2026 California Labor & Employment Law Symposium

November 10, 2026



Agenda

- **9:30 a.m.** – Labor & Employment Legal Update
- **10:30 a.m.** – Minute Break
- **10:35 a.m.** – Employee Performance Management
- **11:35 a.m.** – 5-Minute Break
- **11:40 a.m.** – Arbitration Agreements
- **12:40 p.m.** – 30 Minute Lunch
- **1:10 p.m.** – Leaves of Absence
- **2:10 p.m.** – Exempt vs. Non-Exempt Classification
- **3:10 p.m.** – 10-Minute Break
- **3:20 p.m.** – Roundtable Discussion + light snacks and refreshments
- **4:30 p.m.** – Program Concludes

Labor & Employment Legal Update – Key Legislative and Case Law Developments Impacting California Employers Today

Presenters:

Lisa M. Reimbold, Member
Katie Trinh, Associate

November 10, 2026

Learning Objectives

Overview of major California employment law developments affecting employers in 2027

1. Identify new California compliance obligations for employers
2. Understand recent developments impacting arbitration agreements and PAGA litigation
3. Evaluate pending legislation that may require future policy or workplace practice updates

We will also look at how statutory, regulatory, and judicial developments interact to create employer risk

SB 464: Pay Data Reporting

Background: private employers with 100+ employees report pay and demographic data to the Civil Rights Department (CRD)

What changed:

- Demographic data must be stored separately from personnel files
- Courts must impose civil penalties (previously discretionary) on employers who fail to file when the CRD requests it
- Job categories increase from 10 to 23, effective January 1, 2027

Penalties: $100 per employee for first failure; $200 per employee for subsequent failures

SB 261: Teeth for Unpaid Wage Judgments

The "Triple Penalty": If a final judgment for unpaid wages remains unsatisfied for 180 days after the appeal period expires, the court may impose a civil penalty of up to three times the unpaid judgment amount on top of what is already owed

What changed: adds Labor Code § 238.05

Trigger: a wage judgment that stays unsatisfied 180 days after the appeal period expires, with no appeal pending

Penalty: up to 3x the outstanding judgment, plus post-judgment interest

- Collected civil penalties are split evenly: 50% to affected worker(s) and 50% to the Division of Labor Standards Enforcement

Practice points: judgment collection strategy, settlement leverage, and advising employers on post-judgment posture



2027 Wage Thresholds

Effective January 1, 2027

- **Minimum wage:** up 50 cents (from $16.90) to $17.40 per hour for all employers, regardless of size
- **Local and industry rates:** higher rates (e.g., fast-food, healthcare) still supersede the state floor
- **Exempt salary floor:** pegged at 2x minimum wage, rising from $70,304 to $72,384 per year ($1,392 per week)

“Stay-or-Pay” Restrictions

Anti-TRAP Law Updates

Effective date: amendments and implementation of restrictions on training and retention repayment provisions (TRAPs) take effect January 1, 2027

New exception

- **Financial services:** recruiting/retention payments documented in standalone agreements with consultation time
- **PTO:** limited PTO balance recovery, capped at 40 hours of advanced leave without interest

AB 2155 Updates

Changes to employment arbitration, effective January 1, 2027

- California law narrows the scope of enforceable employment arbitration
- Adopts the federal transportation worker exemption under the FAA
- Incorporates the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act directly into state-level standards
- Removes alternative avenues to compel arbitration under the California Arbitration Act in these areas



Hohenshelt v. Superior Court

August 11, 2025, S284498

- **Statute:** CCP § 1281.98 – unless otherwise agreed, the drafting party must pay arbitration fees within 30 days of the due date, and invoices are deemed due on receipt
- **Facts:** the employer paid within 30 days of a new due date set by the arbitrator, but late under the original invoice. The employee moved to withdraw from arbitration and return to court. The trial court denied the motion and the Court of Appeal reversed
- **Holding:** the court rejected a rigid per se forfeiture reading. Automatic waiver applies only where non-performance is willful, grossly negligent, or fraudulent

Hohenshelt: Open Issues and Practice Points

- **Open issues:**
  - Parties may be able to contract around the statute by selecting FAA procedures
  - Uncertainty over how AAA Rule R-56's automatic waiver provision will fare after Hohenshelt
- **Practice points:**
  - Calendar fee deadlines from the original invoice date
  - Document any good-faith mistake
  - Review the fee and procedure language in arbitration agreements

Leeper v. Shipt, Inc. (S289305)

Case is still pending: “headless” PAGA claims

Background: the representative plaintiff seeks penalties only for violations against co-workers, not himself or herself – a strategy used to avoid arbitration of the individual PAGA claim

Framework: Viking River, then Adolph v. Uber, which held that a plaintiff whose individual claims are compelled to arbitration keeps standing to litigate non-individual PAGA claims

Court of Appeal decision: the Second District held every PAGA action includes both an individual and a representative claim, so a plaintiff cannot abandon the individual claim to avoid arbitration

AB 1961: Group Workplace Violence Orders

Passed and Enacted into Law; September 30, 2026

- **Existing law (CCP § 527.8):**
  - An employer or collective bargaining representative may seek a restraining order on behalf of an employee who suffered unlawful violence or a credible threat of violence
  - Courts may extend protection to other employees at the court's discretion
- **Proposed changes under AB 1961:**
  - Employers could seek a restraining order on behalf of an entire workplace, facility, or group of employees, without identifying a specific employee
  - Applies when violence, harassment, intimidation, or credible threats target a workplace, location, or group with common job functions

AB 1961: Legislative Status

Passed and Enacted Into Law; September 30, 2026

Effective: January 1, 2027

Amends Section 527.8 of the California Code of Civil Procedure regarding workplace violence protective orders

What it Does: allows employers to seek a workplace violence restraining order on behalf of all employees at a workplace / location when harassment, unlawful violence, or a credible threat is directed at the workplace itself.

AB 1961 and Workplace Violence Prevention

Interaction with California workplace violence prevention requirements

- Relationship between AB 1961 and California's workplace violence prevention program requirements
- Employer obligations for incident reporting, training, risk assessment, and violence prevention planning
- How group restraining orders could become part of a broader workplace safety strategy

AB 1961: Potential Benefits and Challenges

- **Benefits:** expanded ability to protect employees when threats are directed at an entire workplace rather than a single individual
- **Challenges:** documenting group-based threats and demonstrating the necessity of court intervention
- **Balancing:** employee safety concerns with operational and employee-relations considerations

Practical Employer Considerations

- **Where group orders may help:** threats directed at healthcare facilities, retail locations, government-facing employees, or customer-service teams
- **Before seeking relief:** consider documentation and investigative steps
- **Coordinate:** Human Resources, security personnel, and legal counsel when responding to workplace threats
- **Keep monitoring:** additional legislation expected to affect workplace safety, wage-and-hour compliance, and employee protections in 2027 – and build a process for tracking developments and preparing for future compliance obligations

Conclusion: Key Compliance Themes

- California employers face an increasingly complex compliance environment driven by legislative changes, evolving case law, and heightened enforcement mechanisms
- Proactive compliance is generally less costly than responding to litigation, agency investigations, or statutory penalties
- HR professionals, legal counsel, and business leaders should work together to monitor developments and keep policies and practices current

Employer Action Items for 2027

- Review HRIS, payroll, and recordkeeping systems to prepare for expanded pay data reporting and new job classifications
- Audit wage-and-hour practices, including minimum wage adjustments and exempt employee salary thresholds
- Evaluate existing arbitration agreements and dispute resolution procedures in light of recent California and federal developments
- Monitor pending legislation and regulatory activity affecting workplace violence prevention, employee protections, and employer obligations

Risk Management Takeaways

- Develop a calendar for compliance deadlines and reporting obligations
- Conduct periodic reviews of employment agreements, handbooks, and policies
- Train HR and management personnel on new legal requirements before implementation dates
- Consult labor and employment counsel when significant statutory or case law changes affect workplace practices

California remains one of the most rapidly changing employment law jurisdictions in the country.

Employers that stay informed, document compliance efforts, and proactively adapt policies will be better positioned to minimize risk and respond to legal changes effectively.

Questions?



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From Algorithm to Exit

Defensible Employee Performance Management Under California and Federal Law

Presenters:

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Priya R. Patel, Senior Attorney

November 10, 2026

Learning Objectives

PART 1 · INTRODUCTION & FRAMING

By the end of this session, you will be able to:

1. Identify the California and federal rules now governing AI-assisted evaluations, discipline and termination
2. Apply current retaliation burden-shifting frameworks to a PIP timeline
3. Manage performance lawfully during protected leave and accommodation
4. Carry out a compliant California termination and release



Agenda

60 MINUTES · FIVE PARTS · ONE PERFORMANCE DECISION, FROM RATING TO SEPARATION

PART 1

Introduction & Framing

3 min

Objectives, the Jordan hypothetical, why now

PART 2

Evaluating Performance

20 min

AI-assisted ratings and bias in the review

PART 3

Acting on Performance

20 min

PIPs, retaliation, leave and accommodation

PART 4

Separating the Employee

10 min

The termination decision and the release

PART 5

Conclusion & Q&A

7 min

Key takeaways and questions

Why This Matters Now

PART 1 · INTRODUCTION & FRAMING

California is adding obligations

FEHA automated-decision system regulations
Effective October 1, 2025

CCPA automated decision-making technology rules
Compliance deadline January 1, 2027

SB 947 "No Robo Bosses Act"
Operative July 1, 2027

AB 1331 · AB 1883 · AB 2563 · SB 951
Effective January 1, 2027

Federal enforcement is pulling back

Executive Order 14281 (April 23, 2025)
Agencies deprioritize disparate-impact enforcement

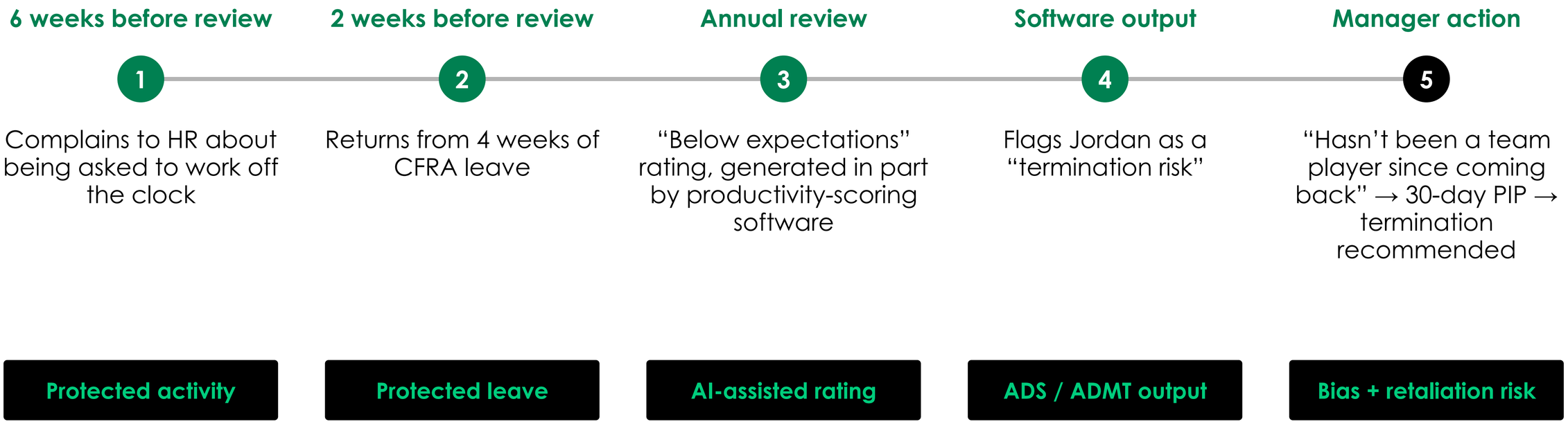
EEOC National Enforcement Plan, FY 2025–2029
Approved June 2026 — focus on DEI-related discrimination

EEOC rescissions
2024 harassment guidance (Jan. 2026); 1979 affirmative-action guidelines (July 2026)

The result: a widening gap. California obligations control every step of the performance cycle.

Meet Jordan: Our Running Hypothetical

PART 1 · INTRODUCTION & FRAMING



"Jordan," a fulfillment analyst at a 300-employee California distribution company. We return to Jordan in every segment.

Three Overlapping AI Regimes

PART 2 · EVALUATING PERFORMANCE

CIVIL RIGHTS COUNCIL

FEHA ADS Regulations

Oct 1, 2025

In effect

Who
Employers with 5+ employees

Reaches
Hiring, promotion, pay and discharge decisions

CA PRIVACY PROTECTION AGENCY

CCPA ADMT Rules

Jan 1, 2027

Deadline · rules in effect 2026

Who
CCPA-covered businesses (≈ $26.6M+ revenue or data thresholds)

Reaches
"Significant decisions": work allocation, pay, promotion, termination

LAB. CODE §§ 1520–1526.7

SB 947 "No Robo Bosses Act"

July 1, 2027

Operative date

Who
All employers, any size

Reaches
Discipline and termination decisions that rely on an ADS

FEHA Automated-Decision System Rules

What counts: any computational process that makes — or facilitates — an employment decision. A productivity score feeding a rating is an ADS.

1 **Vendors can be your "agent"**

Third parties doing employer functions (screening, hiring, promotion, pay or leave decisions) count as the employer (§ 11008(b)). Cf. Mobley v. Workday — pending. Contract for testing, data, cooperation, indemnity.

2 **Anti-bias testing**

Not mandated — but its quality, efficacy, scope, recency and your response are evidence. No testing becomes the plaintiff's evidence.

3 **4-year recordkeeping**

Preserve ADS inputs, outputs and customization data for four years (§ 11013; Gov. Code § 12946).

4 **Disability & accommodation**

Speed, keystroke or tone metrics can screen out employees with disabilities — offer an alternative evaluation (§ 12940(m)).

Read the whole amended framework: vendor liability (§ 11008(b)) and retention (§ 11013) sit outside new § 11008.1.



CCPA Automated Decision-Making Rules

PART 2 · EVALUATING PERFORMANCE · AI

Triggered by a "significant decision": work allocation, compensation, promotion, demotion, suspension, termination.

1. **Pre-use notice**
   Purpose, how it works, how its output is used (§ 7220)

2. **Right to opt out**
   With exceptions, e.g., a human appeal; some hiring and work/pay uses (§ 7221(b))

3. **Right to access**
   Plain-language explanation of how ADMT was used (§ 7222)

4. **Risk assessment**
   Executive attestation; first submission due April 1, 2028 (§§ 7150–7157)

The human-involvement test

It isn't ADMT if a human reviewer:

- Knows how to interpret the output
- Reviews it with other relevant information
- Has authority to change the decision

Build this step once — it also supports the FEHA defense and SB 947.

SB 947: The “No Robo Bosses Act”

PART 2 · EVALUATING PERFORMANCE · AI

July 1, 2027

Operative date — about eight months to prepare. Narrowed successor to SB 7, vetoed October 2025

$500

Civil penalty per violation, plus injunctive relief. Enforced by the Labor Commissioner and public prosecutors; no private right of action

Core rule	No discipline or termination based solely on an ADS. When relying primarily on ADS output, a human must independently corroborate it — rubber-stamping fails.
Post-use notice	Stand-alone written notice: ADS was relied on, a human verified it, a human contact, right to a data description, no retaliation.
Prohibited uses	Violating employment laws · inferring protected traits · predicting who will exercise legal rights.
Burden of proof	Once ADS use is shown, the employer must prove it did not primarily rely on it or that it complied.
Union exemption	A CBA with a clear and unambiguous waiver that sets wages and working conditions and protects against algorithmic management.

Workplace Surveillance & the Federal Overlay

PART 2 · EVALUATING PERFORMANCE · AI

California surveillance limits

AB 1883 & AB 1331 · EFFECTIVE JAN 1, 2027

- **AB 1883:** no AI that infers emotional state; no neural-data collection
- **AB 1331:** no surveillance in workplace bathrooms; employees may leave tracking devices outside
- **Penalties:** up to $500 per violation; no express private right of action, but AB 1883 penalties are recoverable by employees (PAGA risk)

Action: inventory and disable "sentiment," "engagement" and tone-analysis features.

The federal overlay

NO COMPREHENSIVE FEDERAL AI-EMPLOYMENT STATUTE

- **Title VII:** disparate impact (Griggs) is still enforceable by private plaintiffs
- **EO 14281:** directs federal agencies to deprioritize disparate-impact enforcement
- **California:** FEHA disparate-impact claims remain fully available

Bottom line: reduced federal enforcement offers California employers little cover.

Jordan: The AI Flag

APPLYING THE LAW · PART 2 · EVALUATING PERFORMANCE

Productivity score
An ADS under the FEHA regulations

"Termination risk" flag
ADMT output used for a significant decision under the CCPA rules

Termination after July 1, 2027
If the employer primarily relies on the flag: a human must corroborate it with underlying data, and Jordan gets a post-use notice

Practice pointers

- Inventory every tool that scores, ranks or flags employees
- Map each tool to all three regimes
- Adopt one written human-review protocol: what the reviewer examined and why they agreed or disagreed
- Update vendor contracts: testing data, four-year retention, litigation cooperation

Bias in the Review: The Legal Framework

PART 2 · EVALUATING PERFORMANCE · BIAS

Title VII & FEHA

Bar discrimination in evaluations that drive pay, promotion or discharge. FEHA adds a duty to prevent (§ 12940(k)).

Price Waterhouse v. Hopkins (1989)

A partner's advice that she "walk more femininely" was evidence of sex stereotyping.

AB 2563 (eff. Jan 1, 2027)

Lists stereotype conformity within FEHA's "sex" — declarative of existing law, codifying Price Waterhouse.

Harris v. City of Santa Monica (2013)

FEHA: "substantial motivating factor." Same-decision defense bars damages; declaratory or injunctive relief and fees remain.

Ames v. Ohio DYS (2025)

Same prima facie standard for majority-group plaintiffs. Demographic rating tweaks create exposure from every side.

Staub / Reeves: "Cat's Paw"

A biased supervisor's review or PIP can taint an unbiased decision-maker (Staub arose under USERRA). Only a truly independent investigation breaks the chain.

How Bias Enters — and the Federal/State Gap

Red flags plaintiffs use to show pretext

- Subjective criteria: “culture fit,” “attitude,” “executive presence”
- Unexplained drops from prior ratings
- Inconsistent treatment of comparators
- Shifting explanations
- Calibration changes with no record of who or why

Research: women are more likely to get vague feedback not tied to business outcomes (HBR, 2016).

Federal: EEOC plan FY 2025–2029

Targets pay or bonuses tied to demographic goals and evaluation rubrics using protected traits; 2024 harassment and 1979 affirmative-action guidance rescinded. Bostock still binds.

California: unchanged or expanding

Duty to prevent discrimination (§ 12940(k)); mandatory harassment training (§ 12950.1); AB 1803 adds anti-hate-speech content (2028).

Reconcile both: audit outcomes for disparities; fix the process (clarify criteria, retrain raters, re-review with documented reasons) — never adjust individual ratings by protected characteristic.

Jordan: The Review

APPLYING THE LAW · PART 2 · EVALUATING PERFORMANCE

The manager's comment

"Hasn't been a team player since coming back."

Subjective | Tied to protected leave | Cat's-paw risk

An unbiased decision-maker who relies on this review would likely inherit its bias.

Practice pointers

- Use behaviorally anchored criteria
- Require specific written examples for any rating above or below target
- Record the reason for every calibration change
- Compare each rating to prior ratings and peers before finalizing

Is a PIP an Adverse Employment Action?

PART 3 · ACTING ON PERFORMANCE

TITLE VII DISCRIMINATION

Muldrow v. City of St. Louis (2024)

"Some harm"

to an identifiable term or condition — no "significant" threshold. A PIP touching bonus, assignments or a path to discharge may qualify; courts are split on a PIP alone.

FEDERAL RETALIATION

Burlington Northern v. White (2006)

"Materially adverse"

Might dissuade a reasonable worker from making or supporting a charge. Muldrow left this in place.

FEHA

Yanowitz v. L'Oreal (2005)

"Materially affects" — collectively

A negative review, lost assignments and a PIP can be aggregated into one course of conduct.

Treat every PIP as potentially actionable.

A defensible PIP: specific, measurable expectations · realistic time frame and support · consistent with comparators

Retaliation Frameworks & the Timing Problem

PART 3 · ACTING ON PERFORMANCE

SB 497

90 days

Adverse action within 90 days of activity protected by §§ 98.6 or 1197.5 — e.g., wage complaints, equal-pay inquiries — is presumed retaliatory

Up to $10,000

per employee per violation (§§ 98.6, 1102.5), awarded to the employee

Same facts, three different standards

Lab. Code § 1102.5 (Lawson / § 1102.6)	Employee: protected activity was a contributing factor. Employer: clear and convincing proof of the same decision. No pretext required.
FEHA § 12940(h)	McDonnell Douglas burden-shifting (Yanowitz)
Title VII	But-for causation (Nassar, 2013)

Lampkin v. County of Los Angeles (2025): employer proved the same-decision defense; the $400,000 fee award was reversed and judgment entered for the County. Documented reasons win.

Managing Performance During Protected Leave

PART 3 · ACTING ON PERFORMANCE

CFRA
Gov. Code § 12945.2

Employers with 5+ employees. No interference with, or retaliation for, protected leave.

FMLA
29 C.F.R. § 825.220(c)

Leave can't be a "negative factor" (9th Cir.: Bachelder); some circuits require but-for causation.

Pregnancy disability leave
Gov. Code § 12945

Separately protected under California law.

1 **Metrics & scores**

Exclude leave from production metrics, attendance points and ADS scores. Counting leave days as low output is itself evidence of interference.

2 **PIP timing**

Pause the PIP during leave and restart it with a fresh, reasonable period. Don't discipline for output missed due to intermittent leave.

Moore v. Regents (2016): a termination closely following medical leave revived disability, accommodation and CFRA claims.

Performance & Reasonable Accommodation

PART 3 · ACTING ON PERFORMANCE

1 The duty

Reasonable accommodation and a timely, good-faith interactive process (§ 12940(m), (n); regs §§ 11068–11069).

2 Standards stay

No need to lower uniform, job-related quality or quantity standards — but consider schedule changes, equipment or reassignment that help meet them.

3 The trigger

Start the interactive process once aware of a need, including by observation (§ 11069(b)). Case law extends this to performance problems a disability may explain.

Wills v. Superior Court (2011)

Uniform conduct rules (e.g., threats) can be enforced even if a disability caused the misconduct. Distinguish conduct violations from shortfalls caused by an unaccommodated disability.

Pregnancy: PWFA

Accommodate known pregnancy-related limitations. Elective-abortion provisions vacated (Louisiana v. EEOC, 2025); EEOC plans to revise the rule. California PDL and FEHA duties are broader.

Jordan: The PIP & the Leave

APPLYING THE LAW · PART 3 · ACTING ON PERFORMANCE

Protected activity

Off-the-clock complaint six weeks out (§ 98.6): a rating, PIP or termination within 90 days is presumed retaliatory

Employer's burden

Clear and convincing evidence: pre-complaint documentation, consistent comparators, an independent decision-maker

Protected leave

Rating period included CFRA leave, and the manager tied the rating to Jordan's return

Before any PIP, discipline or termination

1. Check the prior 90 days for complaints, wage or safety claims, leave and accommodation requests
2. Confirm the documentation predates the protected activity
3. Don't accelerate timelines after a complaint
4. Recalculate the rating without leave, strike the comment, reset the PIP
5. Thin record? Defer — and document why

The Termination Decision

PART 4 · SEPARATING THE EMPLOYEE

AT-WILL AND ITS LIMITS

Lab. Code § 2922 · Guz v. Bechtel (2000)

Written policies such as progressive discipline can create an implied-in-fact contract. Longevity and good reviews alone do not.

Action

If the handbook promises progressive discipline, follow it — or confirm it is properly disclaimed.

WHERE GOOD CAUSE IS REQUIRED

Cotran v. Rollins Hudig Hall (1998)

A fair and honest reason, supported by substantial evidence from an adequate investigation.

Action

Give notice of the claimed misconduct and a chance to respond.

AI-ASSISTED TERMINATIONS

SB 947 · SB 951

Once SB 947 is operative, the human-corroboration record and post-use notice go on the checklist.

Action

SB 951 (Jan 1, 2027): Cal-WARN notices need added disclosures when AI or automation substantially causes job losses.

Termination-Day Obligations

PART 4 · SEPARATING THE EMPLOYEE

1 **Final pay**

Wages and accrued PTO due immediately on discharge (§§ 201, 227.3). Late pay: waiting-time penalties up to 30 days' wages (§ 203). Bonuses and commissions per the plan's terms (Schachter v. Citigroup).

2 **Required notices**

Written notice of change in status (Unemp. Ins. Code § 1089) and EDD pamphlet DE 2320; benefit continuation/conversion notice (§ 2808); COBRA and Cal-COBRA.

3 **Records requests**

Personnel-file and payroll requests continue after termination (§§ 1198.5, 226(b)). SB 513 (2026) adds education and training records; the 30-day deadline and $750 penalty apply.

4 **Litigation hold**

Issue once a claim is reasonably anticipated — including ADS data, messaging apps and managers' notes.

Separation & Release Agreement Checklist

PART 4 · SEPARATING THE EMPLOYEE

1

Gov. Code § 12964.5

Required "unlawful acts" carve-out; advise of the right to counsel; at least 5 business days

2

Scope of release

§ 1542 waiver. Unpaid wages (§ 206.5), UI, workers' comp and vested benefits can't be released

3

OWBPA (age 40+)

Cite the ADEA; added consideration; no future claims; advise counsel in writing; 21 days (45 for groups); 7 to revoke

4

Restrictive covenants

Non-competes are void wherever signed (§§ 16600, 16600.5); § 925 limits out-of-state law and forum

5

Code Civ. Proc. § 1001

Limits confidentiality of facts in sexual assault, harassment and discrimination claims

6

NLRA: McLaren Macomb

Still law for non-supervisors; Board said it's open to reconsidering (Prime Communications, Apr 2026)



Jordan: The Exit

APPLYING THE LAW · PART 4 · SEPARATING THE EMPLOYEE

Wage claims
Off-the-clock complaint: a release can't waive wages due unless they've been paid (§ 206.5).

Agreement terms
§ 12964.5 "unlawful acts" carve-out, right-to-counsel notice, 5 business days.

AI-driven decision
Terminated after July 1, 2027 based on the flag? Corroboration record plus SB 947 notice.

Age 40 or older?
OWBPA applies: cite the ADEA, advise counsel, 21 days to consider, 7 to revoke.

Before Jordan's last day

1. Finish the leave and retaliation fixes first; document independent reasons
2. Pay final wages and accrued PTO that day; resolve the off-the-clock claim
3. Deliver § 1089, DE 2320, § 2808 and COBRA notices
4. Issue a litigation hold: software data, PIP file, manager messages



Key Takeaways

PART 5 · CONCLUSION & QUESTIONS

Five things to do before the next review cycle

1. **One human-review protocol** that satisfies the FEHA ADS rules, the CCPA ADMT rules and SB 947
2. **Evidence-based ratings:** written examples, documented calibration, process-level audits
3. **A 90-day check** for protected activity and leave before any PIP, discipline or termination
4. **A California-specific checklist** for final pay, notices, records and release language
5. **Verify AI-drafted work:** Noland (2025) — $10,000 sanction for fabricated citations

Questions?

PART 5 · CONCLUSION & QUESTIONS



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Arbitration Agreements – Best practices for Structuring and Implementing Enforceable California Arbitration Agreements

Presenters:

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November 10, 2026

Roadmap: Arbitration is a Strategic Choice

Five questions for California employers

1

Should we arbitrate?

2

How should we draft it?

3

How do we roll it out?

4

How should it be signed?

5

What does current law require?

Framing Point: The FAA Favors Enforcement, Not Formation

The policy is strong, but ordinary contract rules still govern

VALID • IRREVOCABLE • ENFORCEABLE

Courts enforce arbitration agreements according to their terms

But the FAA does not create assent, cure defective rollout, or eliminate fraud, duress, or unconscionability defenses.

Pros & Cons of Arbitration Agreements

- Advantages for Employers
- Disadvantages and Risk Points



Advantages for Employers

- Reduces exposure to class and collective actions
- Potentially faster, more private, and more cost-effective
- Reduces risk of an unpredictable jury

Disadvantages and Risk Points

- California requires employers pay all fees/costs unique to arbitration
- Limited procedural safeguards + limited appeal rights
- “Private” is not “confidential”
- Class/representative waivers can result in “mass arbitration” proceedings
  - A class or collective action in court is sometimes preferable
- Per the EFAA, pre-dispute agreements no longer reach sexual-harassment and sexual-assault disputes unless the employee elects to do so



Drafting an Enforceable Arbitration Agreement

- Formation Fundamentals
- Avoiding Unconscionability
- Class/Collective-Action Waiver and Delegation
- Structural Clauses that Preserve Enforceability

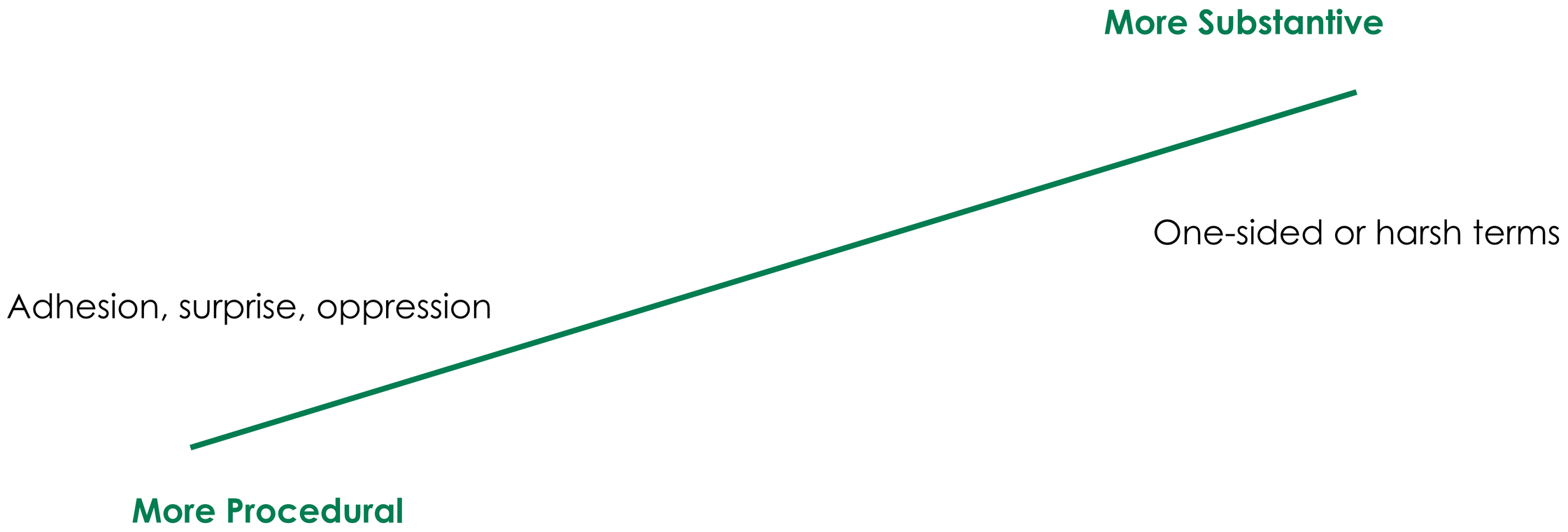
Formation Fundamentals

No contract, no arbitration

MUTUAL ASSENT	Clear notice and affirmative agreement
CONSIDERATION	Employment or continued employment
AUTHENTICITY	Proof that the employee *actually agreed*
DEFENSES	Fraud, duress, and unconscionability remain available

Avoiding Unconscionability

California unconscionability uses a sliding scale: both procedural and substantive unconscionability must be present



Avoiding Unconscionability

The Design Checklist

- MUTUAL OBLIGATIONS
- EMPLOYER PAYS ARBITRATION-SPECIFIC COSTS
- ADEQUATE DISCOVERY
- FULL STATUTORY REMEDIES
- NO SHORTENED LIMITATIONS PERIOD
- WRITTEN AWARD

Class/Collective-Action Waiver and Delegation

- Class and collective-action waivers are enforceable under the FAA
- Delegate arbitrability clearly
- Consider carving the class/collective-arbitrability question out to the court
- Note the EFAA override: the *court*, not the arbitrator, decides applicability

Structural Clauses That Preserve Enforceability

- ALL-CAPS, **bold** acknowledgement of the jury/court waiver
- Governing-law provision
  - Covering interpretation, proceedings, and substantive claims
- FAA-selection clause
- Successors-and-assigns clause
- Severability clause

Presenting Arbitration Agreements to Employees

- Choose the Format Deliberately
- Document Assent and Consider An Opt-Out



Choose the Format Deliberately

Where the arbitration promise lives affects notice, contract formation, and later proof

BEST DEFAULT

Stand-alone agreement

Clear contractual intent and focused acknowledgement

ALTERNATIVES

Offer or employment agreement

Efficient, but can be buried among other terms

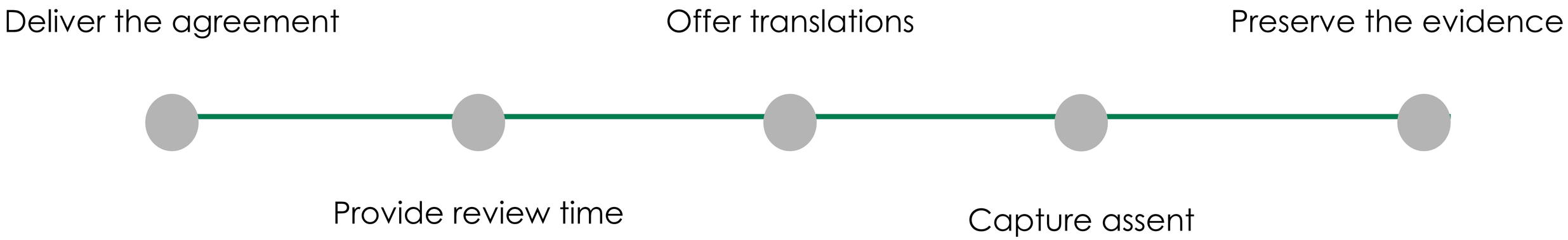
HIGHER RISK

Handbook-embedded clause

Disclaimer and modification language may undermine contractual intent

Document Assent and Consider An Opt-Out

A defensible rollout workflow: design the record you will need years later





E-Signatures vs. Wet Signatures

- The Signatures Are Legally Equivalent
- The Employer's Authentication Burden When the Employee Denies Signing
- Why We Prefer Wet Signatures

The Signatures Are Legally Equivalent

- The UTEA recognizes electronic signatures, but attribution must be proved
- Burden of Proof
  - Who used the credentials?
  - What security procedure applied?
  - What audit trail remains?

The Employer's Authentication Burden When the Employee Denies Signing

A denial shifts the fight to authentication evidence

1

Employee denies or cannot recall

2

Employer bears the burden

3

Conclusory declaration is insufficient

4

Court evaluates the security procedure

5

Formation succeeds or fails

Standard: preponderance of the evidence that the electronic signature was the employee's act

The Employer's Authentication Burden When the Employee Denies Signing

Authentication declaration: witness must explain the actual system and the actual transaction

Credentials	Unique private username and password
Controls	Mandatory password reset or comparable security step
Workflow	Step-by-step description of how employee accessed and signed
Attribution	Why no one else could affix the signature
Records	Audit trail, time stamp, IP or device data, and retained logs

Why We Prefer Wet Signatures

Our practical preference: use wet signatures where feasible

WET	ELECTRONIC
Recognizable signature	Requires credential controls
Simple custodian testimony	Requires durable audit trails
Less dependence on system logs	

Governing Case Law and Recent Updates

- The FFA Framework and Class/Collective Waivers
- The EFAA
- California-Specific Developments
- Recent U.S. Supreme Court Developments



The FAA Framework and Class/Collective Waivers

Epic Sys. Corp. v. Lewis (2018):

- The FAA requires courts to enforce arbitration agreements per their terms
- Such terms include mandating individualized proceedings
- The NLRA does not displace the FAA
- Thus, class/collective-action waivers are enforceable

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 ("EFAA")

9 U.S.C.A. § 402:

- At Claimant's election, no pre-dispute arbitration agreement or joint-action waiver is valid or enforceable for a sexual-harassment or sexual-assault dispute
- Court decides applicability, not arbitrator
- Applies to claims that arise or accrue on/after March 3, 2022

California-Specific Developments

Hohenshelt v. Superior Court (2025)

- Late arbitration fees trigger forfeiture only when nonpayment is willful, grossly negligent, or fraudulent.

Adolph v. Uber (2023)

- Compelling the individual PAGA claim does not eliminate standing to pursue representative PAGA claims in court.

Ramirez v. Charter (2024)

- Confirmed *Armendariz* remains the governing unconscionability framework; procedural and substantive elements operate on a sliding scale.

Recent U.S. Supreme Court Developments

Morgan v. Sundance (2022)

- A party can waive arbitration by litigating too long; no arbitration-specific prejudice rule.

Coinbase v. Bielski (2023)

- An interlocutory arbitrability appeal requires a stay of merits proceedings.

Smith v. Spizzirri (2024)

- When a stay is requested, FAA § 3 requires a stay rather than a dismissal.

Recent U.S. Supreme Court Developments

A focus on FAA § 1's transportation worker exemption

Sw. Airlines Co. v. Saxon (2022)

- Look at what the worker actually does.

Bissonnette v. LePage Bakeries Park St., LLC (2024)

- Clarified that the employer need not be in the transportation industry.

Flower Foods, Inc. v. Brock (2026)

- Interstate-commerce engagement does not require crossing state lines or interacting with a vehicle that does.

Conclusion

Four takeaways

1. Arbitration is a deliberate trade-off, not a cure-all
2. Enforceability is earned during drafting and rollout
3. Signature method is a proof strategy
4. Governing law keeps moving

Questions?



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Leaves of Absence – Navigating Overlapping Obligations, Including PDL, FMLA, CFRA, and Disability Accommodations

Presenters:

Armando Solorzano, Senior Attorney
Jessica L. Soriano, Associate

November 10, 2026

Today’s Roadmap

Program overview

1	2	3	4	5	6	7
Leave types at a glance	**Managing the leave**	**Recent updates**	**Thumbs up, thumbs down**	**Hypotheticals**	**Your questions**	**Wrap-up**
Plus a short quiz	Six steps, start to finish	New laws and cases	Green card, red card	Two scenarios to work through	Bring them all	Three takeaways

What You'll Leave With

Learning objectives

1. **Understand the Basics of CFRA, FMLA, and PDL:** Who is covered? Who is eligible to take leave? What reasons employees take leave? How much leave are they entitled to?

2. **Explain how these Types of Leave Interact with Each Other**: when leaves run concurrently and when they run consecutively, especially PDL, FMLA, and CFRA.

3. **Managing the Leave Process:** from preparing for leave to start through the ultimate return to work

4. **Recognize the Employer's Continuing Obligations:** once the employee returns to work, the FEHA/ADA accommodation analysis may begin, and the employer may have some continuing obligations

5. **Practice Makes Perfect:** lets put our knowledge to the test and look at some hypotheticals to further our understanding of CFRA, FMLA, and PDL

Raise your hand if a leave request has ever left you asking, "Wait, which law is this?"

Four Questions for Every Leave

1

Is the employer covered?

2

Is the employee eligible?

3

What is the reason for leave?

4

What happens when the leave ends?

FMLA and CFRA

FMLA

- Employers with 50+ employees within 75 miles.
- Employees with 12 months and 1,250 hours worked.
- Up to 12 weeks (26 for military caregiver leave).
- Own serious health condition, family care, bonding, and exigency.

29 U.S.C. § 2601 et seq.
29 C.F.R. pt. 825

CFRA

- Employers with 5+ employees.
- Same 12 months and 1,250 hours; no 75-mile rule.
- Up to 12 workweeks in 12 months.
- Broader family list, including one designated person.
- Does not cover pregnancy disability; that is PDL.

Gov. Code § 12945.2
Cal. Code Regs., tit. 2, § 11087 et seq.

Pregnancy Disability Leave

Leave types at a glance

5+

employees

PDL covers employers with five or more employees

0

service or hours test

Covered from the first day on the job

4

months per pregnancy

Up to 17 1/3 weeks for a full-time employee, for the period of actual disability

PDL is more than leave

- Transfer
- Modified duties
- Reduced schedule
- Extra breaks
- A chair or water bottle

A Working Rule

PDL runs with FMLA, never with CFRA.

- PDL does not count against CFRA
- CFRA and FMLA often run together, but not always

Cal. Code Regs., tit. 2, § 11046
Also in the same file: paid sick leave (Lab. Code § 245 et seq.); reproductive loss leave (Gov. Code § 12945.6); bereavement leave (Gov. Code § 12945.7); victim leave (Gov. Code § 12945.8)

When Statutory Leave Runs Out

Leave types at a glance

The FEHA/ADA safety net

- When statutory leave is exhausted, a finite extension may still be a reasonable accommodation.
- Employers are not required to allow indefinite leave.
- Begin the interactive process before any decision on employment.

The working rule

Concurrently: PDL and FMLA run at the same time



Consecutively: CFRA starts after PDL ends



FMLA rides along. CFRA waits its turn.

Other Leaves That Land in the Same File

Leave types at a glance

Paid sick leave

Including local ordinances

Reproductive loss leave

Up to five days after a qualifying loss

Bereavement leave

Up to five days; a designated person starting in 2027

Victim leave

Now includes related court proceedings

Distinction: SDI and PFL replace wages. They do not protect the job like the above leaves.

Quick Quiz: Which Law Applies?

Leave types at a glance

1. An employee hired three months ago at a 30 person company is disabled by pregnancy complications.

2. An employee at a 60-person company asks for 8 weeks to care for a grandparent after surgery.

3. A new mother at a 200-person company finishes PDL and asks for bonding leave.

4. An employee uses 12 weeks of leave for surgery. Her doctor says she needs six more weeks.

Quiz Answers

Leave types at a glance

1

PDL only

PDL has no service or hours test. CFRA and FMLA do not apply.

2

CFRA if she is eligible

FMLA does not cover grandparents, so do not designate the leave as FMLA.

3

CFRA bonding leave

PDL does not count against CFRA. FMLA already ran at the same time as PDL.

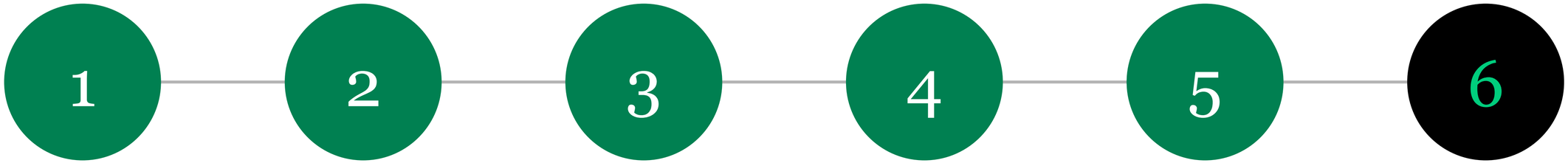
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The FEHA/ADA analysis

Statutory leave is exhausted. The accommodation analysis begins.

Six Steps for Managing Every Leave

Managing the employee and the leave



Recognize

Spot the request

Respond

On time and in writing

Certify

Need, dates, duration

Administer

Track each law separately

Return

Reinstate correctly

Reassess

Before any termination

Steps 1 and 2: Recognize and Respond

Managing the employee and the leave

1 Recognize

- Employees do not need to say “CFRA.”
- Verbal notice can be enough.
- Managers refer the request to HR the same day.
- Managers do not decide it on their own.

2 Respond

- 5 business days to respond to a CFRA request
- 10 calendar days to respond to a PDL request

- Tell the employee in writing which law the leave counts against.

Steps 3 and 4: Certify and Administer

Managing the employee and the leave

3 Certify

- Ask for the need for leave, the dates, and the expected duration.
- Do not ask for the diagnosis.
- If a PDL certification is complete, accept it.

4 Administer

- Track PDL, FMLA, CFRA, and accommodation leave separately.
- Count intermittent leave in increments of one hour or less.
- Health coverage during PDL and during CFRA are separate entitlements.
- Keep medical information confidential.

Quick poll

When an employee first mentions needing time off, who usually hears it first at your organization: HR, or the frontline manager?

Pregnancy: The Order of Analysis

Managing the leave: the pregnancy timeline

1

Disabled by pregnancy?

Start with PDL and accommodations. No service or hours test.

2

Covered by FMLA?

PDL counts against FMLA at the same time.

3

Ready to bond?

CFRA bonding follows PDL as a separate 12 weeks. The 1,250-hour test looks back from the first day of PDL.

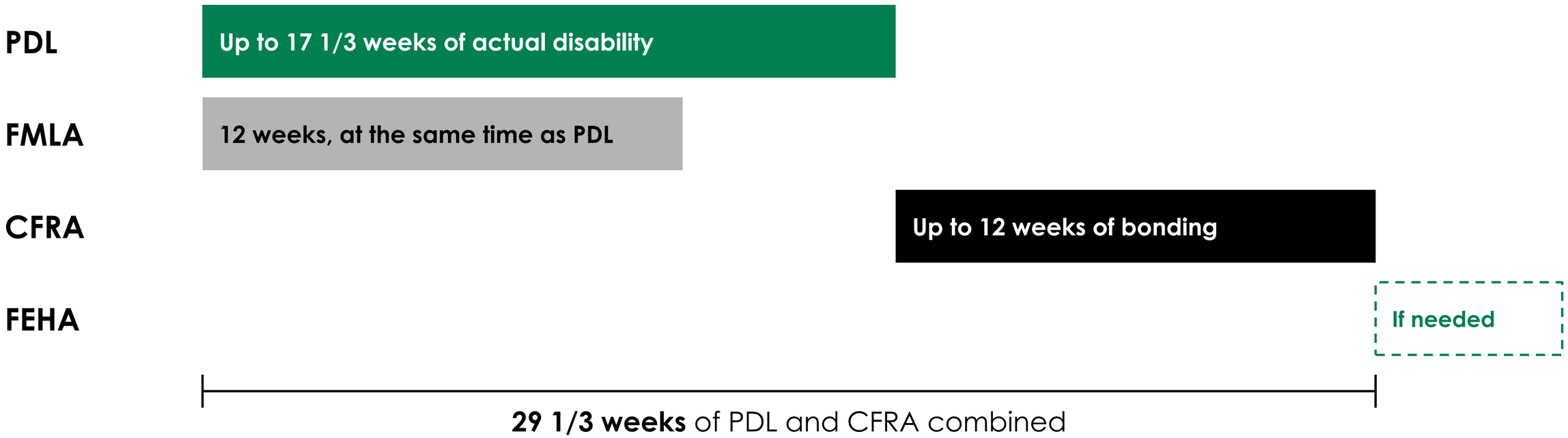
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Still disabled at the end?

Begin the FEHA extension analysis.

Up to 29 1/3 Weeks of Job-Protected Leave

Managing the leave: the pregnancy timeline



Who pays? The state, not the employer: SDI during disability, then up to 8 weeks of PFL for bonding. 2026 maximum weekly benefit: $1,765.

The Number to Remember

Managing the leave: the pregnancy timeline

693 hours of PDL;
Four months of PDL for a full-time employee.

PDL is more than leave

- Transfer
- Modified duties
- Reduced schedule
- Additional breaks
- Equipment, such as a chair or a water bottle

Don’t place employee on leave they have not requested.

Steps 5 and 6: Return and Reassess

Managing the employee and the leave

5 Return

- PDL: reinstatement to the same position.
- CFRA: the same or a comparable position.
- A return-to-work release is permitted only if applied uniformly.
- No “100 percent healed” policies (ruled discriminatory by Ninth Circuit in *McGregor v. National Railroad Passenger Corp*).

6 Reassess

- Do not terminate automatically when leave runs out.
- Start the interactive process.
- Consider a finite extension, reduced schedule, transfer, or modified duties.
- Document each step.

New Legislation to Know

Recent developments

AB 406

In effect Jan. 1, 2026

Paid sick and safe time, and unpaid victim leave, now cover court proceedings for a crime affecting the employee or a family member. The CRD enforces the victim leave provisions.

SB 1149

Effective Jan. 1, 2027

Signed Sept. 27, 2026. Bereavement leave now covers a designated person. Employers may limit it to one designated person per 12 months.

SB 590

Operative July 1, 2028

Paid family leave benefits extend to a designated person. Watch for summaries that wrongly say 2026.

AB 1697

For agreements on/after 1/1/27

Revises California's ban on "stay-or-pay" terms. Employers may now recover up to 40 hours of paid time off advanced at the employee's request if the employee quits voluntarily.

CFRA's text did not change for 2026. The CRD's January 2025 model notices and policies remain the reference point.

The Designated Person Keeps Growing

Recent developments

2023

CFRA care leave

Job-protected leave to care for a designated person (AB 1041)

Jan. 1, 2027

Bereavement leave

Up to five days when a designated person dies (SB 1149)

July 1, 2028

Paid family leave

Wage replacement while caring for a designated person (SB 590)

Each law lets the employer limit the employee to **one designated person per 12 months**.

Case Law: Knowledge and Accommodation

Recent developments

Husband v. Target Corp.

Cal. Ct. App., May 21, 2026 (published)

An employer is not charged with knowledge of an undisclosed disability unless disability is the only reasonable reading of what it observed.

HR takeaway

Knowledge is the trigger. Route every medical signal to HR, and never guess at a diagnosis.

Miller v. CDCR

(2024) 105 Cal.App.5th 261

An employee on leave must show that a reasonable accommodation would have allowed a return to work.

HR takeaway

Record the accommodations considered, what the employee said would help, and why each option did or did not work.

Case Law: Certifications and Finite Leave

Recent developments

Perez v. Barrick Goldstrike Mines

(9th Cir. 2024) 105 F.4th 1222

Under the FMLA, a second medical opinion is optional. An employer may challenge a doubtful certification with non-medical evidence.

HR takeaway

Use a documented process and involve counsel first. The rule's reach under CFRA is unsettled.

Manos v. J. Paul Getty Trust

Cal. Ct. App., Feb. 21, 2025 (unpublished)

After about a year of leave, summary judgment was affirmed where the employee's follow-up requests were open-ended.

HR takeaway

Use a finite leave, a clear return date, and a written record.

Federal Guidance to Watch

Recent developments

DOL opinion letters

January 5, 2026

- Travel time to and from medical appointments can qualify as FMLA leave.
- The letters also address how partial-week closures are counted.
- Guidance, not binding law. No matching CFRA authority.

Pregnant Workers Fairness Act

Federal

- The law and its regulations remain in flux.
- For California employers, PDL and FEHA remain the baseline.

Do or Don’t?

Statement 1 of 6 · Thumbs up for do, thumbs down for don't

“She never said ‘CFRA,’ so we have no obligation yet.”

Do or Don’t?

Statement 2 of 6 · Thumbs up for do, thumbs down for don't

“Ask for the diagnosis so we can decide.”

Do or Don’t?

Statement 3 of 6 · Thumbs up for do, thumbs down for don't

“For pregnancy, address PDL first and bonding second.”

Do or Don’t?

Statement 4 of 6 · Thumbs up for do, thumbs down for don't

“Count her PDL against her CFRA time.”

Do or Don’t?

Statement 5 of 6 · Thumbs up for do, thumbs down for don't

“Track each law separately.”

Do or Don’t?

Statement 6 of 6 · Thumbs up for do, thumbs down for don't

“Her leave ran out Friday, so termination papers go out Monday.”

Dos and Don’ts: The Answers

Dos and don’ts

DON’T	**“She never said ‘CFRA,’ so we have no obligation yet.”** Verbal notice of a covered reason is enough.
DON’T	**“Ask for the diagnosis so we can decide.”** Ask about need, dates, and duration.
DO	**“For pregnancy, address PDL first and bonding second.”**
DON’T	**“Count her PDL against her CFRA time.”** They are separate. PDL counts against FMLA only.
DO	**“Track each law separately.”**
DON’T	**“Her leave ran out Friday, so termination papers go out Monday.”** Begin the interactive process first.

Hypothetical 1: Birth and Bonding

An employee at a 120-person Los Angeles retailer has two years of full-time service. She is on bed rest for six weeks before her due date and is disabled for eight weeks after delivery. She then takes 12 weeks of bonding leave. As it ends, her physician's note states that complications will keep her out four more weeks.

- Which laws apply, and when?
- How many weeks of each are used?
- What should the employer do at the end?

Hypothetical 1: Discussion

- 14 weeks of PDL are used
- FMLA ran concurrently and is exhausted
- CFRA bonding is a separate 12 weeks
- For the extra four weeks, begin the FEHA interactive process
- A finite extension is likely reasonable absent undue hardship
- Check whether any PDL entitlement remains (about 3⅓ weeks)

Gov. Code §§ 12940(n), 12945
Cal. Code Regs., tit. 2, §§ 11046, 11087
Sanchez v. Swissport, Inc. (2013) 213 Cal.App.4th 1331

Hypothetical 2: The End-of-Leave Note

An employee uses 12 weeks of CFRA and FMLA leave for back surgery. On the last day, the physician's note states that she "needs additional leave, return date to be determined, maybe three to six months."

- May the employer terminate now?
- What may the employer ask?
- What options other than leave might work?

Hypothetical 2: Discussion

- No automatic termination
- Begin the interactive process now
- Ask for an expected return date and functional limits, not the diagnosis
- Consider a finite extension, reduced schedule, transfer, or modified duties
- No bright line, but no duty to grant indefinite leave
- Document each step

Gov. Code § 12940(n)
Nealy v. City of Santa Monica (2015) 234 Cal.App.4th 359
Miller v. Department of Corrections and Rehabilitation (2024) 105 Cal.App.5th 261

If Time Permits: The Close Friend

Hypotheticals

An employee asks for six weeks to care for a close friend with a terminal illness. Is the friend a “designated person”?

Yes, if:

- The employee identifies the friend when requesting leave.
- The friend has a serious health condition.

The employer may limit designations to one person per 12 months.

Three Takeaways

Wrap-up

1

Start with the reason for leave, then eligibility, then which law the leave counts against.

2

Track each law separately. Some leaves stack.

3

The end of statutory leave is the beginning of the accommodation analysis.

Questions?



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Exempt vs. Non-Exempt Classification – Understanding California's Strict Exemption Framework and Avoiding Classification Pitfalls

Presenters:

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Emma Erickson-Kery, Associate

November 10, 2026

Today's Discussion

45 minutes of discussion + 5 minutes of questions

I. California's Exemption Framework

II. Occupation & Industry Specific Parameters

III. Federal Labor and Standards Act (the "FLSA") v. California Comparison

IV. Common Misclassifications & Pitfalls

V. Key Caselaw

VI. Questions & Conclusion

California’s Exemption Framework

The Classification Framework

- The applicable wage order matters.
- Job title/description, or payment on a salary basis are not enough.
- Laws liberally construed *in favor of employee protection*.
- Each exemption has a defined scope

Why Does This Matter?

The employer carries the burden

- "Exempt": Employer is *not* required to track their hours, overtime, double time, meal breaks, rest breaks.
- "Non-exempt," the employees have rights under the Labor Code related to timekeeping, meal and rest breaks, overtime, and payment of (at least) minimum wage, overtime, double time, and other types of pay.

Salary Requirement
+
Duties

Salary

$70,304

2026 general California EAP salary floor

$72,384

2027 general California EAP salary floor

Duties

More than 50%

California’s quantitative duties test

“White-Collar” Exemptions

- Executive
- Administrative
- Professional

Administrative Exemption

❖ **Work related to management or business operations**

1. Nonmanual office work *directly related to* management policies or general business operations of the employer or the employer's customers;
2. Discretion and independent judgment on matters of significance;
3. Qualifying assistance or specialized assignments; and
4. More than half of time in exempt work.

Executive Exemption

❖ **Management responsibility + qualifying work time**

- Manages the enterprise or a recognized unit
- Directs two or more employees
- Has meaningful hiring or firing authority
- Regularly exercises independent judgment

Professional Exemption

❖ **Licensed, learned or artistic work**

- Qualifying profession or advanced learning
- Predominantly intellectual and varied work
- Customary discretion and independent judgment

Discretion and independent judgment

A fact-specific inquiry

Evaluating meaningful alternatives

Making recommendations with real weight

Exercising judgment as a regular part of the job

Exemptions May Be Combined to Meet the Duties Test

Occupation & Industry Specific Parameters

Outside salespersons

Where and how the employee sells matters

- Age 18 or older
- More than half of work time away from the business
- Selling or obtaining orders or contracts
- No minimum salary requirement for this exemption

Inside sales is a separate analysis

A limited overtime exemption under Orders 4 and 7

- Earnings exceed 1.5 times the minimum wage
- More than half of compensation is commissions
- Timekeeping and break obligations remain

Other Occupation Specific

- Computer software professionals
- Healthcare – Physicians and Surgeons
- Academic Faculty
- Private-School Teachers
- Agricultural Workers
- Drivers
- Insurance Adjusters

Sector pay rules can change the floor

Higher minimum wages do not establish exemption

- Covered fast food: $20 per hour
- Health care: facility-specific wage schedules
- Exempt salary requirements may also rise

FLSA v. CA

California and federal tests differ

Both systems can apply to the same employee

California: more than half of work time

Federal: the principal or most important duty

Federal salary floor: $684 per week

Highly compensated employees

Federal rule only

- $107,432 in total annual compensation
- At least $684 per week on a salary or fee basis
- A reduced federal duties test still applies

Common Misclassifications & Pitfalls

Common classification mistakes

None of these establishes an exemption

- A high salary
- Job titles: “Manager,” “Director,” “Supervisor,” “Lead”
- Employee consent or silence
- An *idealistic* job description
- Federal compliance alone

Potential exposure

Separate claims have separate legal requirements

- Unpaid overtime and break premiums
- Waiting-time and wage-statement penalties
- PAGA claims and class litigation
- Interest and attorney’s fees

Edward’s classification problem

- “Manager” earning $55,000 per year
- No meaningful authority or independent judgment
- 10-hour days, five days a week, for three years
- Missed breaks and late final pay

Edward's classification problem

Unpaid Overtime (Edward's regular rate of pay for his unchanging salary without bonus was $26.44 ($55,000/52 (weeks)/40 (hours)), meaning his overtime rate was $39.66. He worked 10 hours of overtime per week for 156 weeks (3 years))	**$61,875.00**
Unpaid Meal Premiums (780 workdays * $26.44)	**$20,625.00**
Unpaid Rest Premiums (780 workdays * $26.44)	**$20,625.00**
Waiting Time Penalties (30 days * $211.54/day)	**$6,346.15**
Inaccurate Wage Statement Penalties ($50*1)*($100*25)	**$2,550.00**
	$112,021.15

$112,021.15

Illustrative exposure for one employee, before fees and interest

Time and purpose of work

Ramirez (1999) and _Heyen_ (2013)

- Actual work time is central in California
- Realistic expectations also matter
- Concurrent work requires a primary-purpose analysis

The administrative exemption in practice

Harris (2011) and _Kizer_ (2017)

- The wage-order requirements control
- The production distinction is a guide
- Every exemption element needs support

Actual duties and realistic expectations

***Rodriguez* (2022) and *UPS* (2010)**

- Closely related work may count as exempt
- Employee performance requires context
- Titles cannot create a bright-line rule

Misclassification in a class action

***Duran* (2014)**

- Individual duties can complicate certification
- Uniform practices can support common proof
- Statistical evidence requires rigor

Classification Review Priorities

A documented, role-specific assessment

- ✓ Actual duties and time spent
- ✓ Applicable salary and wage-order requirements
- ✓ Reassessment when work or pay rules change

Questions?



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Clark Hill

Roundtable Discussion



Thank You

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