California Employment Law Update: Another Year of Workplace Rules and Regulations

California Bankers Association

Bank Counsel Seminar

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Littler®



Presented By



THEODORA R. LEE

Shareholder

San Francisco/Walnut Creek

tlee@littler.com

(415) 677-3132

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Agenda

- Pay Data Reporting & Fair Pay
- HR Grab Bag
- Mileage Reimbursement
- Leaves of Absence
- Artificial Intelligence
- FINRA



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Pay Data Reporting & Fair Pay

Pay Data Reports: New Rule on Demographic Data Handling

- The amended PDR law requires employers and labor contractors to store demographic data separately from personnel records
  - Data on race, ethnicity, and sex
- New Data Fields (mandatory from 2027):
  - Exemption Status (FLSA exempt/non-exempt)
  - Employment Type (full-time, part-time, intermittent)
  - Annual Weeks Worked (including paid leave)
- A “good faith” effort to comply is no longer a valid defense for penalties

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~~Equal~~ Fair Pay Act

- **SB642 clarifies pay scale disclosure:** good faith estimate of the expected wage range for a position upon hire
- Amended Fair Pay Act to replace "opposite sex" with "another sex," broadening protections to be more inclusive
- Employees may now recover wages for violations no later than 3 (vs. 2) years after the cause of action occurs; May obtain relief for entire period of violation, not to exceed *six years*
- Cause of action is triggered not only when a discriminatory pay decision is made, but also each time wages are paid under that decision (the "continuing violation" theory)

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Definition of Wages Expanded in FPA

- Definitions of “wages” and “wage rates” now includes all forms of compensation:
  - Salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.
- New definition of “wages” applies in the context of **this statute only**.
- Does not change what you need to include in your public-facing job postings.



SB 1237: Increased Penalty for Failure To File Pay Data Report

Current law (GC 12999):

- Private employers must submit annual pay data reports to the CRD.
- Penalties for noncompliance: $100 per employee, $200 per employee for noncompliance after the first penalty.



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SB 1237: Increased Penalty for Failure To File Pay Data Report

Effective 1-1-27:

- Penalties for noncompliance: $100 per employee, ~~$200~~ $1,000 per employee for noncompliance after the first penalty.



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HR Grab Bag

SB 1316: Labor Commissioner Hearings

Labor Code 1174.1:

- **Current:** An employer must fully respond to the Labor Commissioner's written requests for books, documents and records.
- Any records not produced may not be introduced in evidence at a later Labor Commissioner hearing.
- **New:** Any records not produced may not be used in any way at a later Labor Commissioner hearing.

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AB 2155: Arbitration Agreements

CA CCP 1281: a written arbitration agreements is valid, enforceable and irrevocable. Pretty much no exceptions.

- However, the Federal Arbitration Act contains some exceptions:
  - contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce (transportation workers)
  - EFAA: bars enforcement of pre-dispute arbitration agreements with respect to a case that … relates to workplace sex harassment or sexual assault
- AB 2155 incorporates these exceptions into CA law
- Effective January 1, 2027

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AB 2495: Unlawful Immigration-Related Practices

Current law (LC 1019): Can't engage in "unfair immigration-related practices"

- Requesting extra documents showing proof to work;
- Refusing to honor authorized documents that appear to be genuine;
- Using E-Verify in an unauthorized manner;
- Threatening to contact immigration authorities.

- No retaliation for exercising rights.
- Rebuttable presumption if adverse action taken within 90 days of exercise of rights.
- Private right of action, including damages and injunctive relief.

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AB 2495: Unlawful Immigration-Related Practices

Effective 1-1-27: Broader coverage

- No retaliation for "attempting to exercise" rights.
- Rights include those under the Labor Code, a local ordinance and any local, state or federal statute or regulation.
- Unlawful to engage in any other conduct, related to any person's perceived immigration status, which would dissuade a person from engaging in legal conduct.
- Actual immigration status is irrelevant.
- Penalty added: $10,000 per violation, awarded to the person whose rights were violated.

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AB 2495: Unlawful Immigration-Related Practices (cont.)

Current law: Can't engage in "unfair immigration-related practices"

- Requesting extra documents showing proof to work;
- Refusing to honor authorized documents that appear to be genuine;
- Using E-Verify in an unauthorized manner;
- Threatening to contact immigration authorities.

1. No retaliation for exercising rights.
2. Rebuttable presumption if adverse action taken within 90 days of exercise of rights.
3. Private right of action, including damages and injunctive relief.

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AB 2495: Unlawful Immigration-Related Practices

Take-aways:

- Part of a long history of CA pushback on federal policy.
- Very broad anti-retaliation statute.
- “Perceived” status is protected – similar to ADA “regarded as” status.

AB 1331: No Surveillance in Bathrooms

Current law (LC 435): No audio or video recording of employees in restrooms, locker room, or changing room.

- No recording made in violation of this law may be used for any purpose.



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AB 1331: No Surveillance in Bathrooms

Effective 1-1-27: Adds LC 1550 - 1565

- Employers may not use “workplace surveillance tools” in a bathroom.
- “Workplace surveillance tool” includes video or audio surveillance, continuous incremental time-tracking tools, geolocation, electromagnetic tracking and photoelectronic tracking.
- Employees have the right to leave behind workplace surveillance tools when entering a bathroom (except if the employee is required to remain available during meal or rest periods pursuant to law law).

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AB 1331: No Surveillance in Bathrooms

Allowed:

- May check surveillance tools for one-time entry and exit of bathrooms.

Not a violation:

- Employee voluntarily takes workplace surveillance tools into a bathroom.
- Employer policy requiring that a surveillance tool always be in the custody of an employee for identification or safety purposes, or if required to access a locked bathroom, if:
  - No audio or video recording
  - No AI

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AB 1331: No Surveillance in Bathrooms

- **Enforcement:** Labor Commissioner
- **Penalties:** as provided in LC, including new penalty of $500 per violation
- **Likely application:** warehouses and distribution centers
- **Suggestions:**
  - Evaluate/edit policies
  - Check your warehouse quota notices

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SB 1149: Bereavement Leave for a “Designated Person”

Current law (GC 12945.7):

- Five days of unpaid bereavement leave on the death of a family member.
- Family member includes spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.
- Can use vacation, personal leave, sick leave or CTO.

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SB 1149: Bereavement Leave for a “Designated Person”

Effective 1-1-27:

- Bereavement leave can be used upon the death of a “designated person”: any individual related to the employee by blood or whose association with the employee is the equivalent of a family relationship.
- Designated person may be identified by the employee at the time the leave is requested.
- Employer may limit an employee to one designated person per 12-month period.

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SB 1149: Bereavement Leave for a “Designated Person”

- **Suggestion:**
  - Review and update internal policies.
  - Centralize decision making for leave requests – consistency is key.



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AB 1803: Harassment Training — Anti-Hate Speech

Current law (GC 12950.1):

- **2004:** Two hours of sexual harassment training for supervisors, every other year
- **2014:** Training must include prevention of abusive conduct (workplace bullying)
- **2018:** One hour of training for employees, every other year
- **2021:** Training for seasonal employees required within 30 days after hire date, or 100 hours worked, whichever occurs first

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AB 1803: Harassment Training — Anti-Hate Speech

Effective 1-1-2028:

- Training must include "anti-hate speech training":
  - Practical guidance on recognizing, reporting, and confronting workplace speech that vilifies, humiliates, or incites hatred against people based on protected characteristics
  - "A training that includes information about the prohibition against unlawful harassment and prevention of abusive conduct that is based on an individual's protected characteristics … satisfies the requirement..."

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AB 1803: Harassment Training — Anti-Hate Speech

Practical Suggestions:

- Update training materials to include definition of hate speech.
- Consider the “two-year cycle” of training and evaluate early implementation.



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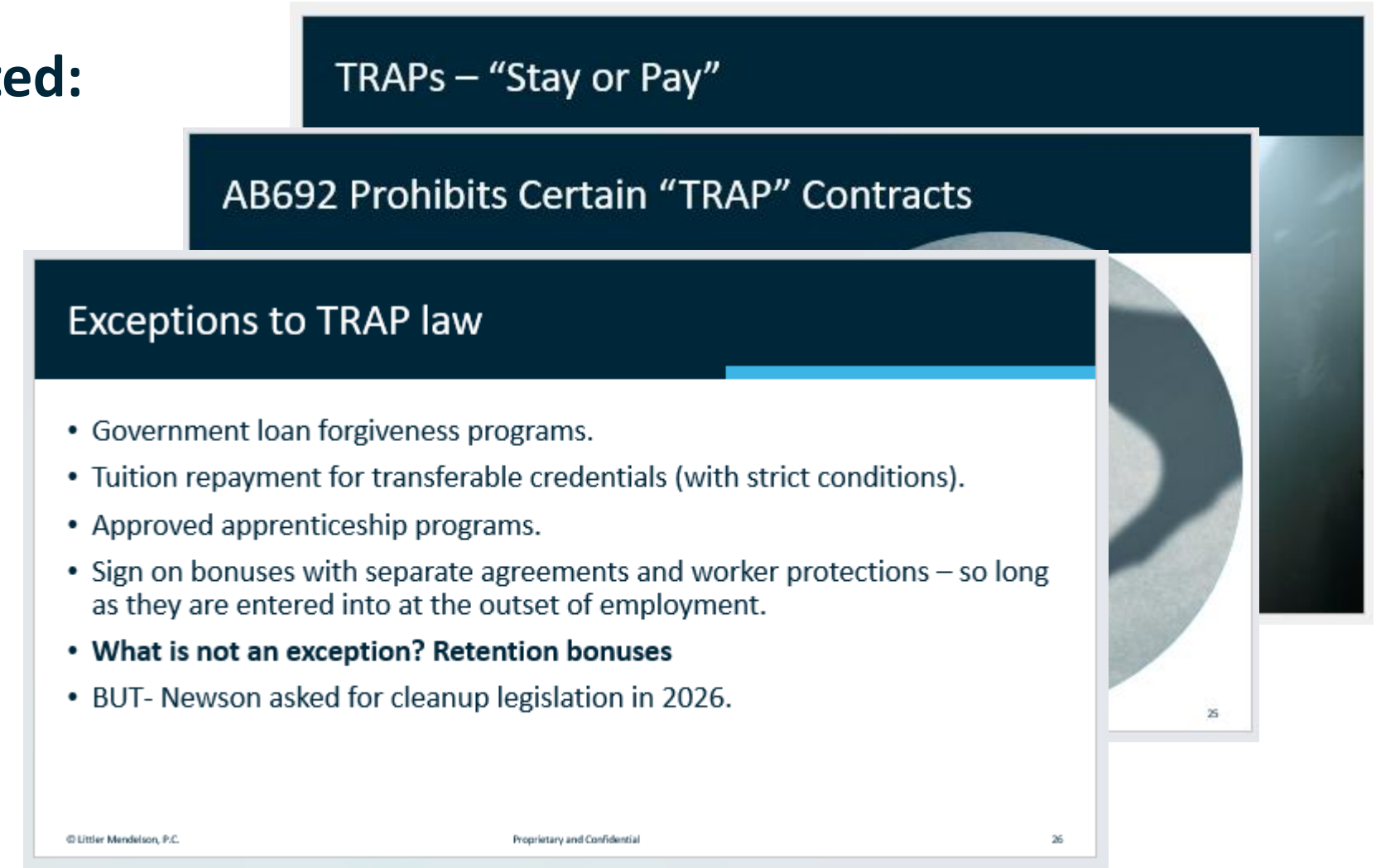
AB 1697: Anti-TRAP Delayed One Year

TRAP Contracts Prohibited:



AB 1697: Anti-TRAP Delayed One Year

Effective 9-30-2026:

- Pending claims are moot
- Effective date of law delayed to 1-1-27



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AB 1697: Anti-TRAP Delayed One Year

Anti-TRAP also amended to include more exclusions:

- Discretionary payments made "at the outset of employment" or afterwards
- Government-funded recruitment grants
- Certain payments to agents registered with the SEC or FINRA, or with licensed with certain CA investment advisor, securities or insurance statutes

DISCLAIMER! The requirements to qualify for an exception are hyper-detailed! This slide is only a jumping-off point!

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AB 1697: Anti-TRAP Delayed One Year

Practical Suggestions:

- Revisit your policies
- If you want to take advantage of an exception, carefully study the requirements



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AB 1961 and AB 2179: Workplace Violence Restraining Orders

Current law (CCP 527.8):

- In response to an incident of workplace violence or credible threat of workplace violence, an Employer or labor union may obtain a TRO on behalf of an employee.



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AB 1961 and AB 2179: Workplace Violence Restraining Orders

Effective 1-1-27:

- If violence or a credible threat of same is directed at a workplace rather than at a specific employee, an employer may obtain a workplace violence TRO without providing the name of a specific employee.
- The TRO would be on behalf of all employees at that workplace.

Effective 1-1-28:

- Witnesses may appear remotely at workplace violence TRO hearings.

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CalWARN

- CalWARN applies to all employers in California that operate a California "covered establishment," which is defined as any industrial or commercial facility or part thereof that employs, or has employed within the preceding 12 months, 75 or more persons.
- CalWARN 60-day notice obligations are triggered if an employer suffers a mass layoff, a termination, or a relocation at a covered establishment.
- **SB 617** amended notice requirements to include more information.

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Layoffs - New Required Disclosures

Employers must now include **specific information** in their 60-day advance notices:

- **Whether the employer plans to coordinate services** for affected employees through a **local workforce development board (LWDB)**, the **email and phone number** for the relevant LWDB, and a statutory required statement about LWDA;
- A description of CalFRESH;
- A functioning email and telephone number of the employer for contact.

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Mileage Reimbursement

Mileage reimbursement rate

- The 2026 business standard mileage rate is 72.5 cents per mile for January 1 through June 30, and 76 cents per mile for July 1 through December 31.
- The IRS raised it mid-year, so 2026 has two business rates rather than one.
- Not required by law but presumed to reimburse employee for all actual expenses.
- Otherwise, employer must demonstrate reimbursement amount is sufficient.

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Leaves of Absence

Paid Family Leave: Expanded

- SB590: extends California Paid Family Leave (PFL) benefits to include individuals who take time off work to care for a seriously ill designated person, for claims filed on/after 7/1/28
- Expands definition of designated person to mean any care recipient related by blood or whose association with the individual is the equivalent of a family relationship
- Mostly aligns with the California Family Rights Act



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AB406: Healthy Workplace Healthy Families Act

- **Last year's amendments** expanded the "safe" time reasons to include crime victim leave (employee or a family member was a victim of domestic violence, sexual assault, stalking) and added new reasons connected to victim status for which leave could be used.
- **THIS YEAR:** Beginning in 2026, allows employees to use leave if they or a family member are a victim of *certain* crimes and are attending judicial proceedings related to that crime.
- For this covered use only, the law defines "victim" as a person against whom a violent felony, serious felony, and/or felony theft or embezzlement is committed.

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AB406: Expands Uses of PSL/HWHFA

Effective October 1, 2025:

- Revises the *paid* leave law to incorporate by reference:
  - Court appearance required by subpoena (Gov't Code § 12945.8(a)(2))
  - Jury duty (Gov't Code § 12945.8(a)(1))



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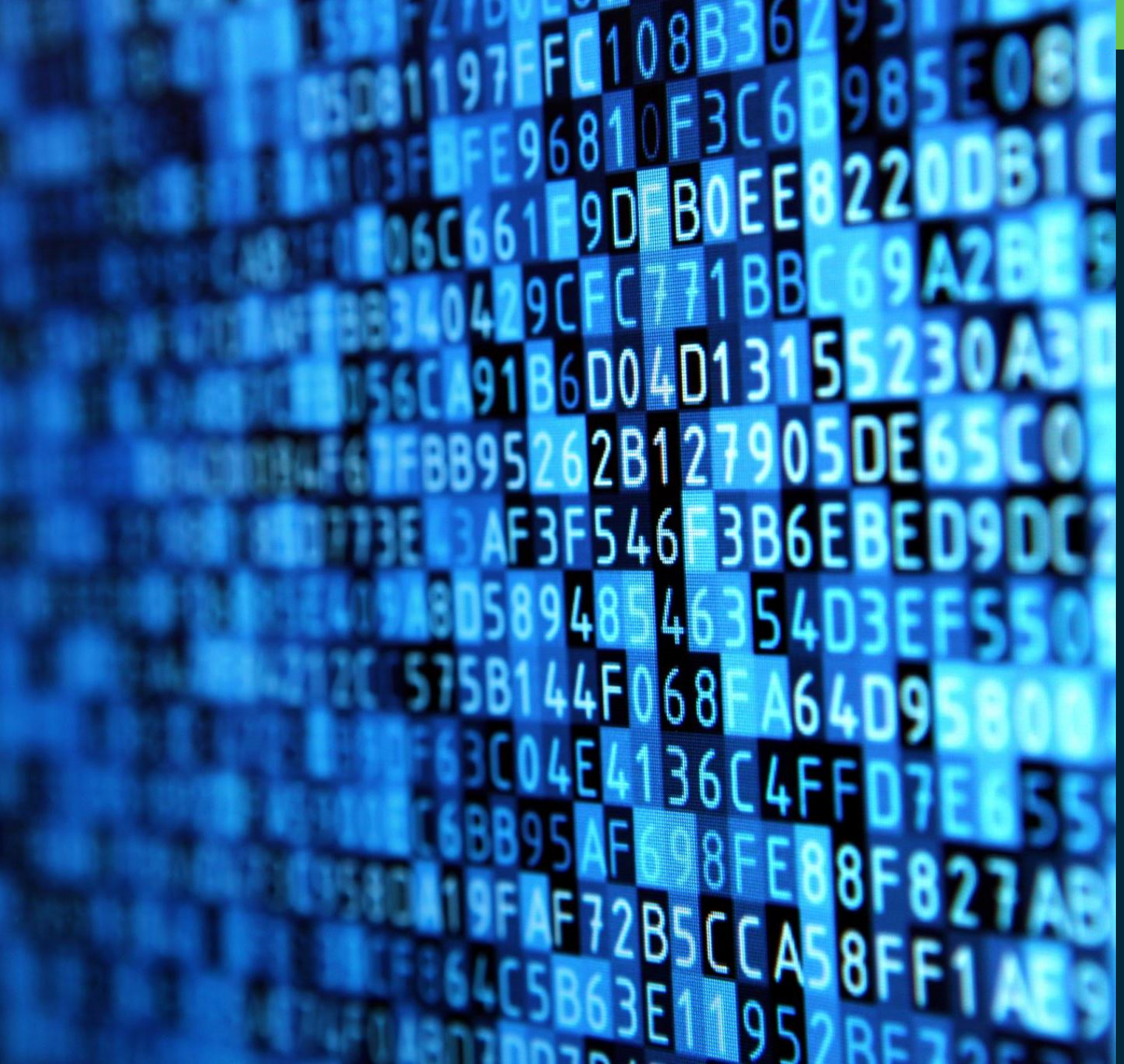

Artificial Intelligence!

SB 947: The "No Robo Bosses" Act

- Bans employers from relying solely on automated decision systems (ADS) to fire, discipline, or deactivate workers
- ADS includes any computational process using machine learning, statistical modeling, data analytics, or AI that issues simplified outputs (scores, classifications, recommendations)
- Human reviewer must independently corroborate the decision using underlying data or other relevant information
- Mandates plain-language written post-use notices starting July 1, 2027
- Notice must include:
  - Confirmation that ADS was used
  - Human reviewer contact information
  - Worker's right to access a description of their data
  - Anti-retaliation statement

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AB 1883: No Emotion Recognition or Neural Data

- Employers cannot use a "workplace surveillance tool" that uses artificial intelligence to:
  - Recognize, infer, or predict an employee's emotional state (e.g., stress, fatigue, concentration) or
  - Collect neural data — information generated by measuring activity of an employee's central or peripheral nervous system, not inferred from non-neural data
- Enforcement and penalties
  - California Labor Commissioner and public prosecutors
  - Penalties: Up to $500 per violation, plus injunctive relief, punitive damages, and attorney fees
  - Civil action: Employees may sue for specified remedies
- **Effective Date:** January 1, 2027

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SB 951: WARN Notices for AI-Driven Layoffs

- Effective January 1, 2027, California employers must add specific AI-related disclosures to Cal/WARN notices when a mass layoff, relocation, or termination is caused "in whole or in substantial part" by AI or other automated technology.
- If a qualifying layoff/relocation/termination is AI-driven, the Cal/WARN notice must now include
  - Statement at the top: "This notice is for a technology displacement"
  - Number, classification/occupation, and work location of jobs displaced by AI/automation
  - Job functions being automated
  - Specific category/type of AI system or other automating technology involved
- The law also defines "artificial intelligence" broadly to include engineered or machine-based systems that can infer from inputs and generate outputs influencing physical or virtual environments.

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AB 316

"**AI made me do it**" is not a legal defense!

"In an action against a defendant who developed, modified, or used artificial intelligence that is alleged to have caused a harm to the plaintiff, it shall not be a defense, and the defendant may not assert, that the artificial intelligence autonomously caused the harm to the plaintiff."



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What is FINRA?

Financial Industry Regulatory Authority (FINRA) was created in 2007 as the result of the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement, and arbitration operations of the New York Stock Exchange (NYSE)

FINRA is authorized by Congress, but technically not part of the federal government

FINRA writes and enforces the rules governing registered brokers and broker-dealer firms in the United States. Its stated mission is “to safeguard the investing public against fraud and bad practices”

FINRA oversees more than 6,800 broker-dealers, and nearly 660,000 registered securities representatives

FINRA is responsible for the Central Registration Depository (CRD) program, which supports the licensing and registration filing requirements of the U.S. securities industry and its regulators

In its enforcement capacity, FINRA has the power to take disciplinary actions against registered individuals or firms that violate the industry's rules

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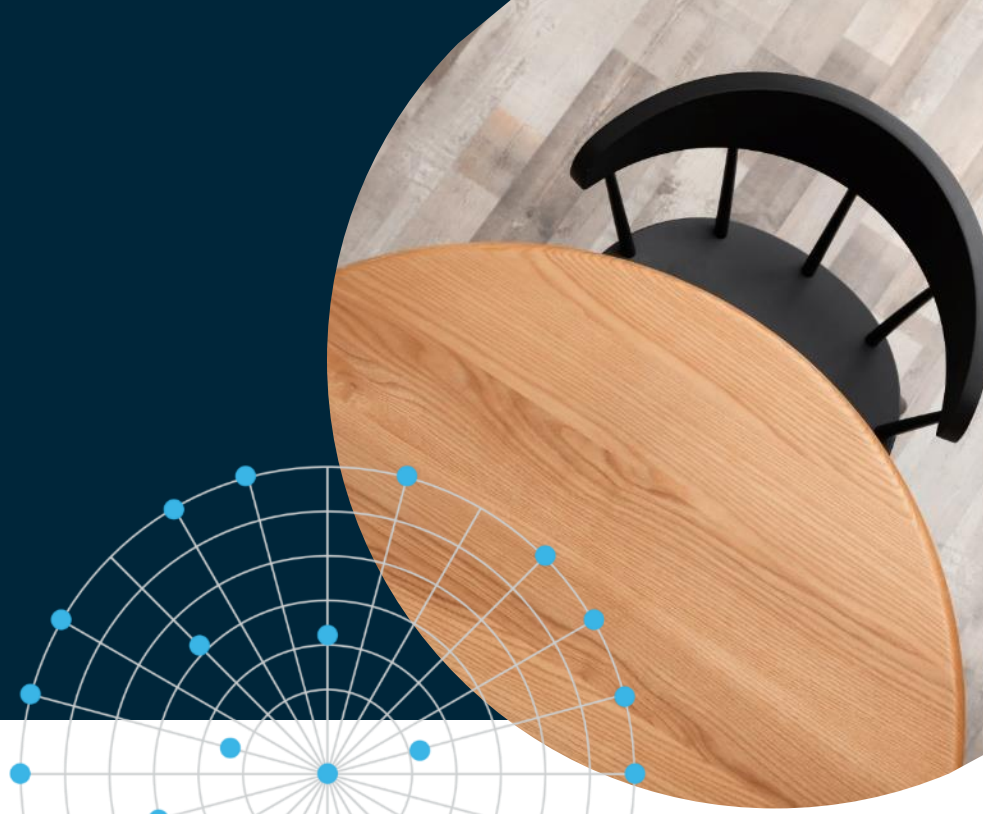

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