

2020 CALIFORNIA EMPLOYMENT LAW CAUSES OF ACTION

Hiring, Termination, and Contractual

- California Constitution (Article 1, Sec 1, privacy; Art 1 Sec 8 (dx))
- 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. §98.6; 1102.5)
- Breach of Contract (oral or written)
- Anticipatory Breach
- Breach of Employment Contract
- Breach of Implied Contract of Good Cause
- Breach of Implied Covenant of Good Faith & Fair Dealing
- Unruh Civil Rights Act (Civ. C. §51 et seq (contractor))
- Intentional Interference with Prospective Economic Advantage
- Intentional Interference with Contract
- Promissory Estoppel
- Unjust Enrichment/Quantum Meruit
- Fraud & Deceit (Civ. C. §1567(3), 1571-1574, 1709-1710)
- Negligent Hire, Supervision or Retention of Employee

Fair Employment and Housing Act Violations

- **AB 9** – extends the statute of limitations for FEHA claims from one to three years eff. 1/1/20. Last adverse employment action giving rise to a claim must have occurred on or after 1/1/19 for AB 9 to apply.
- 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, **racial discrimination and/or harassment based upon a person's natural hairstyle – SB 188**)
- SB 1300 – (1) ER cannot require EE to release a FEHA claim or sign non-disparagement agmt in exchange for bonus, raise, or continued employment; (2) ER liable for any unlawful harassment by non-EEs if ER knew or should have known and failed to take remedial action; (3) prevailing Def cannot recover atty fees and costs unless ct finds P brought frivolous case.
- Sexual Harassment – can't prohibit testimony re criminal conduct/sexual harassment (AB 3109); expanded definition of work relationship (SB 224); can't prevent discl of factual info from settlement agmt if claim filed in court or gov't agency (SB 820)
- 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))
- Aiding & Abetting (Govt. C. §12490(i))
- Failure to Accommodate Disability (Govt. C. §12490(m))
- Failure to Engage in Interactive Dialogue (Govt. C. §12490(n))
- 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)(not clear private c/a, use as ppt)– PAGA only- see LC 233
- California Paid Family Leave (Unempl. Ins. C. §§2708, 3300-3303); **SB 1123 eff 1/1/21 "qualifying exigency" related to active duty status of spouse, etc.**
- Military Duty or Training (Mil. & Vet. C. §394)
- Kin Care Leave (Lab. C. §233)

Miscellaneous Related Torts & Statutory Violations

- Defamation (C/L; Civ. C. §§43, 44, 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 UBP)
- **AB 749** – (1) no-rehire clauses in arb agmts are prohibited. (2) ER cannot force EE to agree to arb agmt as condition of employment eff 1/1/20.
- **AB 707** – ER must pay arb fees by 30 days of due date. If not, ER is in material breach & default of arb agmt and waives right to compel arb. If ER breaches, EE can proceed in court that has jurisdiction.
- 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)
- AB 1619– extends sexual assault SOL to later of 10 years after alleged assault or 3 years after discovery
- Civil Extortion (C/L)
- False Imprisonment (C/L)
- AB 2770 Defamation protection for reporting sex harassment.
- Civil Conspiracy/Aiding and Abetting to violate [add tort] (not freestanding, must pair with violation of a law)
- Invasion of Privacy (Cal. Const., Article 1, §1 & C/L)
- 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)
- Civil Code 3339 Immigration status not admissible in determining empl. damages

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***This checklist is provided as an educational not legal overview and should not be used in place of professional legal advice pertinent to any specific factual situation. SD&A thanks attorneys Ely Grinvald and Melanie Porter for their assistance in preparing this overview

*Information in bold indicates new laws effective as of 1/1/20

Labor Code Violations & Other Related Claims

- **AB 5** – codifies the Dynamex West v. Superior Court ABC Factor test for classification of workers as employees vs. indep. contractors. But see exemptions for certain licensed occupations such as doctors, lawyers, stockbrokers, insurance agents, etc.
 - §96k Failure to hire, demotion, suspension or discharge due to engaging in lawful conduct during non-work hrs away from ER's premises. No private right of action
 - §201 Wages due on termination (immediate)
 - §202 Wages due on quitting (72hours)
 - §203 Penalties for willful failure to pay at term/quit
 - **§210** Willful failure to pay – private right of action eff. 1/1/20
 - §216.5 Forced to sign release for wages due
 - §218.5 Atty fees for non-payment of wages
 - §221 Illegal collection back from EE of wages paid
 - §226 Penalty/remedy due to ER's failure to provide specified info on wage statements; ER must provide copy of payroll records to EE upon request
 - §226.3 Wage statement penalties – PAGA only
 - §226.7 Missed meal/rest periods -1 hr premium/day)
 - §227.3 Vacation time due at termination
 - §232 Illegal to refuse to allow EEs to discuss wages or to discharge/retaliate against EEs for discussing wages
 - §233 Kin Care Act –use to enforce Healthy Families, Healthy Workplace Act w/o PAGA.
 - §351 Makes it illegal to take tips from EE – PAGA only
 - §432 Allows EE to get copy of any writing signed
 - §432.5 Can't force EE to sign agmt prohibited by law
 - §432.7 Can't require 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. ER may only consider particular convictions when assessing EE's criminal history. Provides for attorneys fees.
 - §432.8 Protects EE from disclosing marijuana possession conviction more than 2 yrs old
 - §435 No audio/video recording EE bathroom, changing rm
 - §510 Workday 8 hours, overtime 1.5 after 8
 - §512 Meal periods
 - §515(d) Non-exempt EEs paid OT after 40 hrs/wk, 8 hrs/day
 - §558 OT penalties
 - §558.1 Owner/director/managing agent of corp potentially liable for certain W&H violations
 - §925 Can't require CA EE to resolve disputes outside CA/ apply non-CA law except empl. contract negotiated by atty
 - §970 Misrepresentation re kind, nature or duration, inducing EE to move for purpose of work; double damages per LC 972
 - §980 Restricts ER requesting access to EE/applicant's 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
 - §1050 Misrepresentation to potential new EEs
 - §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 & convincing evidence that termination would have occurred regardless of whistleblowing
 - §1171.5 Immigration status irrelevant to Labor Code rights
 - §1182.12 Min wage \$13/hr 1/1/20; \$15/hr 1/1/22
 - §1194 Authorizes civil action regardless of agreement to contrary re min & OT wages due
 - §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 w/in 30 days written request (\$750 penalty) (combine request with LC 432 (documents signed) and LC 226 (payroll records))
 - §2699 et seq Private Attorney General Act (PAGA)
 - §2751 Commission agmts must be in writing
 - §2802 EE is indemnified for business expenses
 - §2856 Excuses noncompliance with illegal orders
 - §2929 No termination for EE's judgment's garnishment
 - §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
 - §6402 No ER shall require or permit any EE to be in place of employment which is not safe and healthful
 - §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), max rent charges for apt managers
 - Health & Safety C. §118600 requires businesses & gov't agency to provide single-user, all-gender restroom facility
- SB 142** Lactation Accommodation