

The Top 10 Things California Employers Can Expect in 2016

By Nancy Yaffe

The following are the top 10 trends I saw in my practice from 2015 that inform what California employers can expect in 2016:

1. Just about every regulatory agency (including the federal Department of Labor) is scrutinizing anyone classified as an independent contractor, so make sure you assess whether your contractors are properly classified, and if so, confirm they have an updated and signed independent contractor agreement on file.
2. As we approach the four-year anniversary of the *Brinker* decision in April 2016, expect fewer meal-and-rest break class actions to be filed and for the plaintiffs' bar to focus on other wage-and-hour issues, such as the proper calculation of the overtime rate (to include all nondiscretionary compensation) and the proper calculation of sick pay.
3. California now has the most far-reaching equal pay law in the country with the Fair Pay Act and employers must take steps to ensure not to pay similarly situated men and women differently. Check out [this alert](#), which describes four steps employers can take to be proactive on this issue, including how to amend your employee handbook and your compensation practices.
4. When you lay off employees, be sure you provide an honest reason; don't call it a layoff if it is really performance based and you intend to replace the position. Employees can sense an insincere motive and it never goes well. Also, make sure you offer anyone who is laid off the chance to express interest in any open positions they may be qualified for (even if the only open positions would be a demotion). It is great evidence if a claim is filed and makes the layoff feel less personal.
5. The courts are approving carefully drafted arbitration agreements, including those with class action waivers, so if you don't have one, it is time.
6. Despite #5, claims under the Private Attorney General Act (PAGA) may be excluded. Therefore, given the anticipated rise of PAGA claims, pay closer attention to those PAGA notices and if you can fix the issues raised, do it and fast.
7. As my partner, [Jeff Polsky](#) advises, *think globally, but act locally*. There are many citywide issues to be aware of, including specific minimum wage and sick pay ordinances.
8. Once again, San Francisco will start a trend for the state and eventually the nation. Expect "predictable scheduling" and an onslaught of on-call scheduling.
9. Don't forget that employees out on workers' compensation can still be covered by the FMLA/CFRA and need to be accommodated under the ADA/FEHA. So don't ignore the duty to reasonably accommodate and engage in the interactive process and to document each step of the way.
10. As always, the devil is in the details. Quite often employers have the right policies, but simply don't train new managers on them or ensure that they are consistently followed. Periodic Human Resources compliance audits should be part of every company's budget.

Stay on top of these and other current issues affecting California employers by [subscribing to our California Employment Law Blog](#).

If you have any questions about how these issues apply to your company or in any particular situation, please contact [Nancy Yaffe](#) at nyaffe@foxrothschild.com or 310.598.4160 or any other member the firm's [Labor & Employment Department](#).