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Staying Compliant: Top Legal Risks for California Employers in 2024

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California's employment landscape is undeniably complex, and the evolving laws and regulations can feel like "a riddle wrapped in a mystery inside an enigma." As companies transition back to traditional, in-office settings, employers must navigate new legislation, updated regulations, and shifting workforce expectations. In this article, we explore the top ten legal challenges California employers face in 2024 and provide practical strategies to help businesses successfully adapt to this ever-changing environment.

1. Remote Work and Returning to the Office

Whipple

The transition back to the traditional office has been met with resistance, from a workforce accustomed to remote work and its benefits, such as avoiding California's notorious traffic and the competition for office amenities. While some employees are resistant to the great return, employers point to productivity concerns and cultivating company culture as key reasons for the shift back to the traditional office. Some employers have navigated this tension by maintaining a hybrid model, which comes with its own set of challenges.

Employers must address potential liabilities related to health and safety, wage and hour compliance, and workers' compensation for remote workers. Policies on time-tracking, as well as meal and rest breaks, must be communicated and enforced consistently, regardless of where employees are located. Simple risk mitigation strategies, such as scheduling breaks for remote employees and having them verify their work hours, can help reduce legal risks. Additionally, employers should notify their workers' compensation insurers about their remote workforce to ensure claims coverage remains intact.

2. Leaves of Absence: Communication and Consistency

California's generous leave laws often leave employers wondering how long they must accommodate an employee on leave, and how to navigate return to work conversations. With the Family Medical Leave Act (FMLA), California Family Rights Act (CFRA), Fair Employment and Housing Act (FEHA), and the Americans with Disabilities Act (ADA), employers must carefully navigate the balance between accommodating employees and maintaining operational efficiency. The key to managing leave requests is developing and communicating clear policies, consistently documenting employee interactions – including return to work communications, and consistency of policy enforcement. Clear and consistent communication mitigates confusion or speculation that often serves as the gravamen of disability and failure to accommodate lawsuits.

3. Pay Transparency and Reporting Requirements

Pay transparency laws are a significant development in California, requiring employers to disclose pay scales in job postings and to current employees upon request, as well as reporting certain pay data to the state. Another wrinkle complicating the interview and hiring process is the ban on inquiring into an applicant's salary history. This interview tool was used by employers to gauge an applicant's salary expectation and to assist employers seeking to make competitive offers to attract top talent. Employers can inquire as to an employee's expectations, but must not delve into past compensation history. This shift increases the scrutiny on pay equity, compelling employers to comply and a failure to do so could lead to penalties and litigation.

4. Non-Competes, Non-Solicits, and Confidentiality Agreements

The prohibition on non-competes and related limitations on non-solicitation clauses continues to be a source of frustration for employers who wish to protect their business interests. Since SB 699 went into effect this year, California's strict stance on non-compete agreements has expanded its reach, even for those employers who conduct business outside of California. All hope is not lost, however, as employers can still safeguard their proprietary information through proper confidentiality agreements and non-solicit clauses. To comply with California's draconian view on non-competes, employers should draft clauses in such a way that the non-solicit clause is limited to preventing employee misuse of confidential information for the purposes of unlawful competition – thereby avoiding any allegation of a restriction on employee mobility. Careful drafting is essential, as overly-broad or aggressive terms may be struck down by courts and could render the entire agreement unenforceable.

5. Off-the-Clock Work and Unauthorized Overtime

California employers must be vigilant in preventing off-the-clock work and unauthorized overtime, particularly as they navigate the balance between returning to the office and managing remote work arrangements. This issue is especially common among non-exempt employees, who may feel obligated to respond to emails or take work-related calls outside of their scheduled hours simply because they have access to company resources, such as laptops, messaging apps, or work emails on their phones. To mitigate the risk of wage and hour claims, employers should establish and enforce clear policies that explicitly prohibit off-the-clock work, ensuring compliance and protecting both the company and its employees.

6. Arbitration Agreements: Still a Good Idea?

Wulffson

For many years, arbitration agreements were a go-to strategy for employers looking to avoid costly litigation and unpredictable jury pools. However, recent legal developments in California, such as the passage of AB 51, which sought to prohibit mandatory arbitration agreements, have made the use of arbitration agreements less certain. While recent case law has enjoined the enforcement of AB 51, holding that the Federal Arbitration Act (FAA) preempts California AB 51, employers can be certain that efforts to impede the enforcement of arbitration agreements will continue. To thwart such efforts, employers should review their existing arbitration agreements to ensure inclusion of language that the FAA governs the agreement, and to mitigate anticipated attacks on the existence of an enforceable arbitration agreement, employers should track the method in which these agreements are provided to new hires, the way the agreements are acknowledged, and the way these agreements are maintained.

7. Unlimited PTO: The Good, the Bad, and the Ugly

Unlimited Paid Time Off (PTO) policies have gained popularity, but they present several challenges for employers. While these policies can be attractive to employees, they complicate the tracking of time off, managing leaves, and handling payouts upon termination. If employers choose to transition to unlimited PTO, employers must continue to track any accrued and unused PTO, as employees will be entitled to a payout of such PTO at the time of their separation. Additionally, to prevent abuse of unlimited PTO policies, such as "hush trips," known as secret vacations while allegedly working "remote," employers should implement clear remote work policies that require employees to disclose their work location and to report any trips in advance. Employers should weigh the pros and cons of implementing such policies and ensure they have clear guidelines to avoid potential wage and hour claims.

8. Requests for Personnel and Payroll Documents

California law allows employees to request access to their personnel and payroll documents, and failure to comply promptly can result in automatic penalties. This area of the law has become a fertile ground for lawsuits, as even minor delays or discrepancies can lead to significant liabilities. Employers should establish clear protocols for handling document requests to minimize the risk of penalties or litigation.

9. Training Requirements for 2024

California employers are subject to a growing number of mandatory training requirements, from sexual harassment prevention to workplace safety. In 2024, new laws have added even more layers to these requirements, including the need for training related to the prevention of workplace violence under SB 553 and pay transparency compliance. To ensure compliance, employers must stay current on all training obligations and provide employees with accessible, well-documented training programs.

10. Preparing for 2025

While it may seem premature to prepare for the 2025 legal landscape as the leaves have not even started to change color, and Southern California has not cooled to its winter, mid-60s temperature, 2025 will be upon us in a few short months and employers should be prepared. Proactive planning can mitigate risks and position employers for success as laws and regulations continue to evolve. Key areas to monitor include new developments in pay equity legislation, changes in workplace safety requirements, and shifts in employee rights related to privacy and data protection. Employers who invest in compliance strategies now, will be better equipped to navigate future challenges.

Conclusion

As California employers look to 2025 and beyond, the legal landscape continues to evolve with new regulations, court rulings, and workplace trends. By addressing these legal issues proactively, employers can reduce their risk of costly litigation and ensure compliance with California's complex and dynamic employment laws. For additional guidance, employers should consult legal professionals who specialize in California employment law to ensure they are fully prepared for the challenges ahead. If you have questions regarding compliance, please contact either author - Alessandra Whipple at awhipple@cdflaborlaw.com or Todd Wulffson at twulffson@cdflaborlaw.com.