

HUMAN RESOURCES

*What you Need to Know
Navigating Regulations Compliantly
and Effectively*

2023 CHANGES IN CA EMPLOYMENT LEGISLATION effective Jan 1, 2023

- ▶ **Senate Bill (SB) 189**: This Bill changes the name of the CA Department of Fair Employment and Housing (DFEH) to California Civil Rights Department (CRD)
- ▶ **SB951: State Disability Benefit Calculations**: SB951 phases in the percentage of the earnings low-wage workers receive while out on family leave, so by 2026 a worker would receive up to 90% of their pay. The increase is smaller for higher wage earners. The bill removes the cap on payroll tax contributions so that higher-income earners will pay more into the system.
- ▶ **SB1002: Workers' Compensation and LCSW Services**: This bill expands the scope of workers' compensation services to include a Licensed Clinical Social Worker as a treatment option for injured workers that the employer is reasonably required to provide and authorizes the Medical Provider Networks (MPN) to add LCSWs to the physician provider listing.

2023 Changes in CA Employment Legislation cont'd

- ▶ **AB1041: Expansion of CFRA and CA Paid Sick Leave to “Designated Person”** This bill expands the class of people for whom an employee may take leave under CFRA and for CA paid sick leave to include a designated person.
- ▶ For CFRA purposes, “**designated person**” is defined to mean any individual related by blood or whose association with the employee is equivalent to a family relationship.
- ▶ For CA Paid Sick Leave a “designated person” is simply someone designated by the employee at the time the leave is requested and there is no stated additional definition, so, it can essentially be anyone.
- ▶ An employer may limit an employee to one designated person per 12-month period.

2023 Changes in CA Employment Legislation cont'd

- ▶ **AB1751: Workers' Compensation and COVID-19 Presumptions Extended to January 1, 2024.** This law extends the presumptions in the workers' compensation system related to COVID-19 from Jan 1, 2023 to Jan 1, 2024.
- ▶ **AB1949: New CA Required Bereavement Leave:** This bill requires employers with five (5) or more employees to provide up to five (5) days of unpaid leave to eligible employees for the death of a family member.
 - To be eligible for leave the employee must have worked for the employer for at least 30 days. The 5 days do not have to be taken consecutively but within 3 months of the date of death of the family member.
 - This is an unpaid leave. Employees can choose to use any paid time off including under CA Paid Sick Leave.
 - Employers can ask for documentation such as a death certificate, published obituary, written verification of death, burial, or memorial services from a funeral home or other applicable entity. The Employer request has to be within the first 30 days of the employee's first day of leave.

2023 Changes in CA Employment Legislation cont'd

- ▶ **SB1162: Pay Equity/Postings/Reports:** This bill relates to salaries and wages. Section 1 defines new data reporting requirements for employers. Section 2 of this bill addresses pay equity and postings. The bill requires employers with 15 or more employees to:
 - Upon request, provide an employee with the pay scale for the position in which the employee is currently employed.
 - For any position posted in any job posting we have to include the pay scale (min and mid)
 - There are civil penalties from \$100 up to \$10,000 per violation
- ▶ **2023 CA Minimum Wage:** The State 2023 minimum wage increased to \$15.50 per hour for all employers.
- ▶ **2023 CA Exempt Salary Rate:** The State annual exempt salary increased to \$64,480.
- ▶ **2023 State Mileage reimbursement rate is 62.5 cents per mile.**

LEAVES OF ABSENCE

- ▶ How many CA Leave Laws are there?
 - ▶ 5?
 - ▶ 10?
 - ▶ 15?
 - ▶ Over 20?
- ▶ The answer there are over 20 protected leaves in California.

Federal and CA Protected Leaves

- ▶ Family Medical Leave Act (FMLA) - 1993
- ▶ California Family Rights Act (CFRA) - 1991
- ▶ Pregnancy-Related Disability Leave, Accommodations or Transfer - 2002
 - Protects an absence for pre-natal care, severe morning sickness, childbirth, abortion, miscarriage, or related medical conditions.
- ▶ Baby Bonding
- ▶ Paid Family Leave (CA State regulation) - up to 8 weeks PFL benefits
- ▶ California Healthy Workplaces, Healthy Families Act
 - Provides employees with 3 paid sick days/year (July 2015)
- ▶ Kin Care
 - Permits use of employer-provided sick leave benefits for the care of a parent, spouse, child, or domestic partner
- ▶ Jury Duty
- ▶ Bereavement Leave - CA provides up to 5 days of unpaid leave within 3 months of the date of death (revised 2023)
- ▶ Americans With Disabilities Act

Federal and CA Protected Leaves

- ▶ California Family-School Partnership Act
 - In California, employers with 25 or more employees must provide up to 40 hours of leave per year to attend school activities, but no more than eight hours per month. Employees must use accrued vacation or personal leave and provide their employer with reasonable notice of their absence.
- ▶ Worker's Compensation Leaves
- ▶ California Military and Veterans Leave
- ▶ Uniformed Services Employment and Re-employment Rights Act (USERRA)
- ▶ Military Care Givers Leave
- ▶ Military Spouse Leave
- ▶ Leaves related to Domestic Violence, Sexual Assault or Stalking
- ▶ Leave for Alcohol or Drug Rehabilitation
- ▶ Leave for Bone Marrow and Organ Donations.
 - Eligible employees may take up to 5 business days
- ▶ Leave for Crime Victims
- ▶ Leave for Religious Practices
- ▶ Leave for Volunteer Firefighters, Reserve Police Officers and Emergency Rescue Personnel
- ▶ Witness Duty Leave
- ▶ Voting

What does “protected” leave mean?

- ▶ Employment - Reinstatement to similar and/or same job position
- ▶ Health Benefits remain active
- ▶ Right to privacy of leave of absence (LOA)
- ▶ No Disciplinary action for anything that can be related to the protected LOA (e.g., attendance)

Leaves: What an Employer May Not Do

- ▶ Interfere with the employee's right to take a protected leave.
- ▶ Deny a valid leave of absence request.
- ▶ Discipline the employee or assess attendance for taking a valid leave.
- ▶ Refuse to promote an employee because the employee has taken a valid leave.
- ▶ Retaliate against the employee for complaining about a violation of family/medical leave laws.
- ▶ Refuse to reinstate an employee into their current job after their protected leave ends.
- ▶ Discontinue a medical insurance plan during a protected leave.
- ▶ Discontinue other benefits when an employer continues them for other types of leaves.

Tips for protecting leave rights:

- ▶ Prior to scheduling a meeting with your employee related to your attendance policy, please be very, very diligent to scrutinize your timesheets to ensure you did not document any absence on your Record of Conference document that is considered protected time off such as CA Paid Sick; COVID leave, FMLA/CFRA, bereavement leave, jury duty or voting time (not all inclusive).
- ▶ Consult with your HR Director or HR Representative and ask to have a review of your documentation to ensure compliance with your current attendance policy and union contracts, if applicable, before meeting with the employee.
- ▶ Not consulting with HR could result in a grievance from the union for violating leave law protections or a complaint from the EEOC or CA Dept. of Civil Rights that could result in an audit of all leave of absence requests over a period of time, a union grievance, or a lawsuit.

Leaves of Absence: Unprotected

- ▶ An unprotected leave of absence occurs when an employee does not meet the guidelines for a protected leave.
 - Example: A new hire that does not meet the hours requirements or the 12 months of continuous employment will not be eligible for protections under the FMLA/CFRA guidelines
 - An employee who has exhausted their “protected” time off
- ▶ General Leaves of Absence
- ▶ When the Company voluntarily CHOOSES to give an employee a leave after the employee exhausts his/her/they statutory leaves, or when the employee is not eligible for them.
- ▶ Protections do not apply to CA state disability enrollment or CA PAID family leave enrollment.

Interactive Process

- ▶ What is the Interactive Process?

The California Civil Rights (CDR) Agency and Americans with Disabilities Act (ADA) provide state and federal laws that prohibit discrimination based on disability and also require an employer to engage in an ongoing, good faith **interactive process** with an employee or an applicant to determine whether reasonable accommodation can be made to an employee with a known disability.

The Interactive Process is the way in which applicants, employees, supervisors, and HR determine whether a reasonable accommodation can be made to an employee or applicant. The interactive process obligation applies to both non-industrial and workers' compensation related injuries or illnesses.

INTERACTIVE PROCESS

What are the steps in the interactive process?

- ▶ **Interactive Process**
- ▶ Step 1: Recognizing an Accommodation Request. ...
- ▶ Step 2: Gathering Information. ...
- ▶ Step 3: Exploring Accommodation Options. ...
- ▶ Step 4: Choosing an Accommodation. ...
- ▶ Step 5: Implementing the Accommodation. ...
- ▶ Step 6: Monitoring the Accommodation.

Interactive Process

- ▶ The interactive process may be triggered by any one or a combination of the following situations:
 1. Employers must initiate an “interactive process” when an applicant or employee with a known disability requests reasonable accommodations specifically or by reference to his/her limitations.
 2. An employee regularly misses work, telling the employer that he/she is ill.
 3. An employee has a workers’ compensation injury.
 4. A family member, friend, health professional, or other representative may request a reasonable accommodation on the employee’s behalf.
 5. A manager or supervisor observes barriers to the employee’s performance on the job.
 6. The employer receives work restrictions from a medical provider.

Interactive Process

What does Reasonable Accommodation Mean?

- ▶ Reasonable means effective.
- ▶ The accommodation allows a qualified individual with a disability the opportunity to perform the essential functions of the job and have equal access to benefits and privileges of employment.
- ▶ Effective also means equal access to the application process for an applicant with a disability.

Interactive Process

What May Be A Reasonable Accommodation?

- ▶ A reasonable accommodation is any effective measure that would enable an employee or applicant with a disability to perform the essential functions of his/her position. The following are accommodations that should be considered (this is not all inclusive):
 - Job restructuring.
 - Modifying work schedules.
 - Adjusting or modifying exams, training, materials or policies.
 - Acquiring or modifying equipment or devices.
 - Providing qualified readers or interpreters.
 - Alcohol or Drug Rehabilitation Programs.
 - Approving a leave of absence including reduced hours or leave coordination in conjunction with the Family Medical Leave Act (FMLA)/California Family Right's Act (CFRA).
 - Reassignment to a vacant position. (This is typically considered an accommodation of “last resort”.)

Interactive Process

What May Be an Unreasonable Accommodation?

- Modifying an employee's work hours or job duties to the extent that it causes a significant disruption to the employer's operations.
- Hiring additional staff to cover the job duties
- Providing an unknown amount of time off, with no estimated date of return. (After statutory leaves are exhausted-FMLA/CFRA, etc.)
- Changing an employee's supervisor
- Promoting an employee.
- ▶ Eliminating a primary job responsibility.
- ▶ Lowering production standards applied to other employees.
- ▶ Providing more paid leave to an employee with a disability than provided to other employees.

Interactive Process

Undue Hardship - What does that mean?

An "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

- The nature and cost of the accommodation needed.
- The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.
- The overall financial resources of the employer, the overall size of the business with respect to the number of employees, and the number, type, and location of its facilities.
- The type of operations, including the composition, structure, and functions of the workforce of the entity.
- The geographic separateness, administrative, or fiscal relationship of the facility or facilities.

Interactive Process

Monitoring the Interactive Process

- ▶ The interactive process is mandated by the ADA.
- ▶ The Interactive Process is an ongoing one which may require continual reassessment of previously provided accommodations especially if the initial accommodation is not working.
- ▶ In other words, the interactive process is not a “one and done” process. If the initial accommodation is failing, the employer is obligated to continue with the interactive process to determine if any other accommodations exist that will permit the employee to perform the essential functions of the job.
- ▶ *Note:* The employee is required to participate in the process, and their failure or refusal to do so amounts to a waiver of rights under the ADA.

Interactive Process and Management Participation

- ▶ Participate in the interactive meeting with the Human Resources Representative and the employee
- ▶ Have an understanding of the job description, essential functions of the job and physical requirements
- ▶ Search and explore options for temporary job modification.
- ▶ HR may have to ask the employee's health care provider for clarification and suggestions.
- ▶ Make a decision on an accommodation
- ▶ Implement the accommodation
- ▶ Monitor the progress by meeting periodically with the employee to review the accommodation
- ▶ If the accommodation is not working or a condition is not improving you can restart the process.
- ▶ When the accommodation ends:
 - HR will document how and why the accommodation ended
 - HR and the Manager will communicate to the employee what is to be expected and when (i.e. return to a normal work schedule, equipment is returned, a leave of absence ends, etc.)

Management's Role

- ▶ **Demonstrate** an understanding of your HR's Policy on Reasonable Accommodation and the Interactive Process
- ▶ **Listen** to your employees closely when they speak of health concerns or having difficulty in performing their work functions
- ▶ **Always** acknowledge the employee of his/her request for accommodation and refer him/her to HR.
- ▶ **Document** the initial conversation and notify HR timely
- ▶ **Participate** in the interactive process meeting with HR and the employee
- ▶ **Maintain** confidentiality of the employee's health condition
- ▶ **Communicate** frequently with the employee
- ▶ **Follow-up** periodically with Human Resources

Employee Engagement

Four (4) predictors of employee engagement

- ▶ My manager motivates me in my work
- ▶ The work of my team contributes to the success of the organization
- ▶ I feel that I fit in at my organization
- ▶ I feel that I am appreciated by my organization

Employee Engagement

- ▶ A 2017 Gallup Poll showed 15% of employees are engaged at work.
- ▶ Lower engagement results in lower productivity, higher absenteeism, performance concerns and lower morale.
- ▶ Engaged employees....
 - Are self-motivated
 - Have a clear understanding of their roles
 - Recognize the significance of their contribution
 - Focus on future training and development
 - Feel that they belong to the organization

Employee Engagement Strategies

- Conduct employee surveys that allow employees to give written opinions, comments and concerns. Respond timely to employee surveys. Provide employees with the results of the surveys.
- Build trust with employees and upper management through good top down communication.
- Managers should promote an Open Door Policy and allow two way conversations with staff. Address employee concerns timely.
- Be approachable and visible with all of your staff.
- Recognize employee's good work. This could be individual, as a department, or as a facility. Employee of the Month, Facility BBQ, monthly birthday celebrations.
- Promote staff education and training for career growth opportunities.
- Hire competent Managers and Supervisors. If you promote from within provide your new leaders with effective management training.
- Treat your employees like individuals, not numbers.
- If possible, help develop a career path for employees.

PERFORMANCE MANAGEMENT

▶ Recruit and hire the best talent

- ▶ Current job descriptions that include the essential functions of the job
 - ▶ **Essential functions:** the job duties are an integral part of the job and the reason the job exists
- ▶ Proper screening of applications and candidates
 - ▶ Ensure the applicant meets the requirements of the job before the interview
- ▶ Prepare for your interviews
 - ▶ Know the questions you can legally ask and not ask
 - ▶ Have structured interview questions
 - ▶ Ask open ended, not closed (yes/no) questions
- ▶ *Reminder:* You can no longer ask a candidate for their current salary. You can ask for their salary expectation.

PERFORMANCE MANAGEMENT

Performance Evaluations

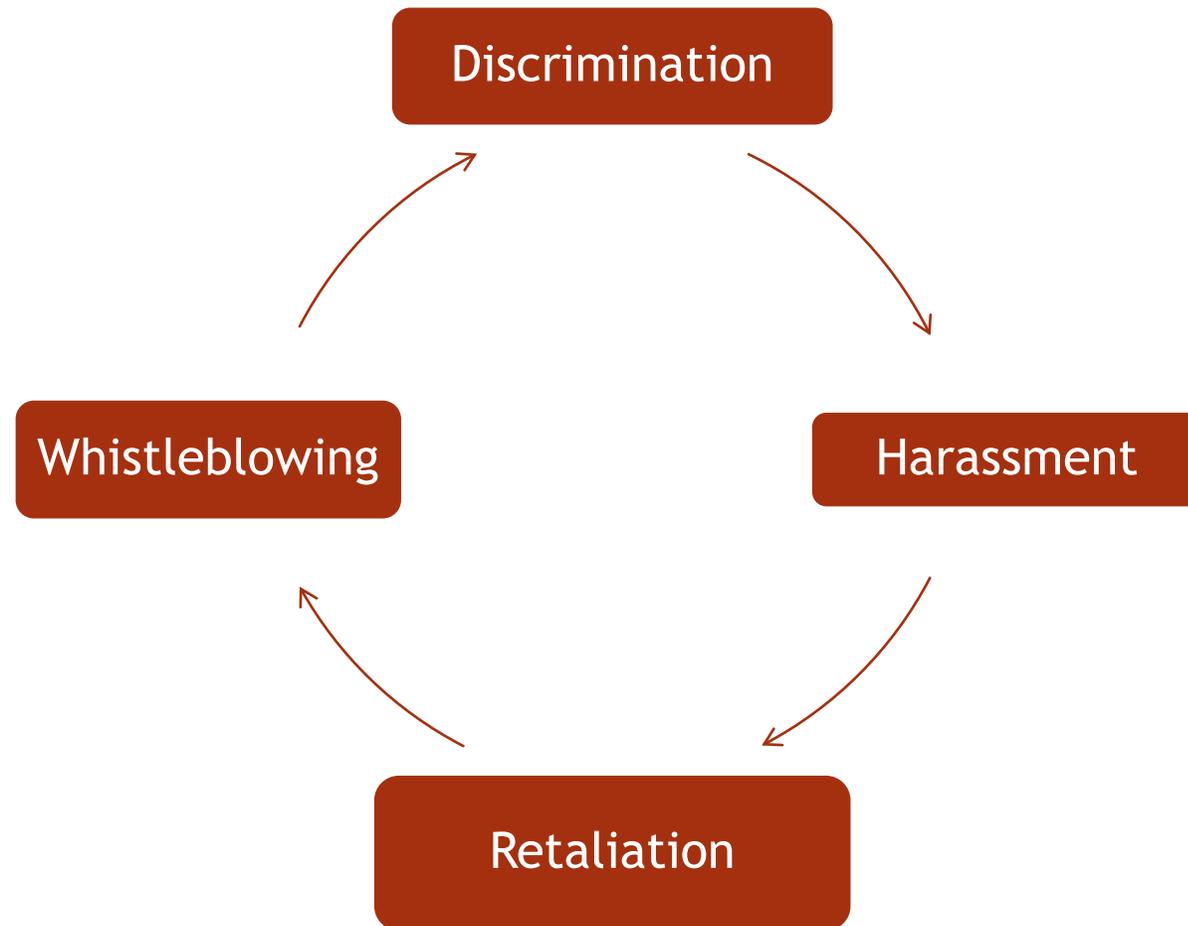
- ▶ Use the 90 day probationary period to address any problems that arise, absenteeism, tardiness, failure to meet the standards of the job
- ▶ Conduct performance reviews on a regular basis
- ▶ Document any performance issues between formal performance evaluations
- ▶ Maintain a performance log for each employee to help track performance issues between performance evaluations
- ▶ If performance issues persist, keep documenting and move the employee through your performance management process
- ▶ Be consistent. Don't discipline one employee but not another for the same infraction
- ▶ Be mindful of what you document on your performance documentation
 - ▶ “This employee should go far and the sooner the better.”
 - ▶ Since my last report, this employee has reached rock bottom and has started to dig.”

Performance Management Documentation

- ▶ Document specific dates and details of performance issues and attach supporting documentation
 - Policy
 - Timesheets
 - Attendance logs
- ▶ Document the specific violation the Policy, Code of Conduct, Employee Conduct and Work Rules, Attendance, government regulations, other directive violated
- ▶ Document, document, document ...
- ▶ Document factual information, dates/times, reports. Omit opinions and assumptions

Performance Management

When to contact HR



Watch out for discrimination and harassment based on Protected Characteristics

- ▶ **Age** (40 or older).
- ▶ **Ancestry.**
- ▶ **Color.**
- ▶ **Marital status.**
- ▶ **Medical condition.**
- ▶ **Mental disability.**
- ▶ **Military and veteran status.**
- ▶ **Natural Hair**
- ▶ **National origin.**
- ▶ **Physical disability.**
- ▶ **Race** (including hair texture/hairstyles).
- ▶ **Religious creed** (including religious dress and grooming practices).
- ▶ **Genetic information.**
- ▶ **Sex, including:**
 - pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breastfeeding;
- ▶ **Reproductive health decision making**
- ▶ **Gender, Gender identity, expression, transgender or transitioning status**
- ▶ **Sexual orientation including,**
 - heterosexuality;
 - homosexuality; and
 - bisexuality
- ▶ **Victims of crimes, domestic violence, sexual assault**

Performance Management Communication

- ▶ Be specific about what you want.
“I want you to report to work at 8:00 am to avoid being late.”
- ▶ Allow the employee to talk and give their excuses but steer them back to the point of the conversation to get the results you want.
“When you do not report to work on time other staff get frustrated when they cannot leave work at the end of their shift.”
- ▶ Do use “we”. You can say, “We have a problem.” or “We need you to make a change.” Focus on the problem, not the person.
- ▶ Don’t feel like you have to fill every silence. Stay silent when there is a lull in the conversation. Obligate the other person to fill in the silence. You may get additional information without even asking a question.

Performance Management Checklist

- 1. Have you established expectations for the performance/behavior based on job competencies?**
 - Are they reasonable
 - Are they in writing
 - Are they attainable
 - Have they been clearly communicated to the employee?
 - Is there evidence that the employee understood (or reasonably have been expected to understand the expectations) and possible consequences?
- 2. Have you monitored and observed the employee's performance? Have you had discussions with your employee (positive, constructive, developmental)?**
 - Are the goals and expectations clear?
 - Are there changes in the job, supervisor or dept. affecting performance?
 - Are there personal issues affecting performance?
 - Does the competence level meet the requirements of the job?
 - Have you received comments from co-workers? Have you interviewed others?

Performance Management Checklist Cont'd

1. Has the employee received recent verbal and/or written counseling regarding his/her performance?
2. Have you completed a formal corrective action reiterating the expectations, and specific incidents of employee behavior demonstrating how the expectations were not met? Did you include consequences for non performance?
3. Have you give the employee a reasonable timeframe to improve his/her performance?
4. Have you been providing ongoing feedback to the employee since the employee received the corrective action?
5. Has the employee recently received a performance evaluation outlining the nature of the performance problem?

Factors to Consider

► Is the chosen level of corrective action fair under the circumstances?

- Timely, appropriate, the least severe (verbal, written, final written, suspension, termination) to correct the conduct, performance deficiency?

Were the following factors considered?

- Seriousness of the misconduct or performance deficiency?
- Employee's past history of performance
- Whether misconduct or performance deficiency is an isolated event or is part of a pattern
- Employee's work history including length of service, quality of work performance, and recent trends
- Past coaching, counseling or opportunities for improvement
- Degree to which the employee was oriented/acquainted with policies, guidelines, performance expectations
- Evidence of prior corrective actions

Performance Management

- ▶ View Human Resources as your Business Partner
- ▶ Know when to contact HR for assistance



Policies and documents you should be familiar with as a Leader

Wage and Hour

- ❑ Pay rules for exempt and non-exempt staff
- ❑ Timekeeping
- ❑ Meals and Rest Periods
- ❑ CA Paid Sick

Attendance and Punctuality

Dress Code and Grooming

Leaves of Absence

Performance Management

Sexual Harassment and other Discrimination Prevention

Union contracts

HR Challenges Today?

1. Recruitment and Retention
2. High turnover of licensed nurses
3. High turnover in management and C-Suite
4. Low Employee and Management Morale
5. Increase in Litigation
6. Increase in Union Grievances
7. Increase in Union Activity