

EMPLOYMENT LAW CAUSES OF ACTION CHECKLIST

Hiring, Termination and Contractual

- Failure to Hire (FEHA/Cal. Cost. Article 1, §8)
- Wrongful Discharge in Violation of Public Policy
- Tortious Constructive Discharge
- Wrongful Demotion (*Scott v. PG&E* (1995) 11 Cal.4th 454)
- Retaliation (Govt. C. §12653; Lab. C. §1102.5)
- Breach of Contract (oral or written)
- Anticipatory Breach
- Breach of Employment Contract
- Breach of Implied Covenant of Good Cause
- Breach of Implied Covenant of Good Faith & Fair Dealing
- Unruh Civil Rights Act (Civ. C. §§551)
- Intentional Interference with Prospective Economic Advantage
- Intentional Interference with Contract
- Promissory Estoppel
- Unjust Enrichment/Quantum Meruit
- Conversion of wages
- Conversion of personal property
- Fraud & Deceit (Civ. C. §1567(3), 1571-1574, 1709-1710)
- Negligent Hire, Supervision or Retention of Employee

Fair Employment and Housing Act Violations

- Discrimination: based on protected class (age over 40, sex, pregnancy, sexual orientation, gender and/or gender identity or expression, association with protected person, ancestry, family care or medical leave, genetic information, marital status, medical condition including cancer, national origin including language restriction, race or religion)
- Sexual Harassment
- Quid Pro Quo Sexual Harassment (2CCR §11019(b)(2))
- Hostile Work Environment Harassment (2CCR §11019)
- Failure to Prevent Discrimination, Harassment or Retaliation (Govt. C. §12940(k))
- Retaliation (Govt. C. §12490(h))
- Aiding & Abetting (Govt. C. §12490(i))
- Failure to Accommodate Disability (Govt. C. §12490(m))
- Failure to Engage in Interactive Dialogue (Govt. C. §12490(n))
- Religious Creed Discrimination – Failure to Accommodate (Govt. C. §12490(l))
- Sex-based Wage Discrimination

Leave Time

- California Family Rights Act (Govt. C. §12945.2)
- California Pregnancy Disability Leave Law (Govt. C. §12945(a))
- California Healthy Workplaces, Healthy Families Act (Lab. C. §§245.5-246.5)
- California Paid Family Leave (Unempl. Ins. C. §§2708, 3300-3303)
- Military Duty or Training (Mil. & Vet. C. §394)
- LC §233 Kin Care Leave

Miscellaneous Related Torts & Statutory Violations

- Defamation (C/L; Civ. C. §§43, 45, 46(3))
- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Unfair Business Practices (Bus & Prof C. §§17200) (court is trier of fact; consider use to challenge non-compliant arb agreement and to ensure court sits as trier of fact for UBPs)
- Assault (C/L, Pen. C. §240, can be used for ppt)
- Battery (C/L, Pen. C. §242, can be used for ppt)
- Sexual Battery (Civ. C. §1708.5)
- Civil Extortion (C/L)
- False Imprisonment (C/L)
- Civil Conspiracy to violate [add tort] (not freestanding, must be paired with violation of a law)
- Aiding and Abetting to violate [add tort] (not freestanding, must be paired with violation of a law)
- Invasion of Privacy (Cal. Const., Article 1, §1 & C/L)
- Physician-employee advocating medically appropriate health care (Bus. & Prof. C. §2056)
- Recording Confidential Info. (Penal C. §§632, 637.2)
- Improper Disclosure of Medical Info (Civ. C. §56.20)
- Improper Disclosure of SSN (Civ. C. §1798.85)
- Improper Use of Credit Report (Civ. C. §1785.1)
- Improper Use of Investigative Report (Civ. C. §1786)
- Stalking (Civ. C. §1708.7)
- Whistleblower Protection Act (Govt. C. §§9149.20-23, 8547.1-12, Govt. C. §§8545.1-5; Health & Safety C. §1278.5; Health & Safety C. §5329.8; also protected under C/L)
- **Immigration status not admissible in determining PI damages** (COA no longer limits future econ. loss) (Evid C. §351.2 (eff. 1/1/17))

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*This checklist is provided as an overview and should not be used in place of professional legal advice pertinent to any specific factual situation.

*Information in bold indicates new laws effective as of 1/1/17

Labor Code Violations & Other Related Claims

- §96k Failure to hire, demotion, suspension or discharge due to engaging in lawful conduct during non-work hrs away from ERs premises. No private cause of action
- §98.6 Discrimination for exercise of rights
- §132a Discrimination for filing work comp claim
- §201 Wages due on termination (immediate)
- §202 Wages due on quitting (72 hours)
- §203 Penalties for willful failure to pay at term/quit
- §210 Willful failure to pay/see also §§2698 & 225.5
- §215 Failure to pay wages due is a misdemeanor
- §216.5 forced to sign release for wages due
- §218.5 Attys fees for non-payment of wages
- §221 Illegal collection back from EE of wages paid
- §223 Makes illegal any deal to pay less than prevailing wage due under statute or contract
- §225.5 Penalties
- §226 Penalty/remedy due to ER's failure to provide specified info on wage stmts
- §226.7 Missed meal/rest periods - 1 hr penalty)
- §227.3 Vacation time due at termination
- §229 Allows EE to sue in ct for wages despite arb agmt
- §230 Jury duty or witness leave
- **§230.1** Domestic Violence Leave. ER must advise of rights in writing for new hires & others upon request
- §230.2 Crime Victim Leave
- §230.3 Prohibits termination or discrimination against EE for performance of EE duty as volunteer firefighter, reserve peace officer or rescue personnel
- §230.4 Temp training leave & reinstatement for voluntary firefighters, reserve peace officer or ER rescue personnel
- §230.7 Prohibits termination or discrimination against EE for req'd appearance in school after child suspended
- §230.8 Protects EE (parent, guardian, grandparent) for taking time off to for child's activities in school
- §232 Illegal to refuse to allow EEs to discuss wages
- **§245.5** In-home caregiver entitled to paid sick leave
- §351 Makes it illegal to take tips from EE
- §353 Requires ER to maintain tip records
- §407 Unlawful to require investment or stock purchase
- §432 Allows EE to get copy of any writing signed
- §432.2 Prohibits use of polygraph
- §432.5 Can't force EE to sign agmt prohibited by law

- **§432.7** Prohibits requiring applicant to disclose arrest not resulting in conviction or dismissed or info re a referral or participation in pre/post trial diversion program, conviction & adjudication as a juvenile (incl. rape, arson, murder etc)
- §432.8 Protects EE from disclosing marijuana possession conviction more than 2 yrs old
- §435 No audio/video recording EE bathroom, changing rm
- §510 Work day 8 hours, overtime 1 ½ after 80
- §512 Meal period
- §515(d) Non-exempt EEs paid OT + 40 hrs/wk, 8 hrs/day
- §558 OT penalties
- §558.1 Owner/director/managing agent of corp potentially liable for certain W&H violations
- §752 Non-unionized EEs in smelters/underground mines right to fair election to establish workday over 8 hrs/day
- §860-864 Overtime & double time for agricultural workers
- §923 Right to spokesperson of own choosing (pre-empted by NLRA; limited to atty/co-EE representation w/consent)
- **§925** Can't require CA EE to resolve disputes outside CA or apply non-CA law except empl. contract negotiated by atty
- §970 Misrep inducing EE to move for purpose of work
- §980 Restricts ERs requesting access to EE social media
- **§1019.1** Prohibits retaliation for opposing unfair immigration-related practice. ER can't request more or different documents than required under federal law
- §1025-1028 Alcohol Drug Rehab Leave
- §1041 Adult Literacy Leave
- §1050 Misrepresentation to potential new ERs
- §1061(b)(1) Janitorial EEs no termination w/o cause for 60 days after 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 (opposition/complaints based on reasonable belief of violation of local, state, or federal rule or regulation)
- §1102.6 Shifts burden of proof to ER by clear and convincing evidence that termination would have occurred regardless of whistle blowing
- §1102.8 Requires posting by ER of whistleblower phone #s
- §1171.5 Immigration status irrelevant to Labor Code rights
- **§1182.12** Min wage \$10/hr; \$10.50/hr 1/1/17; \$15/hr 1/1/22
- §1194 Authorizes civil action regardless of agreement to contrary re min & OT wages due
- §1194(a) Civil action for unpaid min wage or OT

- **§1197.1** Liquidated damages for willful failure to pay min wage (ER must post bond for writ of mandate)
- **§1197.5** Prohibits wage inequality based on gender/race for substantially similar work (prior compensation irrelevant)
- §1198.3 Protects EE who refuses to work hrs in excess of those permitted by IWC orders
- §1198.5 Reqs inspection of personnel records within 30 days written request (\$750 penalty)
- §§1400 et seq. WARN (Worker Adjustment and Retraining Notification Act (mass layoff reqs))
- **§1450** Domestic Workers Rights Act reqs OT after 9hrs/day or 45hrs/wk will remain law (violation is a misdemeanor)
- §1512 Donor Leave (protects EE who took paid leave to donate organ/bone marrow)
- §2699 Private Attorney General Act (PAGA)
- §2751 Commission agmts must be in writing
- §2802 EE is indemnified for business expenses
- §2810 Requires written agreements for certain labor & services contracts
- §2810.5 Written notice to new EEs re rate of pay, paydays, ERs allowances, wage basis, ERs, DBAs and any PEOs
- §2856 Excuses non-compliance with illegal orders
- §2929 No termination for one judgment's garnishment
- §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 gov't (note: complaint to ER is complaint to the gov't.)
- §6311 No discharge for refusing to work in violation of Cal OSHA
- Cal. C. Regs. Tit. 2, §7286.9A(9)(1) (back pay to be in position as if discrimination had not occurred)
- §6399.7 Protects EE for complaining 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 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 ER shall construct unsafe premises
- IWC Orders (min. wages, max hrs and OT)
- **Health & Safety C. §118600** Requires businesses & govt. agency to provide single-user, all-gender restroom facility