

WEBINAR SERIES

West Coast Compliance Update

January 29, 2025



Today's Presenters



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Today's Agenda

- Federal Employment Law Updates
- Caselaw Updates
- State Law Updates
- Employment Law Trends and Hot Topics for 2025

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars



Federal Employment Law Updates

US DOL Overtime Rule Update- Recap

- New rule was proposed on August 30, 2023.
- Set the minimum salary threshold for overtime exemptions under the FLSA to move \$35,568 (or \$684/week) to \$55,068 (\$1,059/week) and increase the threshold for highly compensated individuals from \$107,432 per year to \$143,988 per year.
- Rule had mechanism to periodically increase the salary threshold going forward.

US DOL Overtime Rule Update- New Rule Vacated

- In November 2024, a federal court vacated the rule- holding the DOL exceed its statutory authority.
- The federal minimum salary threshold for exempt employees reverted to \$684 per week (\$35,568 annually).
- Takeaways:
 - July 2024 increase has been vacated.
 - January 202 increase did not go into effect.

NLRB Joint Employer Rule

- NLRB issued a new joint employer rule with an effective date of December 26, 2023.
- Rule sought to enforce that an entity may be considered a joint employer of a group of employees if each entity has an employment relationship with the employees and they share or codetermine one or more of the employees' essential terms and conditions of employment,
- Terms and Conditions of Employment:
 - (1) wages, benefits, and other compensation;
 - (2) hours of work and scheduling;
 - (3) the assignment of duties to be performed;
 - (4) the supervision of the performance of duties;
 - (5) work rules and directions governing the manner, means, and methods of the performance of duties and the grounds for discipline;
 - (6) the tenure of employment, including hiring and discharge; and
 - (7) working conditions related to the safety and health of employees.



NLRB Joint Employer Rule- Vacated

- NLRB's rule was vacated by a federal court in March 2024.
- Returned the joint employer rule to the 2020 rule, which required that entities only be considered joint employers if they possess and actually exercise “substantial direct and immediate control over one or more of the essential terms and conditions of employment.



FTC Non-Compete Ban- Overturned

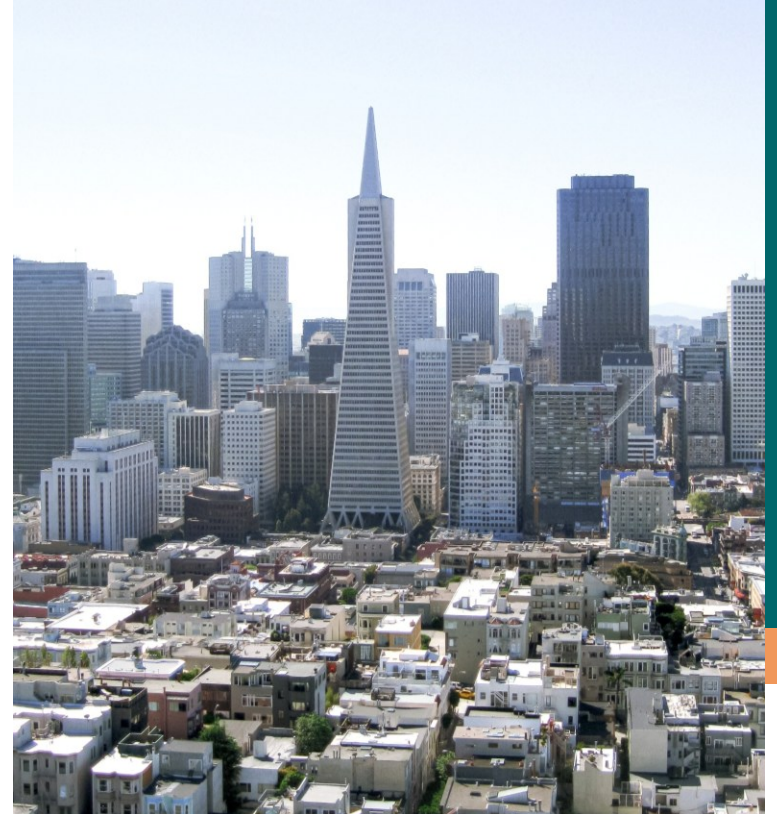
- FTC had introduced a ban on non-compete agreements that was set to go into effect in September 2024.
- In August 2024, a district court set aside the FTC ban, so it did not go into effect. Other district court weighed in as well.
- However, the FTC did appeal and those appeals will be heard likely this year.



Caselaw Update

Bailey v. San Francisco

- **Facts:** The HR representative engaged in intimidating behavior towards, Plaintiff, Bailey. Bailey filed a lawsuit alleging racial discrimination and harassment.
- **Issue #1:** Can the one-time comment display harassment?
- **Issue #2:** Can the HR rep's conduct may be considered an adverse employment action and support a retaliation claim?
- The California Supreme Court held that the one-time use of a racial slur “may be actionable if it is sufficiently severe in light of the totality of the circumstances, and that a coworker’s use of an unambiguous racial epithet, such as the N-word, may be found to suffice.” *Id.* at 620. The Court further held that an HR manager’s intentional obstruction of a complaint is actionable as retaliation.



Castellanos v. State of California

- **Facts:** Union led challenge to Proposition 22, which enacted California Business & Professions Code section 7451 and established that drivers for app-based companies such as Uber, Lyft, and DoorDash are independent contractors, not employees.
- **Issue:** Does B&P section 7451 conflict with the Constitution and infringe on the legislature's plenary power by preventing app-based drivers from receiving workers' compensation benefits?
- **Holding:** The Supreme Court of California ruled unanimously in favor of Proposition 22, upholding the law that allows app-based companies to classify drivers as independent contractors.

Huerta v. CSA Electrical Contractors

- **Facts:** This case involves a wage dispute between an employee and his employer. Plaintiff filed a class action seeking payment for unpaid hours worked. The case was based around the interpretation of the Industrial Welfare Commissions Wage Order No. 16 and the term “ hours worked.”
- **Issue:** Does the burden of proof the employer have to satisfy to meet the exemption turn on a mere preponderance of the evidence or clear and convincing evidence?
- **Holding:** The Ninth Circuit held that as the employer's prohibition on leaving the premises prevented the employee from engaging in personal activities. The employee could bring an action to enforce the Wage Order No. 16 and recover unpaid wages for that time.

Okonowsky v. Garland

- **Facts:** Okonowsky, a former staff psychologist at a federal corrections site, discovered that a lieutenant responsible for overseeing the safety of guards, prison staff, and inmates had created an Instagram page that contained multiple posts that were overtly sexist, racist, anti-Semitic, homophobic, and transphobic. Approximately 100 of Okonowsky's co-workers followed the page, which explicitly or impliedly referred to the prison, prison staff, and inmates. Additionally, some of the posts contained derogatory images resembling Okonowsky and specifically referred to her, including a post "joking" that the all-male custody officers would "gang bang" Okonowsky at her home.
- **Issue:** Can an employer be held liable for a Title VII hostile work environment claim based on harassing content posted on an employee's personal social media account outside the workplace?
- **Holding:** The Ninth Circuit held employers can be held liable for hostile work environment claims under Title VII of the Civil Rights Act if an employee shares harassing content online that negatively affects the workplace, "especially in light of the ubiquity of social media and the ready use of it to harass and bully both inside and outside of the physical workplace." *Id.* at 1171.

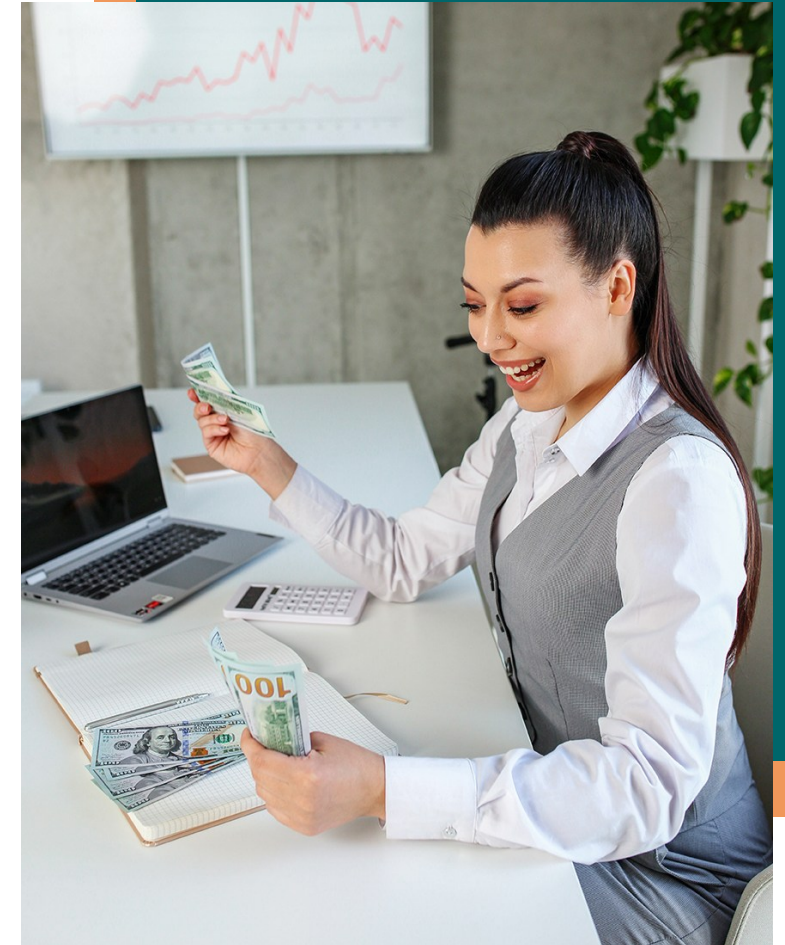
Vazquez v. SaniSure, Inc.

- **Facts:** Plaintiff, Vazquez initially worked for SaniSure from July 2019, and as part of her employment, she signed an agreement to resort to arbitration for any disputes that might arise from her employment. She eventually terminated this employment in May 2021. She returned to work for SaniSure four months later without signing any new arbitration agreement or discussing the application of the previous arbitration agreement to her new employment.
- Vazquez filed a class action complaint against SaniSure, alleging failure to provide accurate wage
- **Holding:** The Court of Appeals held that when Vazquez signed an arbitration agreement during her first period of employment, stopped working, and later returned to work for the same employer, the arbitration agreement executed during the first period did not automatically apply to claims that arose during the second work period. The court found that the termination of the employment served to revoke the arbitration agreement absent evidence that the parties agreed to arbitrate claims from a subsequent employment period statements during her second employment period.

State Law Updates

Minimum Wage Update: California

- Effective January 1, 2025:
 - \$16.50/Statewide increase for all employers.
Due to the increase of state minimum wage
 - Minimum salary for exempt employees rises from \$66,560 to \$68,640.
 - Minimum hourly rate for inside sales exemption rises from \$24 per hour to \$24.75 per hour.



Minimum Wage Update: California

Locality	Rate
Alameda	\$17.00
Belmont	\$18.30
Berkeley	\$18.67
Burlingame	\$17.43
Cupertino	\$18.20
Daly City	\$17.07
East Palo Alto	\$17.45
El Cerrito	\$18.34
Emeryville	\$19.36
Foster City	\$17.39
Fremont	\$17.30
Half Moon Bay	\$17.47

Locality	Rate
Los Altos	\$18.20
Los Angeles	\$17.28
Los Angeles County (unincorporated)	\$17.27
Malibu	\$17.27
Menlo Park	\$17.10
Milpitas	\$17.70
Mountain View	\$19.20
Oakland	\$16.89
Palo Alto	\$18.20
Pasadena	\$17.50
Petaluma	\$17.97
Redwood City	\$18.20

Minimum Wage Update: California

Locality	Rate
Richmond	\$17.77
San Carlos	\$17.32
San Diego	\$17.25
San Francisco	\$18.67
San Jose	\$17.95
San Mateo	\$17.95
San Mateo County (unincorporated)	\$17.46
Santa Clara	\$18.20
Santa Monica	\$17.27
Santa Rosa	\$17.87
South San Francisco	\$17.70
Sunnyvale	\$19.00
West Hollywood	\$19.65

Locality	Rate (Large Employer)	Rate (Small Employer)
Hayward	\$17.36	\$16.50
Novato	\$17.00	\$16.50
Sonoma	\$18.02	\$16.96

PAGA Reform

AB 2288/SB 92

- Increased pre-filing requirements, allowing employers to cure certain violations and prevent lawsuits;
- Increased judicial authority to determine manageability of claims;
- Limited PAGA claims to only those that the Plaintiff personally suffered, to address PAGA plaintiffs' efforts to pursue the kitchen sink of alleged Labor Code violations that they did not experience;
- Limited PAGA claims to those that occur within the one-year statute of limitations, to address recent caselaw used by PAGA plaintiffs to argue in support of claims outside the one-year limitations period; and
- Reduced the penalties and eliminated stacking of civil penalties based on certain derivative violations.

Captive Audience law

Beginning January 1, 2025, the new law will ban employers from discharging, discriminating, retaliating, or taking any other adverse employment actions against employees who choose to decline to participate in or listen to employers' communication related to political or religious topics.

- **According to the California Labor Code, section 1137:**
 - “Political matters” means matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization.
 - “Religious matters” means matters relating to religious affiliation and practice and the decision to join or support any religious organization or association.
 - The Act may be enforced by private court action or by the California Labor Commissioner. In addition to damages and remedies, the statute specifies that an employer who violates this section will be subject to a civil penalty of five hundred dollars (\$500) per employee for each violation.

Whistleblower Posting Requirements

- **California Requirement for Whistleblower Rights Notice Posting, effective January 1, 2025**
- As previously discussed in our October 2024 Insights, the new model notice for Whistleblower Rights and Protection has been posted on the California Labor Commissioner's website and it is also available [here](#).
- The new model notice ensures that employees receive clear information about their rights and responsibilities and provides employers with a model notice to fulfil their posting obligations under the law.
- Alternatively, employers may create their own whistleblower notice if they choose to. The notice must be typed in a 14-point font and displayed in location easily accessible to employees, such a common area or a break room. The whistle blower notice must include the hotline number: 1-800-952-5225 and outline all the whistleblower rights and responsibilities.

Victims of Violence: Assembly Bill 2499

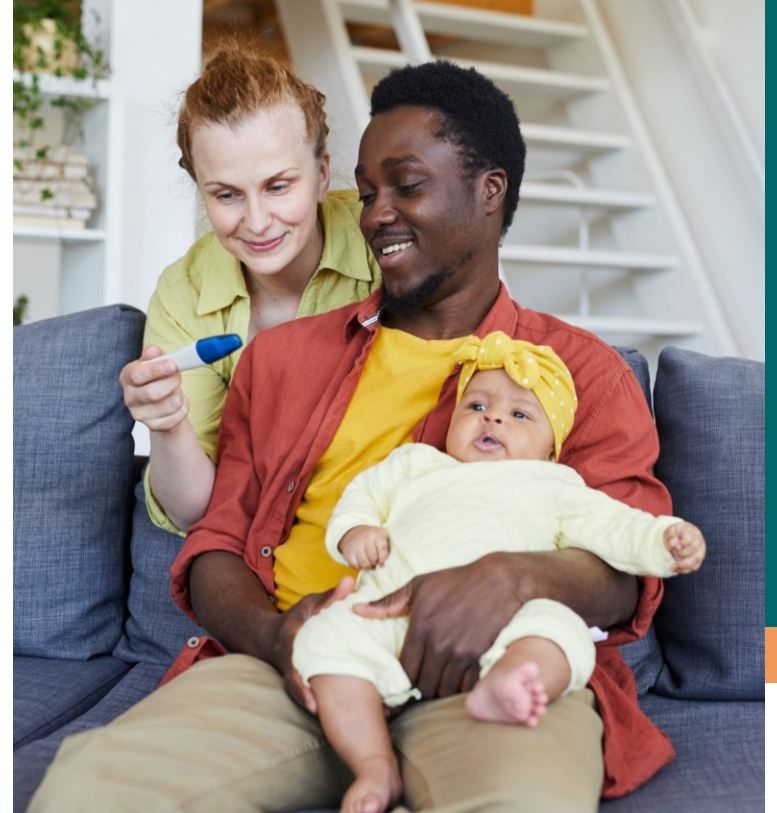
- The law allows for victims of qualifying acts of violence or family members of victims of qualifying acts of violence to take protected leave from work for various purposes as defined within the law:
 - Obtaining or attempting to obtain relief (ex. Restraining order)
 - Obtaining or seeking medical attention for injuries sustained
 - Recovering from injuries sustained or providing care for a family member recovering from injuries sustained
 - Obtaining or seeking services from a victim services organization (ex. Domestic violence shelter)
 - Obtaining or seeking mental health services
 - Participating in safety planning
 - Relocation/engaging in the process to secure new residence
 - Obtaining, seeking, or providing childcare or care to a care dependent adult if it is necessary for their safety
 - Participation in, preparing for, or attending any administrative, civil, or criminal legal proceeding pertaining to the qualifying act of violence
- Qualifying acts of violence is defined within the law to include:
 - Sexual Assault; Domestic Violence; Stalking; or Any act, conduct or pattern of conduct that includes (i) bodily injury or death to another; (ii) brandishing, exhibiting, or drawing a firearm or other dangerous weapon; or (iii) perceived or actual threat to use force against another to cause physical injury or death.
- To be considered a qualifying act of violence under this law, an individual does not need to have been arrested, prosecuted, or convicted of a crime.

Victims of Violence (contd.)

- The law expands the definition of “family member” to align with the definition under California Family Rights Act (“CFRA”) and include: a parent, grandparent, child, grandchild, sibling, spouse, domestic partner, or a designated person.
- The law prohibits an employer with 25 or more employees from discharging or in any manner discriminating or retaliating against an employee who is a victim, or who has a family member who is a victim, of a qualifying act of violence for taking time off work for the defined purposes under the law.
- Employee time off under AB 2499 is not unlimited and is dependent on if the employee is the victim or if their family member is a victim.
 - If the employee is the victim, employers can limit leave time taken to twelve (12) weeks.
 - If the employee’s family member is the victim:
 - And the victim is deceased as a result of the qualifying act of violence, employers cannot limit leave taken to less than twelve (12) weeks.
- The California Civil Rights Department will be publishing a notice no later than July 1, 2025 that employers may use to satisfy the notice requirement under the law.

Update to Paid Family Leave & Earned Vacation Time

- Assembly Bill 2123
 - As of January 1, 2025, employers can no longer require employees to exhaust up to two weeks of their earned but unused vacation time before an employee can receive Paid Family Leave benefits.
 - Employees have the option to choose to exhaust their unused earned but unused vacation time prior to receiving Paid Family Leave benefits.



Freelance Worker Protection Act: Senate Bill (SB)988

- Freelance Worker is defined under SB 988 as “a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than two hundred and fifty dollars (\$250), either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediate preceding 120 days.”
- Contracts must be in writing for freelance work \$250 or greater and must contain:
 - The name and mailing address of the parties
 - An itemized list of the services to be provided that includes its value and the rate and method of compensation
 - The date the hiring party is to pay compensation to the freelance worker
 - The date the freelance worker shall submit a list of services rendered to the hiring party so that the hiring party can process timely payment of compensation to freelance worker
- The law allows for freelance workers to bring civil actions to enforce the Act
- Applies to contracts entered or renewed after January 1, 2025.

Assembly Bill (AB) 3234: Social Compliance Audits

- Effective January 1, 2025, if a business conducts a voluntary, non-governmental social compliance audit, the business will be required to publicly share the results of the audit.
- Social Compliance Audit is defined under the law as a “voluntary, nongovernmental inspection or assessment of an employer’s operations or practices to evaluate whether the operations or practices are in compliance with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor.”
- What must be included if a business chooses to conduct a social compliance audit pertaining to child labor?
 - When the audit was conducted – the year, month, day, and time
 - If the business does/does not engage in or support the use of child labor
 - Copies of any written policies relating to child employees
 - If the business exposes children to hazardous or unsafe (to either mental or physical health and development) workplace situations
 - If children are working within regular school hours, during non-school hours, or during night hours

Washington Minimum Wage Update

- Effective January 1, 2025, the minimum wage in Washington is \$16.66 per hour.
 - Applies to workers 16 years old or older
- The 2025 minimum wage for younger workers, aged 14-15, is \$14.16 per hour.
- Overtime Exempt Employees:
 - Small Employers (up to 50 employees) must pay overtime exempt employees, at minimum, 2 times the state minimum wage.
 - At least \$1,332.80 per week (\$63,305.60 per year)
 - Large Employers (51 employees or more) must pay overtime exempt employees, at minimum, 2.25 times the state minimum wage.
 - At least \$1499.40 per week (\$77,968.80 per year)



Paid Family and Medical Leave Updates

- As of January 1, 2025, Washington's Paid Family and Medical Leave premium rates will increase from 0.74% to 0.92%
 - Employers with 50 or more employees pay 28.48% of total premium and employees pay 71.52% of the total premium.
 - Employers with less than 50 employees are not required to pay the employer portion but are required to either collect the employee portion or pay it on their behalf
- The maximum weekly benefit collected under WA PFML is capped at \$1,542.

Paid Sick Leave

- As of January 1, 2025, SB 5793 goes into effect and amends Washington's sick leave law to expand the definition of family member to include:
 - A child's spouse; and
 - A person who resides in the home of an employee that the relationship between the employee and individual residing in the employee's home creates the expectation that the employee cares for that person and that that person depends on the employee for care.
- Employees may also use paid sick leave if and when their child's school is closed for a state, local government, or federal emergency declaration.

Oregon Minimum Wage Update

- Oregon's minimum wage increases on July increase schedule, rather than in January.
- Currently the minimum wage is:
 - \$14.70 for the standard minimum wage
 - \$15.95 for Portland Metro minimum wage
 - \$13.70 for Nonurban Counties minimum wage
- The state generally calculates the minimum wage increases by April 30th each year.

Paid Leave Oregon Updates

SB 1515 amends Paid Leave Oregon (PLO) to allow employees to use PLO for time relating to the legal process for adoption or foster care placement and as such is no longer covered under the Oregon Family Leave Act.



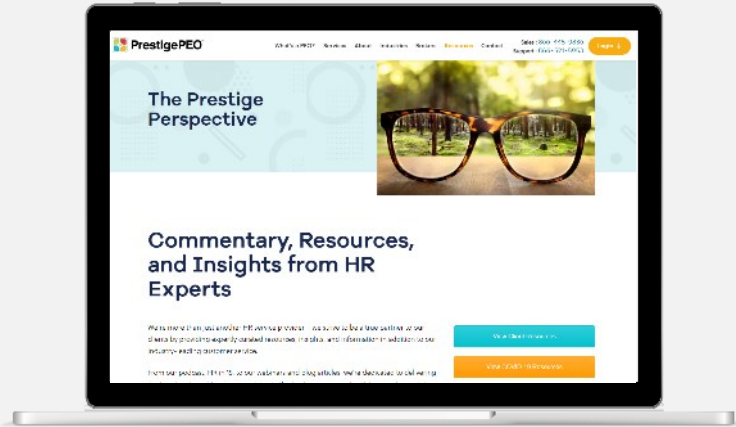
Employment Law Trends and Hot Topics for 2025

Trends/Hot Topics

- Pay Transparency
- Paid Time Off for Prenatal Care and Other Familial Care
- Data Privacy



Questions / Comments / Discussion?



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