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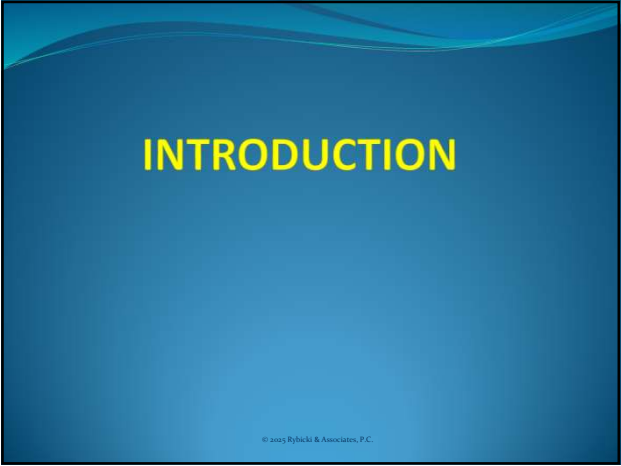
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**NEW LAWS**

Laws adopted by federal, state & local governments

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**WAGES AND PAYMENT**

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**Minimum Wage**

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**Minimum Wage**

- Minimum wage rose to \$16.50 on January 1, 2025, for most employers (higher for others)
- See state wage order MW-2025 (and adjusted rates):
  - <https://www.dir.ca.gov/lwc/MW-2025.pdf>

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**Minimum Wage**

- Other effects:
  - Salary must be at least twice the amount (starting at \$68,640) for white collar exemptions
  - No “part time” salaried employees
  - Meal and rest period minimum penalties increase
  - “Unproductive time” and rest periods for piece-rate employees
  - Reporting-time pay, split-shift pay

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**Minimum Wage**

- Computer Software Professionals = *exempt if paid*:
  - \$56.97 per hour, or
  - annual salary of not less than \$118,657.43 for full time employment and paid not less than \$9,888.13 per month
  - <https://www.dir.ca.gov/OPRL/ComputerSoftware.htm>

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### Minimum Wage

- Physicians = *exempt if paid*:
  - \$103.75 per hour
- But could also be paid \$ 68,640 salary on a 'salary basis' as a *professional employee!*
- No similar hourly exemption for attorneys (unlike federal law) or *any other* professions (except software professionals, above)

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## Healthcare Facilities

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### Healthcare Facilities

- Applies to almost two dozen types of healthcare facilities
- *Does not* apply to other types of employers or operations (but see below)

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## Healthcare Facilities

- A facility or other work site that is part of an **integrated health care delivery system**
- A **licensed general acute care hospital**, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, including a distinct part of any such hospital
- A **licensed acute psychiatric hospital**, as defined in subdivision (b) of Section 1250 of the Health and Safety Code, including a distinct part of any such hospital
- A **special hospital**, as defined in subdivision (f) of Section 1250 of the Health and Safety Code
- A **licensed skilled nursing facility**, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, if owned, operated or controlled by a hospital or integrated health care delivery system or health care system
- A **patient's home** when health care services are delivered by an entity owned or operated by a general acute care hospital psychiatric hospital
- A **licensed home health agency**, as defined in subdivision (a) of Section 1727 of the Health and Safety Code
- A **clinic**, as defined in subdivision (b) of Section 1204 of the Health and Safety Code, including a specialty care clinic, or a dialysis clinic
- A **psychology clinic**, as defined in Section 1204.1 of the Health and Safety Code
- A **clinic** as defined in subdivision (d), (g), or (l) of Section 1206 of the Health and Safety Code

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## Healthcare Facilities

- Applies to individuals providing “health care services” or “services supporting the provision of health care” including:
  - nursing; caregiving; services provided by medical residents, interns, or fellows; and services supporting patient care including technical and ancillary services; janitorial work; housekeeping; groundskeeping; guard duties; business office clerical work; food services; laundry; medical coding and billing; call center and warehouse work; scheduling; and gift shop work
- Applies if the individuals provides services for a covered health care facility

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## Healthcare Facilities

- Additional issue:
  - Coverage for an employee who works less than 100% of time in covered places (e.g., janitor gardener providing maintenance or landscaping at healthcare and non-healthcare locations)?
    - If **more than ½ time** = pay for all hours at covered facilities
    - If **less than ½ time** = no healthcare facility minimum unless operator is a **joint employer** of the worker

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## Healthcare Facilities

- Applies to *subcontractor* employees if:
  - A worker provides health care services or services supporting the provisions of healthcare, *and*
  - The worker's employer (the contractor or subcontractor) contracts with a "covered health care facility" directly or through a contractor or subcontractor to provide health care services or services supporting the provision of health care, *and*
  - The health care facility is a *joint employer* of the worker or the worker spends *more than 50% of their time in a workweek performing work at the covered health care facility (see above)*

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## Healthcare Facilities

- Guidance provided by the Department of Industrial Relations at:
  - <https://www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-FAQ.htm>
  - (Waivers) <https://www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-Clinic-Waiver-FAQ.htm>

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## Healthcare Facilities

- A **licensed residential care facility for the elderly**, as defined in Section 1569.2 of the Health and Safety Code, if affiliated with an acute care provider or owned, operated or controlled by a general acute care hospital, acute psychiatric hospital, or the parent entity of a general acute care hospital or acute psychiatric hospital
- A **psychiatric health facility**, as defined in Section 1250.2 of the Health and Safety Code
- A **mental health rehabilitation center**, as defined in Section 5675 of the Welfare and Institutions Code
- A **community clinic** licensed under subdivision (a) of Section 1204 of the Health and Safety Code; **intermittent clinic** exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code
- A **rural health clinic**, as defined in paragraph (1) of subdivision (l) of Section 1396d of Title 42 of the United States Code
- An **urgent care clinic that provides immediate, nonemergent ambulatory medical care**, including but not limited to walk-in clinics or centers
- An **ambulatory surgical center** that is certified to participate in the Medicare Program A physician group operating as a medical group practice, a corporation controlled by physicians and surgeons, or a medical partnership with 25 or more physicians
- A **county correctional facility** that provides health care services
- **County mental health facility**

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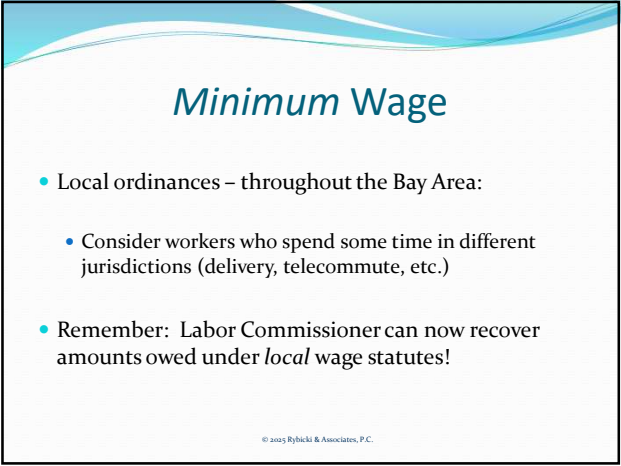
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### Local Ordinances

- Review *all* jurisdictions employees visit or work in
- Local ordinances proliferate:
  - Sick and family leave
  - Benefit contributions
  - Scheduling requirements
  - Many other varied local ordinances

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### Local Ordinances

- Variety of situations where an employer may owe minimum wages in another area:
  - **San Francisco:** all employees working more than *two hours per week*
  - **Sonoma:** (\$18.02/\$16.96) all employees who work two hours in *any particular workweek*
  - **Santa Rosa:** (\$17.87) two hours *in a particular week*

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### Local Ordinances

- Very important to consider some of the issues:
  - How to calculate 'regular rate' and overtime
  - How to calculate payment of sick leave
  - Other potential ordinances (health coverage etc.!)

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## Agricultural Workers

- In the past: agricultural workers *not covered by an industrial wage order* could work 10/60 weeks without overtime
- This has been phased out for different sizes of employers over the past several years
- Effective 2025: *all* employer are required to pay 8/40 overtime to agricultural workers

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## Other Issues

- This presentation does not address some specific areas that should be familiar to employers in certain industries:
  - Large fast-food operations
  - Hotel/hospitality wages in certain locations such as Los Angeles

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## Independent Contractors

SB 988

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**Independent Contractors**

- Important: SB 988 - Freelance Workers Protection Act
- Should be called: “**Independent Contractor Protection Act**” as it covers *many* modern freelancers
- Review the law at:
  - [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202320240SB988](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB988)

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**Independent Contractors**

- Contractor covered even when *incorporated*
  - (How do you know whether there is more than one person at “Happy Flower Delivery, Inc.”?)
- Covers any “professional services in exchange for an amount equal to” **\$250** including any services “during the **immediately preceding 120 days**”

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**Independent Contractors**

- Contractor covered even when *incorporated*
  - (How do you know whether there is more than one person at “Happy Flower Delivery, Inc.”?)
- Covers any “professional services in exchange for an amount equal to” **\$250** including any services “during the **immediately preceding 120 days**”

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## Independent Contractors

- Marketing
- Administrator of human resources
- Certain travel agent services
- Graphic design
- Grant writer
- Fine artist
- IRS enrolled agent
- Payment processing agent
- Still photographer, photojournalist, videographer, or photo editor
- Digital content aggregator
- Writer, translator, editor, copy editor, illustrator, or newspaper cartoonist
- Content contributor, advisor, producer, narrator, or cartographer
- Licensed esthetician, licensed electrologist, licensed manicurist, licensed barber, or licensed cosmetologist
- A specialized performer hired by a performing arts company or organization to teach a master class for no more than one week
- Appraiser
- Registered professional foresters

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## Independent Contractors

- Definition of “Professional Services” is the same as Labor Code section 2778(b)(2)
- Section 2778 is at:
  - [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=2778.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2778.&lawCode=LAB)

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## Requirements

- Written contract providing:
  - (1) The name and mailing address of each party
  - (2) An itemized list of all services to be provided by the freelance worker, including the value of those services and the rate and method of compensation
  - (3) The date on which the hiring party shall pay the contracted compensation or the mechanism by which the date shall be determined
  - (4) The date by which a freelance worker shall submit a list of services rendered under the contract to the hiring party to meet the hiring party’s internal processing deadlines for purposes of timely payment of compensation

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## Requirements

- A **copy of the contract** must be provided in hard or electronic copy to the freelancer
- Contract must be retained for **four years**
- Hiring party must pay **by the date in the contract** and no later than **30 days after service**

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## Independent Contractors

- Hiring party must pay on time and may not require:
  - require a **discount** for timely payment, or
  - Require **more goods or services**, or grant **more intellectual property** rights, than agreed to in the contract

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## Penalties

- Violations may result in:
  - **\$1000 award** for refusal to provide a written contract when requested
  - Up to **double damages for failure to pay on time** (question: is this a 2x penalty *separate* from amounts due to the worker?)
  - **Damages equal to the value of the contract or the work performed** (whichever is greater) for any other violation of the contract
  - Attorney fees and costs, injunctive relief

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**Independent Contractors**

- Applies to contracts started or renewed on or after January 1, 2025

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**RECRUITMENT AND HIRING**

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**Drivers License**

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### Drivers License

- SB 1100: Employers may not include language in job advertisements, postings, applications, or other material that an applicant must have a driver’s license unless:
  - The employer reasonably expects driving to be one of the job functions for the position, *and*
  - The employer reasonably believes that using an alternative form of transportation would not be comparable in travel time or cost to the employer

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### Drivers License

- “Alternative form of transportation” includes, but is not limited to:
  - Using a ride hailing service
  - Using a taxi
  - Carpooling
  - Bicycling
  - Walking

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## Use of Digital Replicas

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## Digital Replicas

- Labor Code section 927:
- Most contracts with an individual may not require that an employer may use a “digital replica” of the individual “in place of work the individual would otherwise have performed in person”
- Digital replicas include computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work, or transmission in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered

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## Digital Replicas

- Exceptions:
- The contract contains a “reasonably specific description of the intended uses” (unless use is consistent with the terms of the agreement or the fundamental character of photography or soundtrack)
- The individual was represented by counsel who negotiates clear terms or a union that negotiates a collective bargaining agreement addressing digital replicas

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## Neural Data

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## Privacy- Neural Data

- California Consumer Privacy Act (CPRA) requires disclosures as to the types of sensitive personal information is collected and used by many employers
- Employers who are or may be covered by the CPRA should have developed a set of privacy disclosures and procedures
- 2025 brings an added category of “sensitive personal information” (previously items such as SSN, DL and passport numbers, account logins, geolocation, etc.): “neural data”

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## Privacy- Neural Data

- “Neural data” includes information that is generated by measuring the activity of a consumer’s central or peripheral nervous system, and that is not inferred from nonneural information.
  - Wearables
  - Exercise equipment
  - Certain types of security system collection

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## Social Compliance Audits

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**Social Compliance Audits**

- Applies to any employer required (or chooses) to participate in a Social Compliance Audit
- Often required by retailers, manufacturers, 'brands' (including sales and wineries) to "maintain oversight" of their supply chain

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**Social Compliance Audits**

- New law applies to any employer who "voluntarily subjected itself" to such an audit where any part of the audit is "to determine if child labor is involved in the employer's operations or practices"
- Includes "nongovernmental" inspections or practices to evaluate compliance with state and federal labor laws
- Requires a "clear and conspicuous link" on the employer's website to a report on findings

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**Social Compliance Audits**

- Report must contain:
  - The year, month, day, and time the audit was conducted, and whether the audit was conducted during a day shift or night shift
  - Whether the employer did or did not engage in, or support the use of, child labor
  - A copy of any written policies and procedures the employer has and had regarding child employees

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## Social Compliance Audits

- Report must contain:
  - Whether the employer exposed children to any workplace situations that were hazardous or unsafe to their physical and mental health and development
  - Whether children worked within or outside regular school hours, or during night hours, for the employer
  - A statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations

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## Issues

- Definition of “social compliance audit” is very broad – it could apply to *any* non-governmental audit
- Can it apply to an employer’s *own* review of policies and practices (e.g., compliance audit)
- Employers should again consider both use of minors and the “mandated reporter” obligations now in place in California!

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## Whistleblower Posting

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## Whistleblower Poster

- Employers must post a list of employee rights and responsibilities under whistleblower laws
  - At least 14-point font
  - Including telephone number of the California Attorney General whistleblower hotline
- Labor Commissioner form available at: <https://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf>

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## Workers Compensation Posting

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## Workers Compensation

- Posting requirement expanded to include “information concerning an injured employee’s ability to consult a licensed attorney to advise them of their rights under workers’ compensations laws”
- Failure to post is “prima facie evidence of noninsurance” – which can lead to a “stop order” and more than \$10,000 fine (*and estimated cost penalties!*)

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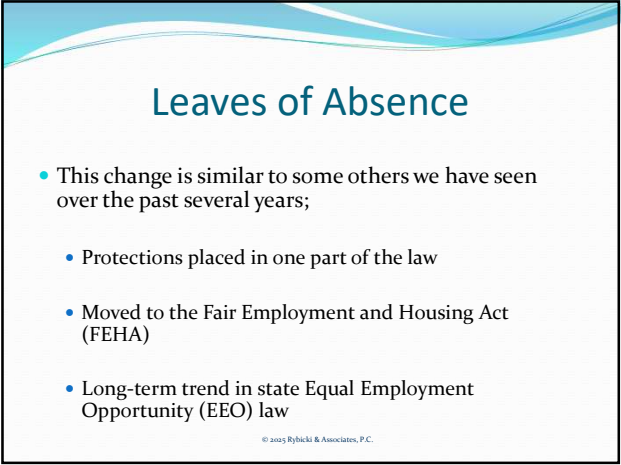
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## Leaves of Absence

- Changes from one area to the FEHA have significant impact
  - Jurisdiction by Civil Rights Division (former DFEH)
  - Requires change to definitions in handbooks
  - Changes grounds for harassment as well as discrimination

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## Right to Leave

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## Fair Employment and Housing Act

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## Jury Duty and Witness Leave

- FEHA amended to prohibit adverse action against an employee who:
  - Serves on a jury (with reasonable notice), or
  - Takes time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding

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## Victim of Crime Leave

- FEHA also amended to prohibit adverse action against any employee who:
  - is a **victim** (of a crime or act of violence)
  - to obtain or attempt to obtain any **relief**
  - Including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of **the victim or their child**

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## Victim of Crime Leave

- Employers with **more than 25 employees** must allow time off to obtain:
  - temporary **restraining order**, restraining order, or other injunctive relief;
  - **medical attention** for or to recover from injuries caused by a qualifying act of violence;
  - Services from a **domestic violence shelter**, program, rape crisis center, or victim services organization;
  - **psychological counseling or mental health services** related to an experience of a qualifying act of violence;
  - **safety planning** or other actions to increase safety from future qualifying acts of violence;
  - **Relocation or securing a new residence** including temporary or permanent housing or enrolling children in a new school or childcare;
  - **care to a family member** who is recovering from injuries;
  - **civil or criminal legal services** in relation to the qualifying act of violence;
  - **civil, administrative, or criminal legal proceeding** related to the qualifying act of violence;
  - **childcare or care** if necessary to ensure the safety of the child or dependent adult.

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### Victim of Crime Leave

- Employers with **more than 25 employees** must also pay attention to an expanded definition of 'family member':
  - child,
  - parent,
  - grandparent,
  - grandchild,
  - sibling,
  - spouse, or domestic partner,
  - designated person (the equivalent of a family relationship)
- As with Paid Sick Leave the "**designated person**" may be identified by the employee at the time the employee requests the leave; employer may limit an employee to one designated person per 12-month period

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### Victim of Crime Leave

- **Reasonable advance notice** is *generally* required when possible
- Employer may request **certification** – but this is permitted in many forms ranging from police reports "indicating" that the employee or family member was a victim to a written statement signed by the employee, "certifying that the absence is for a purpose authorized under this section "
- Employer must keep documentation **confidential**

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### Victim of Crime Leave

- Additional obligations include:
  - Reasonable accommodation of an employee who is a victim or whose family member is a victim of a qualifying act of violence who requests an **accommodation for the safety of the employee while at work**
  - **Employers may not discriminate** an employee's status, or the employee's family member's status, as a victim
  - Employer notice provisions apply – **formal notice prepared by July 1, 2025**

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## Limits of Leave

- Employees may use vacation, personal leave, paid sick leave, or compensatory time off for time taken off for any of the purposes within the amendments
- But:
  - employees do not have a right to take unpaid leave that exceeds the 12-week unpaid leave time allowed under the federal Family and Medical Leave Act (FMLA)
  - There are much shorter limits for most family victim leave purposes
  - Time runs concurrent with California Family Rights Act and FMLA time if such leave is available to the employee for the purpose

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## Expanded Leave Guidance

- Guidance has not been issued by the CCRD but has been published by the Labor Commissioner
- Look for guidance, and the mid-year notice form, at the Civil Rights Department website: <https://calcivilrights.ca.gov/>
- Current Labor Commissioner guidance can be viewed at:
  - [https://www.dir.ca.gov/dlse/paid\\_sick\\_leave.htm](https://www.dir.ca.gov/dlse/paid_sick_leave.htm)

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## CA Paid Sick Leave

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## Paid Sick Leave Changes

- Paid Sick Leave rules were also changed along with placing additional leave under the Fair Employment and Housing Act
- These provisions will change Paid Sick Leave policies as well because employees may use PSL for *any* of the reasons added to the FEHA

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## Agricultural Employees

- Agricultural employees who work outside may use paid sick leave to avoid smoke, heat, or flooding conditions created by a local or state emergency
- Also allowed when an employer closes operations for the same reasons
- “Local or state emergency” exists if the Governor proclaims a state of emergency, or a local emergency is proclaimed, due to smoke, heat, or flooding conditions

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## Agricultural Employees

- The Labor Commissioner already revised its Sick Leave guidance to explain its position on the leave (as well as victim of crime leave)
- Current Labor Commissioner guidance can be viewed at:
  - [https://www.dir.ca.gov/dlse/paid\\_sick\\_leave.htm](https://www.dir.ca.gov/dlse/paid_sick_leave.htm)

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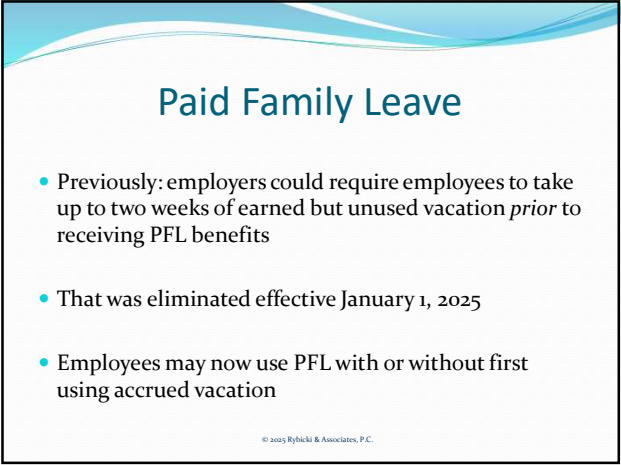
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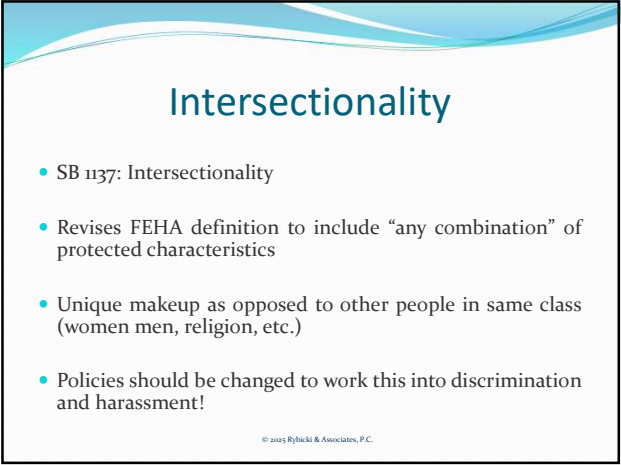
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**CROWN Act**

- FEHA currently protects hairstyles and styles “historically associated with race”
- SB 1137 *removes* the concept of “historical” – now defines ‘race’ to include all “traits associated with race”
- Policies should be revised to ensure proper language

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**WORKPLACE SAFETY**

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**Workplace Harassment Injunctions**

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## Workplace Injunctions

- My soapbox: long history of employers’ ability and inability to obtain protection for workers
  - In the past: there was *no* formal way for employers to help; we would appear on behalf of the *employee* rather than the employer (conflicts aside)
  - Recently: restrictive definition of what justified a workplace injunction limited to serious threats, stalking etc.

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## Workplace Injunctions

- New standard:
  - May be based on “harassment”
  - “knowing and willful **course of conduct** directed at a specific person that seriously **alarms, annoys, or harasses the person**” and serves no legitimate purpose
  - must be that which would cause a reasonable person to suffer **substantial emotional distress** and must actually cause substantial emotional distress

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## Workplace Injunctions

- The new standard is not easy and still requires a high level of proof
  - Injunctions interfere with constitutional rights
- But: the definition fits the type of conduct we see *and* will educate judges on the difference between personal and workplace conduct

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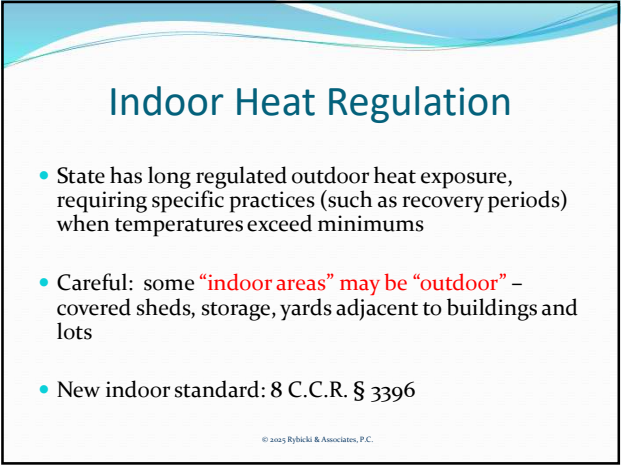
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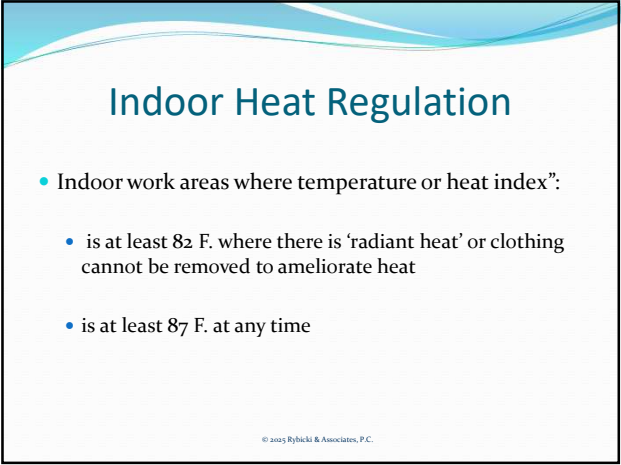
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## Indoor Heat Regulation

- Various requirements that model many outdoor heat requirements, such as:
  - Access to “cool down” areas
  - Active monitoring for heat illness
  - Proactive assessment and control measures
  - Emergency response procedures
  - Training
  - Heat Illness Prevention Plan

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## Indoor Heat Regulation

- Extensive guidance provided by Cal-OSHA:
  - <https://www.dir.ca.gov/dosh/heat-illness/indoor.html>  
(basic guidance)
  - <https://www.dir.ca.gov/dosh/HeatIllnessInfo.html>  
(comparison of outdoor and indoor requirements)
  - <https://www.dir.ca.gov/osh/sb/documents/Indoor-Heat-updated-txtbrdconsider.pdf>  
(regulation text)

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# FEDERAL DEVELOPMENTS

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**NOT Federal (but almost)**

- State law revised to prohibit mandatory “captive-audience” meetings where employers share their views on “religious or political matters”
- “Political matters” include matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization
- “Religious matters” include matters relating to religious affiliation and practice, and the decision to join or support any religious organization or association
- Employers facing union organizing should seek counsel immediately to navigate National Labor Relations Board policy and doctrine, but –
- State law has been challenged and is likely to be overturned or modified (stay tuned)

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**Federal Pregnancy Accommodation**

- EEOC has issued pregnancy fairness regulations addressing issues such as reasonable accommodation and interactive process issues
- These will overlap broad existing state law under our Pregnancy Disability Act
- Discussion at: <https://www.eeoc.gov/summary-key-provisions-eeocs-final-rule-implement-pregnant-workers-fairness-act-pwfa>

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**OTHER NEW ISSUES**

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### PAGA Reform

- PAGA discussion – civil penalties
- Reform has allowed changes for *new* cases
- Major issue: review and correct compliance *immediately* upon receiving a request for employee records!

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## DISCUSSION OF SELECTED COURT CASES

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### Court Cases

- In most years there are fewer statutes and regulations, leaving *more time* for caselaw!
- The past year has seen significant cases on arbitration, PAGA penalties, wage and hour issues, meal and rest periods, discrimination and retaliation claims, and various other areas
- There are a few cases, however, to consider quickly:

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### Court Cases

- Reimbursement of workers for home work even when required by health officials.
- Use of federal percentage bonus standards rather than state Labor Commissioner opinion
- Proportion of religious duties required for an employee to fall within the “ministerial exception ”
- “Hobson’s choice” case finding presence of music may be offensive on one hand even though prohibiting it could appear discriminatory
- Revision of religious accommodation standard to limit *de minimus* standard
- Affirmation of requirement that accommodation permit essential job functions

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### Recent Activity on:

- Meaning of ‘adverse action’ under federal EEO laws
- Application of meal period penalties to unionized employees
- Refinement of travel and ‘controlled’ time in pre-shift activities under California law
- Incorporating one arbitration agreement into another agreement

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## ON THE HORIZON

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**On the Horizon**

- There are many more changes likely
- Various laws are also likely to be addressed such as potential state laws affecting **arbitration agreements, family care, artificial intelligence**
- Federal agencies and Congress are likely to implement changes rapidly (potentially in early 2025)

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**On the Horizon**

- Keep an eye on California Chamber of Commerce bill positions (such as “jobkiller” status) and position statements:
  - <https://advocacy.calchamber.com/bill-positions/>

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**Be Prepared**

- WATCH for interpretations by agencies over the coming months (CCRD, Labor Commissioner, DOL)
- READ postings and newsletters from chambers and industry organizations
- REVIEW policies and materials to ensure compliance with these new laws

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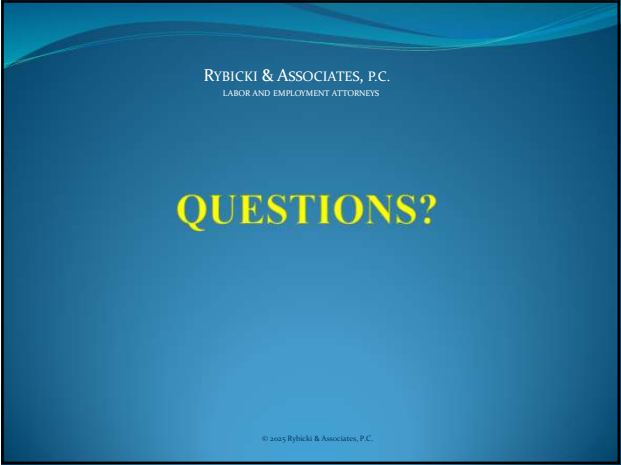
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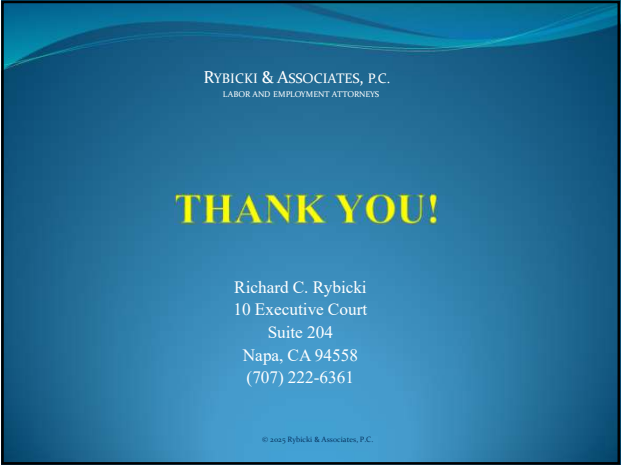
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