



2019
HR COMPLY
CALIFORNIA
An HR Daily Advisor Event

Los Angeles
Oct. 7-9, 2019

The state's leading human capital management conference for California HR professionals, executives, and in-house counsel.

REGISTER TODAY

[Cont. Ed: Up to 16.25 HRCI-CA/SHRM plus MCLE (10.75 main conference + 2.75 per pre-con workshop)]

Monday, October 7 | Pre-Conference Workshops

Continental Breakfast

7:30 a.m. – 8:30 a.m.

Choose from Full and Half-Day Workshops:

(Full day) **FMLA/CFRA Master Class: California Advanced Skills for Employee Leave Management**

8:30 a.m. – 4:30 p.m. (lunch on your own from 12:00 – 1:00 p.m.)

Morning Focus: Mastering FMLA/CFRA Fundamentals

Afternoon Focus: FMLA Compliance Scenarios and Case Studies for Real-World Application

Think employee leave management is a one-time policy issue? Be careful! New and confusing regulations, conflicting court decisions, and *increasing employee abuse of FMLA protections* means family and medical leave will remain one of HR's biggest management headaches.

To help you master your obligations and avoid costly penalties, the publisher of your state's *Employment Law Letter* has crafted a cost-effective and engaging solution: **2019 FMLA/CFRA Master Class: California Advanced Skills for Employee Leave Management** This intensive day-long workshop provides the comprehensive knowledge you need to master real-life issues. Experienced attorneys will provide substantive instruction on fundamental FMLA compliance principles in light of new and existing regulations, court rulings, and application of

this far-reaching law. You'll engage with your instructors and your peers, solving challenges you face day in and day out concerning intermittent leave, return to work, employee performance, and much more.

This event teaches employee leave management essentials while instilling the confidence you need to make the right coverage calls, control abuse and fraud, answer the toughest questions from employees and your executive colleagues, and avoid the expensive missteps that have devastated other employers.

You'll enhance your advanced-practitioner skill set when you attend this satisfaction-guaranteed event and learn:

- How to judge a "serious health condition" the way a real judge would, and eliminate disputes about what does and doesn't constitute it
- The latest FMLA revisions, so you don't risk noncompliance
- What recent FMLA court decisions really mean, so you can adjust your policies accordingly
- Why FMLA recordkeeping continues to trip up even the savviest human resource managers, and some solutions to avoid similar mistakes
- How to tame the intermittent leave and reduced schedule beasts, and put a stop to abuse and fraud
- How FMLA, ADA, and state workers' comp laws overlap, so you can avoid violations
- And more!

(AM Only) Opioids and Marijuana in CA: Employer's Rights and Responsibilities When Hiring, Disciplining, and Terminating

8:30 a.m. – 11:30 a.m.

Presented by: Ryan H. Nell, Esq. of Pettit Kohn Ingrassia Lutz & Dolin

This intensive pre-conference will walk attendees through applicable law as it applies to employee drug use, particularly evaluating the various stages in the employment lifecycle in which drug policies and testing may become relevant. The goal of the presentation is to prepare California employers for the vast (and occasionally countervailing) compliance and practical predicaments that can arise from their employees "using"—particularly when they are doing so for legally protected reasons. Attendees will learn:

- Pre-employment drug screening pitfalls to avoid
- The manner in which an employer can choose to revoke a job offer based on a positive drug test
- The fine line to walk regarding off-duty drug usage
- Strategies for responding when employees appear to be impaired or otherwise under the influence
- How to balance legal and safety concerns
- Best practices for legally disciplining employees that use drugs in violation of applicable policy and/or law

(PM Only) Wage and Hour Audits: The Most Costly Trouble Spots to Find and Fix Before the DLSE or Feds Do

1:00 p.m. – 4:00 p.m.

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

Who's entitled to travel pay under California Labor Code and accompanying Division of Labor Standards Enforcement (DLSE) regulations? And when? Should that meal or rest break be compensated? How do employers comply with their meal and rest break obligations? And, are you sure your exempt employees really aren't entitled to overtime pay? Lots of questions with sometimes rather complex answers given the voluminous state and federal regulations that govern employee compensation in California. This comprehensive pre-conference workshop will cover:

- The key factors that determine when travel time or on-call time can be considered compensable work time
- How California laws differ from federal regulations regarding travel, on-call time, and overtime exemptions – and what you need to know to stay compliant
- How to tell what's work time and what isn't through examples addressing commuting, travel to job sites, overnight travel to another location, conferences, and more
- How overtime pay rates should be calculated, and who they apply to
- Penalties for mandatory meal and rest break violations and when waivers may apply
- Best practices for drafting wage and hour-related policies that comply with the Fair Labor Standards Act and DLSE regulations

Tuesday, OCTOBER 8 | MAIN CONFERENCE

Main Conference

Registration & Breakfast

7:00 a.m. – 7:55 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 right now.

Toxic Personalities at Work: How to Make Legally Sound Decisions about Performance Improvement and Discipline

8:00 a.m. - 8:15 a.m.

Presented by: Phillip Maltin, Esq., Raines Feldman LLP

Managing difficult and potentially toxic employees is a source of angst for HR professionals here in California and nationwide. But, there are ways you can proactively coach and discipline to yield better results from employees who seem to always be embroiled in workplace conflicts. *HR Comply CA* kicks off with an energetic talk designed to give you tips on how to improve performance and minimize legal risks under state and federal law when you need to coach, document, discipline and/or terminate problematic employees.

Get Ready for the CA Consumer Privacy Act Taking Effect January 1, 2020

8:20 a.m. - 8:50 a.m.

Presented by: Usama Kahf, Esq. Fisher Phillips LLP

The newly enacted California Consumer Privacy Act (CCPA), which takes effect January 1, 2020 and represents the first state law to be enacted in the United States that follows the European Union's General Data Protection Regulation (GDPR), is a big deal. Violations of the law will come with steep fines with civil penalties ranging from \$2,500 to \$7,500 per violation. It's imperative for businesses operating in California to learn precisely how to ensure that the personal information collected and stored meets CCPA requirements. To ensure compliance, employers must undertake significant preparations in 2019. This talk will highlight what to do right now to prepare.

Independent Contractor or Employee? The Practical Impact of *Dynamex* and Key Considerations if AB 71 or AB 5 Become Law

8:55 – 9:10 a.m.

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

In *Dynamex Operations West Inc. v. Superior Court*, the California Supreme Court developed a test for determining independent contractor status. In the aftermath of the court's ruling, lawmakers on opposite sides of the issue have been making strides to address it: AB 71 seeks to replace the "ABC" test for determining contractor status with a specific multifactor test whereas AB 5 would officially codify the court's test into the state's code. Right now, it's important for California workplaces to understand how the Legislature's ultimate action on the issue will impact the relationship employers have with freelancers and other contract workers—and this talk will keep you up to date on the practical implications of these two tests for determining contractor status.

On the Record: Inside Look at How the Latest California and Federal HR Laws, Court Rulings and Regulations Impact Recordkeeping and Workplace Policies

9:15 a.m. – 10:30 a.m.

Presented by: Cathleen Yonahara, Esq., Freeland Cooper & Foreman 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 2019 and into 2020? 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:

- Mandatory California employee handbook updates you should make for 2019
- The most noteworthy state and federal court rulings that impact your California employment practices
- Essential HR recordkeeping practices to follow for the new year ☑ And much more!

Networking and Refreshments Break

10:35 a.m. – 10:50 a.m.

Paid Family Leave, Sick Time and PTO: How to Ensure that Your Policies Line Up Under Existing and Proposed California Laws

10:55 a.m. – 12:10 p.m.

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

California has been a trailblazer in the push to provide paid leave to the workforce. For instance, under state law, new and expectant parents are entitled to wage replacement benefits up to 70 percent of their pay for up to six weeks of family leave. And, municipalities across the Golden State seek to push the envelope even further—take Los Angeles, for example, where the city council is considering a proposal for 18 weeks of paid parental leave. Also, recently enacted SB 1123 will expand paid family leave for active military duty members. In the case of domestic violence, an employee may use available paid time off, including sick leave, due to injuries or when seeking medical care. Suffice to say, there is a web of paid leave compliance obligations California employers must be ready to navigate. This session will keep you up to date on the latest paid sick and family leave requirements under state and local law.

Networking Lunch

12:10 p.m. – 1:10 p.m.

Dollar for Dollar: What You Should—and Shouldn't Do—to Ensure Pay Equity and Avoid Gender Discrimination Claims under Title VII and FEHA

1:10 p.m. – 2:25 p.m.

Presented by: Christopher W. Olmsted, Esq. of Ogletree, Deakins, Nash, Smoak & Stewart,

P.C. California is just one of several states and municipalities (including San Francisco) that has passed pay equity legislation. Such legislation generally has a two-prong goal: to take previous salary or compensation out of the equation when organizations are determining what to pay a

given candidate; and to ensure equal pay for the same or comparable work. Statistics show that women earn 80.5 cents for every dollar a man makes across nearly all occupations. The legislation in effect here in California and elsewhere seeks to eradicate that 20-percent wage gap, but what are the steps employers should be taking to audit their own pay practices to uncover unwarranted wage gaps—and what steps should they legally take to achieve pay equity across their positions and their organization? This session will explain:

- Your obligations under state law and municipal ordinances to ensure pay equity—and which local cities are likely to pass similar legislation
- How to determine whether work is “comparable” or “substantially similar”—and whether and when some variation in pay is permitted when employees are performing such work
- Whether things like geography, seniority and merit systems, compensation based on earnings by quantity or quality of sales, education, training, experience, and travel factor into whether a job is substantially similar
- Tips for conducting your pay practices audit to correct gender-based disparities, including how to:
 - Evaluate starting pay across job categories
 - Standardize your policy for salary increases and promotions
 - Ensure that merit-based pay systems are based on objective, relevant criteria as part of a formal weighing or scoring system
 - Determine if some variation in pay will still be permissible for employees performing comparable work in certain instances
 - Avoid legal missteps if you discover pay disparities—and what the law expressly prohibits employers from doing if they discover a pay disparity exists, and recommended strategies for legally “leveling up” lower wage earners
- Affirmative defenses to equal pay claims brought under California law ☑ And more!

Networking and Refreshments Break

2:25 p.m. – 2:40 p.m.

Attracting Top-Tier Talent: How to Cultivate a Competitive and Compliant Sourcing, Advertising, and Vetting Strategy

2:40 p.m. – 3:55 p.m.

Presented by: Phillip Maltin, Esq., Raines Feldman LLP

Are targeted job ads on Facebook and other social media platforms legal? Could predictive analytics used in hiring lead to discrimination lawsuits, and if so, how? Also, what are the

current legal tripwires to watch out for when conducting background screenings on your applicants? These are just a few questions that California employees need to know the answers to. And, in today's competitive arena for talent, it's equally important to ensure that your candidate experience during the sourcing, vetting, and interviewing process is designed to attract top talent. This eye-opening session will cover:

- Legal ways to advertise and recruit for talent on social media, without violating the Age Discrimination in Employment Act (ADEA), the Fair Housing and Employment Act (FEHA), or other state or federal laws
- Predictive analytics-based legal pitfalls to avoid when recruiting talent—so you don't spark disparate impact claims under state or federal law
- The biggest mistakes tied to criminal history-related inquiries, salary, and more that can expose employers operating in California to significant legal liability during the application and background check processes
- Prohibitions on salary history inquiries—and what you must do under AB 168 and AB 2282 if an applicant asks for pay scale information
- The #1 way to predict how an applicant will perform on the job—and the legal pitfalls to avoid when conducting any sort of “job audition”
- How to create a candidate experience that your competitors will envy without sparking legal risks under state and federal antidiscrimination laws

Disability, Leave, and Lactation Accommodation Requests: Your Duties and Rights under ADA/FEHA, FMLA/CFRA, AB 1976, and Other Applicable Laws

4:00 p.m. – 5:15 p.m.

Presented by: Kelly Gemelli, Esq. Jackson Lewis P.C.

This session will explore common—but often complex—issues employers encounter and how to analyze whether and what accommodations must be granted under state and federal law concerning:

- Physical disabilities due to injury or illness, as well as mental impairments, such as anxiety, bipolar disorder, and depression
- Pregnancy, as well as lactation to ensure compliance with AB 1976
- Leave as accommodation to recover from a transitory impairment
- When an accommodation is reasonable—and how to manage telecommuting requests
- Documentation an employer may legally request
- How to comply with your obligations to engage in the interactive process
- When you can legally discharge an employee out on leave due to a disability

Day 1 Adjourns

5:15 p.m.

Wednesday, October 9 | MAIN CONFERENCE

Breakfast

7:00 a.m. – 8:00 a.m.

Breakfast and Learn

7:30 a.m. - 7:45 a.m.

New Challenges in Defending Sexual Harassment Claims: How to Avoid Hostile Work Environment Claims under FEHA *and* Foster a Culture of Respect to Minimize Risk

8:00 a.m. – 9:00 a.m.

Presented by: Kelly O. Scott, Esq., Ervin Cohen & Jessup LLP

Employers operating here in California now have a tougher time avoiding liability for unlawful harassment under the Fair Employment and Housing Act (FEHA). A host of new laws have gone into effect addressing harassment in the workplace, including SB 1300, which will make it much harder to obtain summary judgment in the event you're sued for sexual harassment. This session will cover:

- The increased scrutiny workplaces will now face when an employee claims a single instance of harassment created a hostile work environment under SB 1300
- How SB 820—the Stand Together Against Non-Disclosure Act—and AB 3109 impact how settlement agreements should be drafted, and what release of harassment claims should no longer include
- What is permissible to say under AB 2770 if asked about whether you would rehire a current or former employee and whether not rehiring that individual was based on harassment-related matters
- The increased sexual harassment training requirements now in effect here in California
- Expected legislation to strengthened workplace protections in 2020, including enhanced protection for harassment victims, extended deadlines to file harassment/discrimination claims, and extended record retention requirements for harassment complaints
- Signs your workplace culture could be a breeding ground for harassment and successful ways to change it for the better

Job Descriptions: Key Drafting and Updating Strategies to Protect Your Organization Against Legal

Liability

9:10 a.m. – 10:25 a.m.

Presented by: Danielle Moore, Fisher Phillips LLP

Writing and updating job descriptions can seem like a tedious—and never-ending—task for HR. But, it's a crucially important one. If a job's essential functions are poorly defined or outdated,

it can be difficult to achieve full compliance with the Americans with Disabilities Act (ADA) or the Fair Employment and Housing Act (FEHA). This means well-written and up-to-date job descriptions are critical when it comes to recruiting, promoting, and classifying employees, conducting performance reviews, and providing reasonable accommodations to the California workforce. This session will prepare you for drafting and updating job descriptions that accurately define exactly what the job is. You'll learn how to:

- Separate the job description from the individual currently performing the job (the two can oftentimes be very different)
- Use correct language and learn what to keep in and what to leave out
- Review and update existing job descriptions—don't simply rely on older versions
- Define the “essential functions” of each position
- Use job descriptions in assessing whether to hire or promote, based on an individual's skill set
- Create job descriptions that will support the interactive process when evaluating requests for reasonable accommodations under the ADA/FEHA
- Correctly classify employees and avoid legal issues regarding overtime under federal and state law

Networking and Refreshments Break

10:25 a.m. – 10:45 a.m.

Putting FMLA/CFRA Certifications to Work for You: How to Effectively—and Legally—Combat ‘Monday/Friday’ Syndrome and Intermittent/Reduced-Schedule Abuse

10:45 a.m. – 12:00 p.m.

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

The federal Family and Medical Leave Act (FMLA) is a voluminous maze of confusing regulations—and the California Family Rights Act (CFRA) is equally complex. In fact, it's generally worse. So, when you suspect an employee of working the system by calling in unexpectedly, showing up late to work, and/or otherwise hiding behind their right to take protected intermittent or reduced schedule leave, what can you do? This is a question that continuously plagues employers both here in California and nationwide. Fortunately, there are several things you can legally do when you suspect that an employee is abusing the right to take protected FMLA/CFRA leave. This session will show you precisely what to legally do to prevent and curb FMLA/CFRA abuse. You'll learn:

- How FMLA and CFRA intersect with other California leave laws—so you'll know precisely what you can and can't do to prevent someone from taking leave

- Why the medical certification could be your best defense, especially when you seek to deny leave and particularly when you believe an employee is working the system
- Good practices for obtaining the medical documentation to discern whether a California employee is entitled to protected leave
- What you legally may do—and should never do—to try and thwart abuse of the family and medical leave system
- How to navigate California’s stricter requirements concerning medical opinions

Conference Closes

12:00 p.m.