

The Year Ahead

Top 10 Laws and Regulations for 2019

EVERY YEAR comes with new laws and regulations that affect employers. It pays to stay on top of all the new requirements, so we are here to help you understand those that are most likely to affect your business. The following are the top 10 laws, regulations and trends that you need to know about going into 2019.

1. Sexual harassment training

Existing state law requires employers with 50 or more workers to provide at least two hours of sexual harassment training to supervisors every two years.

SB 1343 changes this by requiring employers with five or more employees to provide all employees with at least one hour by Jan. 1, 2020. Training must be held every two years. Also, employers with five or more workers must provide (or continue to provide) two hours of the biennial supervisory training.

2. Data privacy

Companies that collect data on their customers online should start gearing up in 2019 for the Jan. 1, 2020 implementation of the California

NEW PRIVACY RIGHTS

The law gives consumers:

- The right to know, through a general privacy policy and with more specifics available upon request, what personal information a business has collected about them, where it was sourced from, what it is being used for, whether it is being disclosed or sold, and to whom it is being disclosed or sold;
- The right to "opt out" of allowing a business to sell their personal information to third parties; and
- The right to have a business delete their personal information.

Consumer Privacy Act of 2018, which is the state's version of the European Union's General Data Protection Regulation.

The law applies to businesses that:

- Have annual gross revenues in excess of \$25 million,
- Annually buy, receive for their own commercial purposes, or sell or share for commercial purposes, the personal information of 50,000 or more consumers, households or

devices, and/or

- Derive 50% or more of their annual revenues from selling consumers' personal information.

3. Independent contractors

While this legal development happened in 2018, now is a good time to go over it. In May 2018, the California Supreme Court handed down a decision that rewrites the state's independent contractor law.

In its decision in *Dynamex Operations West, Inc. vs. Superior Court*, the court rejected a test that's been used for more than a decade in favor of a more rigid three-factor approach, often called the "ABC" test.

Employers now must be able to answer 'yes' to the following if they want to classify someone as an independent contractor:

- The worker is free from the control and direction of the hirer in relation to the performance of the work, both under the contract and in fact;
- The worker performs work that is

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2019

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New Requirements for Form 300A Electronic Submission

- outside the usual course of the hirer's business; and
- The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hirer.

The second prong of the test is the sentence that really changes the game. Now, if you hire a worker to do anything that is central to your business's offerings, you must classify them as an employee.

4. Electronic submission of Form 300A

In November 2018, Cal/OSHA issued an emergency regulation that required California employers with more than 250 workers to submit Form 300A data covering calendar year 2017 by Dec. 31, 2018. The new regulation was designed to put California's regulations in line with those of Federal OSHA.

This year, affected employers will be required to submit their prior year Form 300A data by March 2. The law applies to:

- Employers with 250 or more employees, and
- Employers with 20 to 249 employees in high-risk sectors.

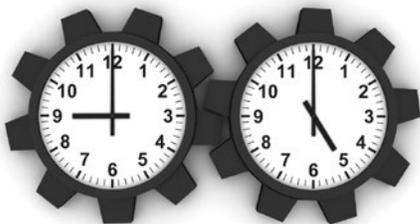
5. Harassment non-disclosure

This law, which took effect Jan. 1, 2019, bars California employers from entering into settlement agreements that prevent the disclosure of information regarding:

- Acts of sexual assault;
- Acts of sexual harassment;
- Acts of workplace sexual harassment;
- Acts of workplace sex discrimination;
- The failure to prevent acts of workplace sexual harassment or sex discrimination; and
- Retaliation against a person for reporting sexual harassment or sex discrimination

6. New tiered minimum wage

On Jan. 1, 2019, the state minimum wage increased, depending on employer size, to:



- \$11 per hour for employers with 25 or fewer workers.
- \$12 an hour for employers with 26 or more workers.

7. Overtime laws

The U.S. Department of Labor plans to propose new regulations governing overtime exemptions from the Fair Labor Standards Act in March 2019.

The DOL is aiming to update FLSA regulations that set a salary threshold below which employees must be paid over-

time. Today, it remains at \$23,660, after the Obama administration unsuccessfully attempted to raise it to \$47,476.

President Trump's DOL is expected to propose a threshold somewhere between \$32,000 and \$35,000.

8. Accommodating lactating mothers

A new law for 2019 brings California statute into conformity with federal law that requires employers to provide a location other than a bathroom for a lactating mother to express milk.

9. New bar for harassment liability

A California Appeals Court ruling in 2018 set a new standard for what constitutes harassment in the workplace in a case that concerned a correctional officer at a prison who was mocked about his speech impediment on numerous occasions by co-workers.

The significance of the case for employers is that even teasing and sporadic verbal harassment can be enough to create a hostile work environment and, hence, liability.

This year, reduce the chances of liability by having an anti-harassment policy. Include training and make sure there are steps for reporting harassment, a mechanism for investigating it, and that the ramifications for harassers are clear.

10. Indoor heat illness regulations

Look for the Division of Occupational Safety and Health to release its proposed indoor heat illness regulations in the first quarter, with possible implementation by the summer.

Draft rules that have been floated so far would apply the standard to indoor work areas where temperatures equal or exceed 82 degrees. All of the provisions would apply to workplaces where it's at least 92 degrees.

Under draft rules, those employers would have to:

- Provide cool-down areas at all times.
- Encourage and allow employees to take preventative cool-down rests when they feel the need to protect themselves.
- Implement control measures like:
 - Engineering controls
 - Isolating employees from heat
 - Using air conditioning, cooling fans, cooling-mist fans, and natural ventilation. ❖





Changing Times

Safety Risks Soar as Job Market Tightens

ONE BY-product of a strong economy is more employment, but the increased activity usually results in more workplace injuries.

That's because there are more inexperienced people on worksites and when a company is busy and there is more activity, the chances of an incident occurring also increase. This is especially the case in manual labor environments from production facilities, warehousing and logistics to construction and other trades.

The September USG + U.S. Chamber of Commerce Commercial Construction Index found that 80% of contractors said that the skilled labor shortage is affecting jobsite safety and it's the number one factor increasing safety risk on the jobsite.

As business activity grows and the job market tightens, many companies are forced to hire more inexperienced workers who are not skilled at understanding all safety hazards.

Experienced personnel have the know-how to identify workplace hazards and understand the safety protocols for all aspects of their work. While training can help new hires, nothing beats experience.

Additionally, with many businesses working hard to fulfill orders, workplaces are busier. Amidst all that hustle and bustle and people moving quickly, the speed and activity can also contribute to accidents in the workplace.

Also, aggressive scheduling may cause employers to use workers with less experience or training, and can push employees to work longer hours. If employees are working overtime, they may also be tired and fatigued, which can contribute to poor judgment and workplace incidents.

One other issue that's affecting workplace safety and is related to the tight job market is that employers are often having to settle for workers they may not normally hire in other times. As you know, the scourge of opioid addiction has been rampant and unfortunately if someone who has an addiction is hired, they may be a serious liability for the employer.

Not only that, but more states are legalizing recreational marijuana and nearly 40 states have medical marijuana laws on the books.

Here's what's concerning construction employers on the worker addiction front, according to the USG + U.S. Chamber of Commerce Commercial Construction Index:

- 39% were concerned about the safety impacts of opioids.
- 27% were concerned about the safety impacts of alcohol.
- 22% were concerned about the safety impacts of cannabis.

The report showed that while nearly two-thirds of contractors had strategies in place to reduce the safety risks presented by alcohol (62%) and marijuana (61%), only half had strategies to address their top substance of concern: opioids, which is a growing issue.

What you can do

In this environment of labor shortages and high competition for workers, employers need to put a premium on safety. ❖

Putting safety first

- Train all new employees in safety and housekeeping procedures.
- Improve the safety climate in the worksite with ongoing training.
- Get buy-in from management on safety.
- Provide more leadership training for supervisors.
- Track near misses and injuries, and identify the factors that led to the near miss or accident.
- Ensure accountability at all levels.
- Empower and involve employees in the safety process.

Tackling substance abuse safety risks

Top strategies to reduce safety risks caused by substance abuse:

- Testing
- Prescreening before hiring
- Education
- Zero-tolerance policies
- Counseling
- Access to rehab services

Most Bosses Guilty of Seven Deadly Sins: Poll

ONE OF the key tenets of effective management and happy employees is for managers to lead by example. And it's especially difficult for managers that do not exhibit to their subordinates the traits they expect of their workers.

A recent study by Florida State University shines the light on what employees think of their managers by focusing on how guilty they are of the time-honored seven deadly sins.

Researchers, who polled 750 mid-level employees, said workplaces are seeing increased levels of hostility due in large part to a deterioration of trust between supervisors and the people they manage.

Worse yet, the poll found that employees who feel their bosses are guilty of sins have impaired work productivity and poorer health.

The employees polled were asked to describe how often they personally experienced a direct supervisor's sins of wrath (anger), greed, sloth (laziness), pride, lust, envy and gluttony in the workplace.

The seven deadly sins are a classification of objectionable vices that have been used since early Christian times.

The most common sins that were reported across genders, different industries and levels of responsibility were sloth, lust, pride and greed. The poll found that:

- 41% of employees said their boss habitually pushes work on to others rather than doing it himself or herself (laziness);
- 33% said their boss tries to get others to stroke their ego (lust);
- 31% said their boss seeks undeserved admiration (pride);
- 27% said their boss pursues undeserved rewards (greed);

- 26% of employees said their boss frequently has trouble managing his or her anger;
- 23% of employees said their boss hoards resources that could be useful to others at work (gluttony); and
- 19% said their boss regularly acts enviously toward others who experience good things.

The fallout

While this would seem to be bad in and of itself, the results of having a boss that is guilty of one or more of these sins are worse.

EFFECTS ON WORKERS

- Employees contributing less effort.
- Workers feeling overloaded by doing their supervisor's work.
- Staff being less likely to make creative suggestions to bosses.
- Employees looking for new jobs.
- Physical and emotional problems and exhaustion among workers.
- Workers feeling anxious.

What to do

The above highlights the need for you to ensure that your own supervisors exhibit behavior that is conducive to strong employee productivity and maintaining a workplace that is devoid of hostility.

The lesson from this study: lead by example. Work with your supervisors to make sure they follow this maxim. ❖



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