



October 17-19  
San Diego, CA



## Agenda

### Wednesday, October 17 | Pre-Conference Workshops

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#### **Continental Breakfast**

7:30 a.m. – 8:30 a.m.

#### **California Employment Policies and Procedures Drafting Workshop**

*Presented by: Cathleen Yonahara, Esq., Freeland Foreman Cooper LLP*

8:30 a.m. – 11:30 a.m.

What are the essential employment policies and procedures that should be included in your employee handbook for the coming year? This hands-on workshop will teach you key language to include—and the issues to steer clear of—regarding your company’s employment policies and procedures. You’ll learn suggested policy language for addressing:

- Anti-harassment/discrimination, including how new requirements concerning LGBT-related issues fit in
- Meal and rest breaks
- Paid sick leave
- Family and medical leave
- Social media/privacy
- Smoking and vaping
- Drug-free workplace and marijuana use
- At-will employment
- Attendance
- Training and education
- Workplace violence
- And more

#### **Independent Lunch**

11:30 a.m. – 1:00 p.m.

## **The FMLA/CFRA, ADA/FEHA, PDL and Workers' Comp Overlap in California: Overcoming Intersecting Compliance Challenges**

1:00 p.m. – 4:00 p.m.

*Presented by: Kristine E. Kwong, Esq., Musick Peeler & Garrett LLP*

When we talk about employee leave and the laws that govern, it's never simple. And, it's even more complicated in employee-friendly California. In addition to contending with the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), employers in California need to have a firm grip on compliance obligations under the California Family Rights Act (CFRA), the Fair Employment and Housing Act (FEHA), as well as under the state's pregnancy disability leave (PDL), workers' compensation, and paid sick leave laws. Knowing where these laws work in tandem and where they differ is crucial for employers. There is a maze of mandated leaves of absence, many of which overlap or have conflicting eligibility requirements. When employees have more than one applicable leave (such as due to an industrial injury and require leave as an accommodation), HR must determine whether the leave periods run concurrently or consecutively. On top of that, there are increased complexities in coordinating paid leave under applicable legislation, regulations and employer policies. This intensive workshop will walk through a series of hypotheticals designed to get you thinking and analyzing the myriad issues you should be considering when an employee may be entitled to protections under CFRA, FEHA, and state workers' compensation law. You'll learn:

- How the ADA/FEHA and FMLA/CFRA, as well as California PDL, workers' comp, and paid sick leave laws intersect and diverge
- How to tell which laws apply to an employee requesting leave or workplace accommodations
- How to determine which leaves run consecutively, and which run concurrently, including stacking and tracking time off
- Traps for the unwary concerning mandated use of paid sick leave concurrently with CFRA leave when employee receives any partial wage replacement, including PFL, SDI, or disability insurance benefits
- How California's new paid sick leave law applies to management of other leaves of absence, including the significantly broader definitions of "close family member"
- What constitutes reasonable accommodations for a disabled employee
- How much leave can an employee request
- How to address pregnancy related disability leave and the intersection with baby bonding leave
- Critical issues for handling intermittent leave and performance management
- The most common mistakes supervisors make when intersecting leave and disability laws are at play

**Registration & Breakfast**

7:00 a.m. – 7:55 a.m.

**Breakfast & Learn Demo**

7:30 a.m. – 7:45 a.m.

**Welcome Remarks**

7:55 a.m. – 8:00 a.m.

**Hot Topic Lightning Round Talks**

8:00 a.m. – 9:15 a.m.

HR Comply CA kicks off with three dynamic and timely talks tackling some of the most interesting workforce challenges facing California employers in 2017 and beyond.

**Arbitration Agreements: What to Use Them for and When to Steer Clear Here in California**

8:00 - 8:20 a.m.

*Presented by: Michelle Lee Flores, Esq., Akerman LLP*

Employers have a strong interest in getting their employees to sign arbitration agreements as condition of hiring. After all, getting them to agree to your terms could mean the difference between years of defending costly legal claims in court and a “one-and-done” hearing before an arbitrator to determine whether their legal claims have any merit and whether they are entitled to any damages as a result. But, a new bill that’s been introduced on Capitol Hill seeks to bar arbitration of sex discrimination or harassment claims. The bipartisan legislation—“Ending Forced Arbitration of Sexual Harassment Act” (S. 2203; HR 4570)—includes a downright scary provision for employers: If this act becomes law, courts would have the authority to invalidate an entire arbitration agreement if it includes terms requiring an employee to arbitrate sex discrimination disputes. What is the current status at the state and federal level concerning an arbitration agreement’s ability to preclude your workers from entertaining lawsuits against the company? This timely *Hot Topic Power Talk* will provide valuable insight into the types of issues to steer clear from including in your arbitration agreements given the current status of court rulings and legislation that has already been enacted or is likely to take effect.

**IRS Enforcement of ACA Employer Shared Responsibility: What to Do If You Receive a ‘Letter 226j’**

8:25-8:45 a.m.

*Presented by: Joanna Kim-Brunetti, Esq., First Capitol Consulting, Inc.*

The IRS is enforcing compliance with the Affordable Care Act (ACA) by issuing tax penalty notice Letter 226J to organizations that were not in compliance with the ACA for the 2015

reporting year. Penalty assessments for many employers are in the millions of dollars. The agency has the information it needs to start sending penalty notices to employers who failed to comply with the ACA for the 2016 reporting year, so right now it's critical to understand the IRS' current ACA enforcement practices, so you'll know how to respond if your organization receives an IRS Letter 226J. This *Power Talk* will also cover what you need to know about filing ACA information for 2018 with the IRS.

### **HR's Data Security and Notification Game Plan in the Event of a Breach**

8:50 – 9:10 a.m.

*Presented by Usama Kahf, Esq., Fisher Phillips LLP*

S.B. 2179 has been introduced in Congress. Known as the Data Security and Breach Notification Act of 2017, if passed, this law would have a sweeping impact on how businesses manage their data security and breach notification practices. That's because it would standardize how data breaches must be reported and replace close to 50 state-based laws addressing the issue. What personally identifiable information (PPI) is most vulnerable to hacking, and what are some of the best practices cybersecurity experts recommend for ensuring that confidential and sensitive data your workplace stores as a matter of doing business is well protected to guard against damaging and potentially financially devastating data security breaches? Also, would the protections under S.B. 2179 be more stringent than what's already in place in California, and if so how? This *Hot Topic Power Talk* will brief you on where new state and federal data security and notification legislation stands and provide best practices for protecting PPI.

### **Labor and Employment 360: Inside Look at How the Latest California and Federal HR Laws, Court Rulings and Policy Updates Will Impact Your Workplace**

9:15 a.m. – 10:30 a.m.

*Presented by: Cathleen Yonahara, Esq., Freeland Foreman Cooper LLP*

How will employment-related legislative, regulatory, and case law developments at the state and federal level impact California workplace policies and practices for the rest of 2018 and into 2019? You'll get the answer during this concise, comprehensive session designed to brief you on the most critical updates California HR managers should know about. Plus, you'll learn:

- New California employee handbook updates to make for 2018
- The most noteworthy state and federal court rulings that impact your California employment practices
- And much more!

*Networking and Refreshments Break*

10:30 a.m. – 10:45 a.m.

### **FMLA/CFRA Intermittent and Reduced-Schedule Leave: Best Practices for Managing Leave Administration and Mitigating Abuse in California**

10:45 a.m. – 12:00 p.m.

*Presented by: Marc Jacuzzi, Simpson, Garrity, Innes & Jacuzzi, P.C.*

Since FMLA/CFRA cover reduced-schedule and intermittent leave for certain serious health conditions and medical treatment, a few lost hours here and there can really add up and sap productivity. Of course, employees usually have legitimate reasons for taking intermittent or reduced-schedule leave, but there are instances of FMLA/CFRA abuse and fraud. It's HR's job to stop employees from milking the system—without opening the employer up to retaliation lawsuits. As you know, this is a delicate balancing act. How do you keep tabs on employees without infringing upon their rights to FMLA/CFRA leave? This session will cover:

- Stipulations and restrictions surrounding FMLA/CFRA intermittent and reduced schedule leave policies
- How to best manage an employee who is taking sporadic leave for medical reasons
- How to discuss and communicate reduced leave policies with your employees
- The difference between FMLA, CFRA and pregnancy disability leave (PDL), and how they interact
- How to prevent FMLA/CFRA abuse

### **Networking Lunch**

12:00 p.m. – 1:00 p.m.

### **Complex Wage & Hour Scenarios in California: Avoid Legal Missteps & Comply with the FLSA and DLSE Rules**

1:00 p.m. – 2:15 p.m.

*Presented by: David Monks, Esq., Fisher Phillips LLP*

Who's entitled to travel pay under the California Labor Code and accompanying Division of Labor Standards Enforcement (DLSE) regulations? And when? These seem like two straightforward questions, but the fact is these are two loaded questions that employers everywhere—and especially here in California—struggle with due to the complex nature of the applicable wage and hour rules. If your organization operates in California and doesn't strictly follow the state's Labor Code regarding compensation for work-related travel, on-call time, or training, you're at risk for costly lawsuits and government fines. And the rules can be tricky: That's because there are many "if this, then that" scenarios that come into play.

For instance, what if employees' travel is between different job sites? What if their flights get cancelled? What if they tack on a vacation using PTO? How should you handle pay for non-exempts who travel at night or over the weekend, when they're technically off-duty? When must training time be compensated? How "on-call" does an employee really have to be for the time to be compensable in California? What should you do if the person is just hanging out at home with a cell phone at the ready? When is travel between job sites compensable? Under what circumstances would commuting to or from home be compensable?

The “what if’s” can be seemingly endless, but your “then that” response concerning the compensability of the travel time in question doesn’t have to be! This comprehensive session will cover how to apply California’s wage and hour requirements to travel, training, and on-call pay for overtime-eligible employees, so that you can stay in compliance and out of court.

You’ll learn:

- The key factors that determine when travel time or on-call time can be considered compensable work time
- How California laws differ from federal ones – and what you need to know to stay compliant
- Best practices for ensuring you’ve got it right when determining whether commuting time or travel during regular work hours qualifies as paid work time
- Whether travel between job sites is compensable
- How travel time applies to employees who telecommute, either occasionally or full-time
- What to consider when determining an employee’s overtime rate—such as longevity pay
- Compensation for nonexempt employees who work beyond their regular shift (lunch, coming in early, etc.) and perform legitimate work activities
- When you have to pay for on-call time—even if the employee isn’t working during that time—and when you don’t
- How much compensation is required for a paid on-call employee
- Best practices for drafting effective travel/overtime/on-call policies for your organization, so you’re in compliance with FLSA and California regulations

### ***Networking and Refreshments Break***

2:15 p.m. – 2:30 p.m.

### **Form I-9 Recordkeeping, Inspections and Immigration Enforcement: New Hurdles for California Employers**

2:30 p.m. – 3:45 p.m.

*Presented by: Jeanne M. Malitz, Malitzlaw, Inc.*

The Citizenship and Immigration Services (USCIS) released yet another revision to the Form I-9 for employment eligibility verification effective September 18, 2017. Also, California’s Immigrant Worker Protection Act (AB 450) is now in effect. What are your obligations under this new law and what types of penalties could your company be on the hook for if you don’t comply? This session will provide important updates on:

- How to comply with the new law—the Immigrant Worker Protection Act (AB 450) that’s now in effect in California—and what *not* to do so you minimize the risk of costly civil penalties of up to \$10,000 per violation
- How to manage Form I-9 practices, including recordkeeping, employment verification, document destruction, and more
- How to self audit your workplace’s employment verification documentation practices and Form I-9 completion methods to ensure that you’re not at risk for costly fines and penalties
- What to do in the event of an ICE inspection or, worse, a raid

- How to manage employees' and their families' concerns about Form I-9 audits, ICE investigations, and more
- How to train supervisors and managers on what not to say or do, so you can minimize the risk of national origin, religious, or citizenship-based discrimination claims under Title VII and IRCA
- And more

**Today's Biggest Hiring Pitfalls: California Background Checks, Ban-the-Box, Salary History Inquiries, and More**

3:50 p.m. – 5:05 p.m.

*Presented by: Lester Rosen, Esq., Employment Screening Resources®*

When it comes to hiring new employees, background checks have become standard practice. But are you up to date on what you can and can't do when it comes to looking into the backgrounds of potential employees? In California, job applicants have even greater rights regarding background checks. In addition to being covered by the federal Fair Credit Reporting Act (FCRA), California applicants are also covered under a number of "Only in California" laws, including the California Investigative Consumer Reporting Agencies Act (ICRA), the California Labor Code, the Fair Employment and Housing Act (FEHA), what seem like continuous updates to "ban the box" laws, and state-specific rules covering credit reports, social media passwords, and offshoring of screening information. California employers also need to be aware of shifting laws that affect background checks, such as legalized marijuana use and required background checks into transportation network drivers. And, the Equal Employment Opportunity Commission (EEOC) has set specific guidelines for background check compliance, making it essential for employers to maintain background check policies that are consistent with business necessity and take precautions to avoid these missteps.

Consider, too, that A.B. 168 just went into effect for 2018. This new law, which came on the heels of a 2016 amendment which expands California's equal pay law that's been around for nearly 70 years, represents a statewide ban on inquiries into a individual applicant's salary history. It's important to note, too, that under the 2016 amendment an employer can't use prior salary history to justify compensation-based disparities.

This timely session will provide you with a roadmap for navigating the rules in California and staying compliant with federal guidelines to avoid costly lawsuits related to background check screening processes. You'll learn:

- The importance of getting permission and using the proper forms when a background check is being conducted—and the high stakes if you don't
- What equal pay for equal work means under state law
- How the newly enacted AB 168 limits what employers can ask of job applications with respect to salary
- FCRA and EEOC rules to abide by concerning employee background checks
- How to ensure compliance with ICRA, FEHA, Fair Chance laws, and other California regulations

- How changing laws about marijuana legalization affect background check policies
- Whether you have to explain if you decide against hiring someone because of a criminal record—and why
- How many years back you can go when doing background checks
- Whether you use social media, such as Facebook, when checking a prospective employee’s background
- How to establish background check policies that link the decision-making to job descriptions
- How to avoid “red flag” issues that could result in disparate treatment and disparate impact
- The importance of individualized assessments to avoid discrimination claims
- Whether you can ask prospective employees if they have a felony record without the assurance that it won’t necessarily exclude them from being hired
- And much more!

### **Day 1 Adjourns**

5:05 p.m.

## **FRIDAY, OCTOBER 19 | MAIN CONFERENCE**

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### **Breakfast**

7:00 a.m. – 8:00 a.m.

### **Sexual Harassment: Rethinking Prevention in the Wake of the #MeToo Movement**

8:00 a.m. – 9:00 a.m.

*Presented by: Rebecca A. Speer, Esq., Tribù Partners LLP*

Workplace harassment isn’t an isolated problem but a common one that can damage any organization. As events in the past year have starkly shown, organizations can unwittingly foster a culture that tolerates harassment or that fails to prevent it. Increasingly, victims of harassment are speaking out about workplace cultures that permit unprofessional, harassing, and uncivil behavior. This session will re-examine sexual harassment prevention strategies in the wake of the #MeToo movement, and the EEOC’s 2016 pronouncement that current prevention strategies aren’t enough. We will delve into the reasons why an organization’s tolerance of inappropriate behavior, and the wrong “tone from the top,” can perpetuate harassment, damaging the workplace culture and generating turnover and legal liability. You’ll learn:

- Demystifying sexual harassment: What harassment looks like and the special challenges it creates for detection and investigation



- The legal requirements that apply to harassment prevention, including California's training requirements under AB 1825
- How to engage your leadership to implement a programmatic approach to sexual harassment prevention – prevention strategies that can more effectively protect your employees and organization
- How to leverage sexual harassment prevention strategies into a broad, value-add for your organization, bolstering its compliance efforts and the workplace culture

### **Marijuana in the Workplace: Your Latest Legal Rights and Limitations in Policy Development and Enforcement under California Law**

9:10 a.m. – 10:25 a.m.

*Presented by: Danielle Moore, Esq., Fisher Phillips LLP*

Tolerate or terminate? That's an important and often complex question for employers both here in California and beyond to answer as they try to navigate drug testing policymaking and recreational and medical marijuana usage. And, employers need to maintain a delicate balance between business objectives, employee rights, and ADA/FEHA requirements. Given the current state of things, it's clearly in an employer's best interest to be proactive on this issue. Workplaces assume a great deal of these costs in the form of absenteeism, increased healthcare expenses and lost productivity. On the other end, each employee who recovers from a substance abuse disorder saves a company more than \$3,200 a year.

This session will focus on the current regulatory landscape concerning the legality of drug testing here in California. You'll learn:

- The ins and outs of developing a comprehensive drug-testing program designed to give you the information you need to make informed and legal hiring and other employment decisions of California-based employees
- How SB 65 impacts employers with company vehicles and when employees drive in the course and scope of their duties
- When an employer may conduct drug testing on prospective and current employees in California
- Drug-testing testing policy essentials, and instances when enforcement of zero-tolerance policy language may spark legal issues under California and federal law
- How to train supervisors and managers on warning signs that someone might be under the influence
- The action plan for addressing a situation when you suspect an employee is drunk or high at work
- What to do if an applicant or a current employee demands to be retested because the test revealed a false positive result

- Which California laws explicitly include employee non-discrimination protections and which likely don't—and best practices for complying with the Fair Employment and Housing Act (FEHA) and the Compassionate Care Act How to address the off-duty use of marijuana in California
- How medical marijuana laws interact with unemployment and workers' compensation-related benefits
- Whether medical marijuana usage may qualify as a reasonable accommodation under the Americans with Disabilities Act (ADA) and FEHA
- How to develop and manage drug-testing policies and practices in light of the current legal landscape
- How to decide if your organization should test for marijuana
- What to do if an employee tests positive for marijuana usage
- The role of fitness for duty evaluations, and best practices for workplace safety

### ***Networking and Refreshments Break***

10:25 a.m. – 10:45 a.m.

### **Can We Fire This Employee or Not? The State and Federal Tripwires to Avoid When Terminating Employees in California**

10:45 a.m. – 12:00 p.m.

*Presented by: Jennifer N. Lutz, Esq., Pettit Kohn Ingrassia Lutz & Dolin*

*HR Comply CA* closes with an energetic quiz show of sorts that will test your knowledge of whether an organization has the proper justification—and documentation to back it up— to fire or otherwise discipline an employee given a series of fact patterns that may—or may not—invoke state and federal laws addressing disabilities, protected leave for medical conditions, pregnancy, and other types of leave, gender identity/conformity, and other issues. This session is designed to arm you with the latest legal insights on what to watch out for in everyday practice so your adverse employment action decisions don't come back to bite you.

### **Conference Closes**

12:00 p.m.

\*Agenda subject to change