CAUSE OF ACTION CHECKLIST
Prepared by Steve Danz and Melanie Porter, Attorney,
San Diego Offices of SD&A

Hiring, Termination, and Contractual

- Failure to Hire (based on discrimination/FEHA or Cal. Const. Article One, Section 8)
- Public Policy Tort Termination (Tameny tortious discharge)
- Tortious Constructive Discharge (forced to resign)
- Retaliation (Govt. Code § 12653; Lab. Code § 1102.5)
- Wrongful Demotion (Scott v. PG&E (1995) 11 Cal.4th 454.)
- Breach of Contract (oral or written)
- Breach of Implied Covenant of Good Faith and Fair Dealing
- Intentional Interference with Prospective Economic Advantage
- Intentional Interference with Contract
- Promissory Estoppel (detrimental reliance on unenforceable promise)
- Unjust Enrichment/Quantum Meruit
- Conversion (of wages) C/L
- Conversion of personal property C/L
- Fraud & Deceit (Civ. Code §§ 1709-1710; 1534)
- Negligent Hire and Retention
- California Government Code § 12960, et seq.Fair & Employment & Housing Act (“FEHA”) Violations
  - Discrimination: based on race, age, sex (includes breast feeding per AB 2386), pregnancy, sexual orientation, gender identity, disability, religion (includes religious dress & grooming practices per AB 1964) veteran or active military status (per AB 556) [based on disparate treatment or disparate impact]
  - Sexual Harassment (conduct need not be motivated by sexual desire per AB 292)
  - Failure to Prevent Discrimination/Harassment (Govt. Code § 12940(k))
  - Failure to Accommodate Disability (Govt. Code § 12940(m))
  - Failure to Engage in Interactive Dialogue (Govt. Code § 12940(n))
  - Failure to Accommodate Religious Preferences (Govt. Code § 12940(k))
  - Retaliation (Govt. Code § 12940(h))
  - Aiding & Abetting (Govt. Code § 12940(g))
  - Wage Discrimination
- Unruh Civil Rights Act Violation (discrimination against non-EE (Civ. Code §§ 51 et seq)
Leave Time

- California Family Rights Act (Govt. Code § 12945.2) (retaliation related to CFRA leave Govt. Code §§ 12945.2(a), (t))
- California Pregnancy Disability Leave Law (FEHA Gov. Code § 12945(a)
- California Paid Leave Act (provides up to 6 wks of partial paid time but no return rights & extends protection to take care of seriously ill grandparents, grandchildren, siblings & parents in law) (SB 770) (Unemploy. Ins. Code §§ 2708, 3300-3303)
- Military Duty or Training (Mil. & Vet. Code § 394)

Miscellaneous Related Torts & Statutory Violations

- Defamation (libel & slander Civ. Code §§ 43,45, 46(3)-47)
- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Negligent Supervision/Retention
- Right to Privacy (C/L)
- Invasion of Privacy (Cal. Const., Article 1, Section One)
- Public Disclosure of Private Facts (invasion of privacy)
- False Light (invasion of privacy)
- Improper Disclosure of Health/Medical Information (Civ. Code § 56.20, HIPAA)
- Improper Disclosure of Social Security Number (Civ. Code § 1798.85)
- Improper Use of Consumer Credit Report (Civ. Code § 1785.1)
- Improper Use of Investigative Report (Civ. Code § 1786)
- Assault (C/L)
- Battery (C/L)
- Civil Extortion (C/L)
- Fraud and Constructive Fraud (CC 1572-1573; 1709-1710)
- Sexual Battery (Civ. Code § 1708.5)
- Civil Conspiracy to violate [add tort] (not freestanding, must be paired with violation of a law)
- Unfair Business Practices (Bus. & Prof. Code §§ 17200-17500 et seq.)
- Physician-employee advocating medically appropriate health care (Bus. & Prof. Code § 2056(c))
Wage Claims & other Labor Code Violations

- § 96k provides lost wages for failure to hire, demotion, suspension or discharge from employ b/c employee engaged in lawful conduct during non-work hrs away from ER’s premises (will not support ppt)
- § 98.6 discrimination for exercise of rights (AB 262 expanded to include protections for employee engaging in immigration-related activities) (AB 254 makes employer liable for criminal extortion for threatening to report immigration status)
- § 132a discrimination for filing work comp claim (use only as basis for ppt)
- § 201 wages due on termination (immediate)
- § 202 wages due on quitting (72 hours)
- § 203 penalties for willful failure to pay discharged/quitting ee
- § 210 willful failure to pay - see also Lab. Code §§ 2698 and 225.5
- § 215 makes failure to pay wages due a misdemeanor
- § 206.5 forced to sign release for wages due
- § 218.5 attys fees for any action relating to non-payment of wages (limited ER’s ability to recover attys fees as prevailing part only if EE brought claim in bad faith per SB 462)
- § 221 makes illegal collection back from employee of any wages paid
- § 223 makes illegal any deal to pay less than prevailing wage due under statute or contract
- § 225.5 penalties (query whether can be demanded under private atty gen.)
- § 226 penalty/remedy due to employee’s failure to provide specified info on wage stmts (SB 1255 employee “injury” as failure to provide accurate wage stmts even if no actual injury)
- § 226.7 illegal to make employee work during meal or rest period - 1 hr penalty (recovery period required to cool down to prevent employee heat illness per SD 435)
- § 227.3 vacation time due at termination
- § 229 allows employee to sue in court for wages despite any agreement to arb.
- § 230 Jury duty or witness leave
- § 230.1 Domestic Violence Leave (includes victims of stalking per SB 288)
- § 230.2 Crime Victim Leave (allows victims of crime time off to testify in court)
- §230.3 prohibits discrimination against employee for performance of emergency duty as volunteer firefighter, reserve peace officer or emergency rescue personnel
- § 230.4 Temporary Training Leave & reinstatement for voluntary firefights, reserve peace officer or emergency rescue personnel (14 days/no retaliation for taking leave per AB 11)
- § 230.7 prohibits termination or discrimination against employee for req’d appearance in school after child suspended
- § 230.8 protects employee who is parent, guardian or grandparent having custody of child for taking time off (up to 40 hrs/yr) to participate in child’s activities in school
- § 232 prohibits retaliation or termination of employer for discussing or disclosing wages or refusing to agree not to disclose wages
- § 233 Kin Care Leave (allows use of sick leave for illness of child, parent, spouse)
- § 234 makes violation per se where policy counts sick leave as absence
• § 351 makes it illegal to take tips from employee
• § 353 requires employee to maintain tip records
• § 407 Unlawful to require investment or stock purchase
• § 432 allows employee to get copy of any writing he has signed
• § 432.2 prohibits use of polygraph
• § 432.5 forcing employee to sign agreement to engage in illegalities
• § 432.7 prohibits requiring applicant to disclose arrest not resulting in conviction or dismissal or info concerning a referral or participation in pre/post trial diversion program
• § 432.8 protects employee from disclosing marijuana possession conviction more than 2 yrs old
• § 435 no audio/video recording of employees in bathroom, changing rooms
• § 510 work day 8 hours, overtime 1½ after 80.
• § 512 meal period
• § 515(d) requires nonexempt employee’s be paid OT for hours beyond 40 hrs/wk, 8 hrs/day
• § 752 non-unionized employee’s in smelters or underground mines have right to fair and impartial election to establish workday > 8 hrs
• § 923 right to spokesperson of own choosing (pre-empted by NLRA; limited to attorney or coworker representation w/consent)
• § 970 misrep (of kind, nature or duration) inducing change of residence for purpose of work, double damages § 972
• § 980 restricts employer from requesting access to employee’s social media
• § 230.7 makes termination illegal for parent to visit child’s school
• § 232 makes illegal refusal to allow employees to discuss wages
• §§ 1025-1028 Alcohol Drug Rehab Leave prohibits ER w/25 or more ees from discriminating/retiliating against employee who believes is denied accommodation to participate in rehab program
• §1041 Adult Literacy Leave (prohibits employee from discriminating/retiliating against employee who believes denied accommodation to enroll & participate in adult literacy program)
• § 1050 (misrepresentation to potential new ers)
• § 1061(b)(1) Janitorial and building serve ees may not be terminated without cause for 60 days follows change in building services contractor.
• §§ 1101-1102 prohibits dx/retaliation against employee for engaging in political choice
• § 1102 threat of discharge as coercion of political activity
• § 1102.5 whistleblower rights re refusal to engage or threatening to or actually reporting legal violations (see also CAL OSHA type reports, § 6310-6311) (SB 496 modified to protect employee regardless of whether disclosing info is part of job duties & includes complaints based on reasonable belief of violation of local rule or regulation)
• § 1102.6 shifts burden of proof to employer to prove by clear and convincing evidence that termination would have occurred regardless of whistle blowing
• § 1102.8 requires posting by employer of whistleblower numbers
• § 1182.5 min wage $9/hr (effective 7/1/14) and $10/hr after 1/1/16 (AB 10)
• § 1194 authorizes civil action regardless of agreement to contrary re min & OT wages due (§ 1194a) attorney fees authorized.
• § 1194(a) civil action for unpaid min wage or OT
• § 1194.2 double amount
• § 1197.1 liquidated damages for willful failure to pay min wage to Lab Comm.
• § 1197.5 wage discrimination based on gender (violation of Cal. Equal Pay Act)
• § 1197.1 liquidates damages for willful failure to pay min wage
• § 1198.3 protects EE who refuses to work hrs in excess of those permitted by IWC orders
• § 1198.5 reqs inspection of personnel records w/in 30 days written request ($750 penalty – see also § 226 which requires copies of all wage statements upon EE’s request)
• §§ 1400 et seq. WARN (Worker Adjustment and Retraining Notification Act (mass layoff requirements for State of CA; minor differences with fed WARN)
• §1450 Domestic Workers Rights Act (OT after 9 hrs/day or 45 hrs/wk)
• §1512 Donor Leave (protects EE who took paid leave to donate organ/bone marrow)
• § 2699 Private Attorney General Act (PAGA) (administrative exhaustion required)
• § 2751 commission agreements must be in writing
• § 2802 indemnification to EE
• § 2810 require written agreements for certain labor & services contracts (warehouse contractor (AB 1855), construction, farm labor, garment, security guard, janitorial)
• § 2856 excuses noncompliance with illegal orders
• § 2929 no termination for one judgment’s garnishment (LC notice req’d in some cases)
• § 2930 failing to provide copy of shopping investigator’s report before disciplining or terminating when based on report of employee’s conduct, performance or honesty)
• § 6310 no discrimination against EE for safety complaints to govt (note: complaint to ER is complaint to the govt for whistle blowing protection rights)
• § 6311 no discharge for refusing to work in violation of Cal OSHA
• California Code of Regulations (cite as Cal. Code Regs. Tit 2, section 7286.9A9)(1) (back pay to be in position as if discrimination had not occurred).
• § 6399.7 protects EE for complaining/testifying re non-compliance w/ Hazardous Substances Information & Training Act
• § 6402 no ER shall require or permit any EE to be in place of employment which is not safe and healthful.
• § 6403.5 protects health care worker for refusing to lift, reposition or transfer patient due to concerns re patient/EE safety or b/c of lack of trained lift team personnel or equipment
• § 6404 no ER shall occupy or maintain any place of employment that is not safe and healthful
• § 6405 no employer shall construct or cause to be constructed unsafe premises.
• Industrial Welfare Commission Orders (governs minimum wages, maximum hours and overtime in California, Lab. Code §§ 1173, 1176-1182, 1184-1190; also cited as 8 Cal. Code Regs §§ 11000 et seq. (IWC defunded in 2004 but orders remain operative)
• Health & Safety Code § 1278.5 (Health care ER may not discriminate or retaliate for EE making grievance to gov’t re quality of care, services or conditions.
• Cal. Fin. Code § 6530 (savings association may not retaliate against whistle blower)

**Public Employment Causes of Action**
• Must file tort claim per Gov’t Code (not required for FEHA claims) (Gov’t Code § 905)
• Failure to Discharge a Mandatory Duty Imposed by Enactment (Gov’t Code § 815.6)
• Dangerous Condition of Public Property (Gov’t Code § 835)
• Liability based on gov’t EE’s conduct in course and scope (Gov’t Code §§ 820.2-823)
• Peculiar Risk of Harm
• Negligent Retention of an incompetent contractor

**Miscellaneous Federal Causes of Action**
• Family Medical Leave Act (29 USC § 2612(a); 29 C.F.R. § 825.100)
• Civil Rights Act of 1866 (42 USC § 1981)
• Age Discrimination in Employment Act, 289 USC §§ 621-634) (“ADEA”)
• Rehabilitation Act (29 USC § 791)
• Americans with Disabilities Act (ADA) 42 USC §§ 122101-12213)
• ADA Amendments Act of 2008 (ADAAA)
• Equal Pay Act of 1963 (29 U.S.C. § 206(d)) [see also wage dx Labor Code § 1197.5]
• FLSA – federal equivalent for wage and hour claims (29 U.S.C. §§ 201 et seq.) (provides for individual liability)
• False Claims: Federal False Claims Act 29 USC § 3721
• WARN (Worker Adjustment and Retraining Notification Act 29 USC § 2101); ERISA (prohibits terminations for purpose of interfering with the attainment of any plan right), 29 USC § 1140
• Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USC § 4311 (no discrimination in hiring, reemployment, retention on basis of military service)
• 11 USC § 525(b) May not discharge EE for filing bankruptcy
• Racketeer Influenced and Corrupt Organization Act (RICO) 18 USC §§ 1961(1)(F), 1961(c), 1962(c)
• Sarbanes-Oxley (SOX) Whistleblower, 18 USC § 1514A
• Dodd - FrankWall Street Reform and Consumer Protection Act (WSRCPA), 15 USC §§ 78u-6(h)(1)(A).
• Whistleblower Protection Act 5 USC § 2302 (fed ees)
• Defense Contractor Employees 10 USC § 2409
• Toxic Substances Control Act 15 USC § 2622
• Asbestos Hazard Emergency Reponses 15 USC § 2651 (state or local agency prohibition on discrimination)
• Major Frauds Act 18 USC § 2807
• 42 USC § 1985(2), Federal Court witness protection from termination
• Patient Protection and Affordable Care Act 19 USC § 218c
• Occupational Safety and Health Act 29 USC § 660
• Records and Reports on Monetary Instruments Transactions 31 USC § 5328
• Federal Water Pollution control Act 33 USC § 1367
• Veterans Affairs 38 USC § 319 (retaliation)
• Emergency Health care Act 42 USC § 1395(dd) (hospital EEs protection)
• Institutionalized Persons 42 USC § 1997(d)
• Energy Reorganization Act 42 USC § 585; 50 USC § 2702 (relates to Dept. of Energy)
• Solid Waste Disposal Act 412 USC § 6971
• Clean Air Act 42 USC § 7622
• Comprehensive Environmental Response, Compensation & Liability Act 42 USC § 9610
• International Safe Container Act 46 App. USC § 1506
• Aviation Investment and Reform Act 49 USC § 42121 (safety violations)
• Commercial Motor Vehicle Safety, Trucking and Transportation 49 USC § 1105
• Pipeline Safety Improvement Act of 2002 49 USC § 60129

Causes of Action may be allowed in following cases, which are otherwise barred by Workers Compensation:
• Dual Capacity Doctrine (ER manufactures product which injures the EE or ER serves separate legal role
• Power Press Exception
• Employer failure to obtain work comp
• Assault by ER or ratification of assault by co EE.
• Fraudulent concealment by er of existence of an injury
• Negligent Exercise of Retained control
• Dangerous Condition of Premises
• Negligent Act of Third Party
• Gigux Doctrine (negligent act of separate but related entity)
• Negligent Performance of an Undertaking
• Peculiar Risk of Harm
• Negligent Selection of Contractor
• Negligent Provision of Required Precautions/Safeguards
• Negligent Failure to Warn of a Dangerous Condition
• Liability for Acts of Unlicensed Subcontractor

* This is not a complete list of all federal or state causes of action and is meant as a general guide to those causes most routinely relied upon in filing lawsuits on behalf of employees. This list should be considered educational in nature only. Consider this checklist a “work in progress”; you are invited to add or comment on causes of action. Let us know if you have a “favorite” that’s missing.