's records) filed by a representative or representatives of employees in one calendar month, nor with more than one request per year by a former employee to inspect or to receive a copy of his or her personnel file. Finally, if an employee files a lawsuit, relating to a personnel matter, this inspection/copying section does not apply.

Editor’s Note: It is recommended that you keep personnel files for length of employment + 4 years.

Editor’s Note: It is recommended that financial records, time records, any medical records, and the I-9 forms be separated from the personnel file.

**Page 47** - **Requests For Payroll Records**- **(Optional** – you must abide by this rule but do not need to include it in a handbook) The Company will provide an employee or former employee with copies of his or her payroll records within twenty-one (21) days of his or her written request.

Editor’s Note: California recently passed revisions to its Consumer Privacy Act law (CCPA) such that it now will mandate certain requirements for employee records for covered employers.

The CCPA goes into effect on January 1, 2020 and “grants consumers various rights with regard to their personal information held by businesses, including the right to know, access and request deletion of their data.” AB 25 clarifies that the CCPA gives rights to all individuals that a business collects personal information from, including applicants, current and former employees, contractors, emergency contacts, and dependents/spouses for purposes of administering benefits. Accordingly, any personal information a business maintains that can identify these individuals is subject to CCPA.  The CCPA covers for-profit “businesses” who meet any one of the following thresholds:  (1) Gross annual revenue exceeds $25 million; or (2) Buys, receives, sells, or shares personal information of 50,000 or more consumers, households, or devices; or (3) Derives 50% or more of its annual revenue from selling personal information.  Businesses do not have to be located in California for CCPA to apply.  CCPA applies if one of the foregoing thresholds is met and the company has “consumer” data covered by the Act.    The first step is to determine whether your company is subject to the CCPA. If you qualify, please contact your attorneys for policy language.

**SAFETY AND SECURITY**

**Page 51 -** **Your Safety**

Editor’s Note: Effective January 1, 2020, AB 1804 and 1805 expand the reporting method for OSHA and the definition of serious injury or illness and serious exposure for reporting purposes. More specifically, AB 1804 amends section 6409.1 of the Labor Code and requires that employers report any serious occupational injury, illness or death to the Division of Occupational Safety and Health (Cal OSHA) through an online platform to be created by Cal OSHA. Until such platform is available, employers may continue making these reports by telephone or email. In addition, AB 1805 amend sections 6302 and 6309 of the Labor Code and changes the definitions of “serious injury or illness” and “serious exposure” to align with the federal Occupational Safety and Health Administration (OSHA) standards. Specifically, the new law removes the requirement of inpatient hospitalization for more than 24 hours for reasons other than medical observation or tests to qualify as a “serious injury or illness” (which must be reported to Cal OSHA). As a result, employers will have to report all inpatient hospitalizations. The law also explicitly identifies the loss of an eye and amputation as a serious injury that must be reported. In addition, the new law updates the definition of “serious exposure” to mean exposure to a hazardous substance that has a “realistic possibility” of death or serious physical harm (rather than requiring “substantial probability” of death/serious harm). Employers should understand the implications of these changes, including the fact that reported injuries, and resulting Cal OSHA investigations and citations, could increase.

**Page 56 - Hazardous Substance Training**

Editor’s Note: SB 258, effective January 1, 2017, adds **6398.5 to the Health and Safety Code.** It requires that any employerthat is required to maintain safety data sheets and ensure that those safety data sheets are readily accessible shall, in the same manner and to the same persons, make readily available the printable information described in subdivision (c) of Section 108954.5 of the Health and Safety Code for designated products, as defined in subdivision (f) of Section 108952 of the Health and Safety Code, in the workplace. The manufacturer should be including the required information in the SDS or it can have a link to the information, but, this information will have to be provided in printable format to the employees by the employer.

**Page 57 -** **Workplace Security Policy**

Editor’s Note 1: Additional Employee Assistance After Acts of Domestic Terrorism (AB 44): If employees are injured in an act of domestic terrorism, AB 44 requires employers to provide injured employees with immediate support from a nurse case manager, who will: 1. assist injured employees in obtaining medically necessary medical treatment; and 2. assist providers of medical services in seeking authorization of medical treatment. These provisions apply only if the Governor declares a state of emergency in connection with the act of domestic terrorism. Upon such a declaration by the Governor, employers have three days to provide notice to employees advising them of the above rights. The Administrative Director of the California Division of Workers’ Compensation will be developing the notice and regulations to implement these rules. (See Labor Code section 4600.05).

Editor’s Note 2: AB 61, effective January 1, 2020, allows employers, co-workers (with employer approval) who regularly interact with the person, or an employee or teacher of a secondary or postsecondary school (with school administration approval), to file a petition for a gun violence

restraining order. Employers should consult with legal counsel on this law’s implications related to the employers’ workplace violence prevention policies and strategies.]

**Page 60 - Right to Observe Employees**-

Editor’s Note 1: You must list here in this policy all locations in which you will post an electronic device. Also, you should post a notice at the physical locations where the cameras are located that the area is being monitored by video surveillance. Please note that legally you may not record audio, but only video.

Editor’s Note 2:This second option is only permissible where you have evidence leading to an investigation of misconduct.Therefore, employees should have no anticipation of privacy in the workplace, with the exception of restrooms and changing rooms.

Additional Editor’s Note: Under AB 1732, commencing on March 1, 2017, all single-user toilet facilities in any business establishment, place of public accommodation, or government agency must be identified as all-gender toilet facilities.

**Page 60 - Voice Mail, E-Mail, and Computer Files**

Editor’s Note:AB 1844 prohibits employers from requiring or requesting employees or job applicants to provide user names or passwords for personal social media accounts and from requesting an employee or applicant to divulge personal social media. There are limited exceptions, including an exception relating to employer investigations.

**Page 62 -** **Safe Operation of Vehicles**

Editor’s Note:Consider having employees name the Company as an additional insured under their own policy. Note that you cannot require them to carry insurance above state basic minimums – if you do, then the DLSE argues you have to reimburse employees for the cost of that extra insurance which is arguably not part of the IRS rate calculation.

**Page 62 - Cell Phone Safety and Electronic Communication When Driving**

Editor’s Note: Under AB 1875, the existing hands-free law related to cell phones is expanded by making it illegal to simply even hold and operate a cell phone while driving. If an individual has a cell phone holder attached to a car, he or she can legally swipe at the phone while driving. However, launching apps and surfing the web will now be clearly outlawed.

**EMPLOYEE HANDBOOK REVISIONS**

**Page 67** - Editor’s Note: We recommend that it be only the President of the company who is able to sign such a document deviating from at will employment.

**RECEIPT AND ACKNOWLEDGEMENT FOR EMPLOYEE HANDBOOK**

**Page 68** - Editor’s Note: The “RECEIPT AND ACKNOWLEDGEMENT FOR EMPLOYEE HANDBOOK” statement above must be separated from the employee’s copy of their handbook, and placed in the employee’s personnel file. The Company upon receiving the “RECEIPT AND ACKNOWLEDGEMENT FOR EMPLOYEE HANDBOOK” statement from the employee should make a copy of the receipt and return copy back to employee.