

## Service

Labor &amp; Employment

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# Top-10 Things You're Probably Getting Wrong with Your California Employees

The regulatory framework that applies to California is complex and ever-changing. Even the most diligent employers can find themselves unintentionally out of compliance in ways both big and small. And California provides many avenues for employees to bring claims challenging that noncompliance, including administrative complaints, private individual or class action lawsuits, and actions under the Private Attorneys General Act (PAGA).

The following summarizes the most frequently missed requirements when employees are situated in the Golden State. Consulting with experienced California employment counsel is worth the relatively small investment when compared to the potential headaches and costs associated with compliance mistakes.

## Top-10 compliance misses

### 1. Have you reported wage data to the California Department of Fair Employment and Housing?

As of March 31, 2021, employers with 100 or more employees and at least one employee in California that are required to file an annual EEO-1 report must report pay data annually.

### 2. Are you providing Supplemental Paid Sick Leave and Continuation Pay pursuant to the California Division of Occupational Safety and Health's Emergency Temporary Standards?

For 2021, a new California emergency sick leave provision resurrects and broadens last year's COVID-19 paid sick leave requirements. In 2020, employers with 500 or more employees (anywhere) were required to provide up to 80 hours of supplemental paid sick leave to employees unable to work or telework for a number of COVID-19-related reasons. This year, employers with 26 or more employees are required to do so, for an expanded list of reasons. For both years the supplemental leave entitlement is in addition to leave already provided to employees pursuant to state and local laws.

### **3. Are your timekeeping practices up to date?**

On February 25, 2021, in *Donohue v. AMN Services LLC*, the California Supreme Court held that employers "cannot engage in the practice of rounding time punches ... in the meal period context," and a "rebuttable presumption of meal period violations" will apply when their time records show noncompliant meal periods.

### **4. Are you inadvertently creating PAGA liability by failing to ensure your employees' wage statements comply with California's wage statement requirements?**

Complying with California's (nit-picky) wage statement requirements is a lot more complicated than many people think. Even the slightest mistake or omission can quickly create hundreds of thousands of dollars in per-pay-period penalties thanks to California's PAGA.

### **5. Did you know California employees are entitled to family and medical leave regardless of whether they are employed at a worksite with 50 or more employees in a 75-mile radius?**

The California Family Rights Act (CFRA) was amended for 2021 such that all employers with 5 or more employees (in any state) must now provide up to 12 weeks of family and medical leave to eligible California employees.

### **6. Did you know California employees are eligible for up to 16 weeks of pregnancy disability leave in addition to 12 weeks of family and medical leave?**

Because the CFRA does not cover pregnancy-related disabilities, a California employee disabled by pregnancy who requires California Pregnancy Disability Leave may also qualify for an additional 12

weeks of bonding leave.

**7. Are you providing mandatory antiharassment training to all employees in California and out-of-state supervisors who manage California employees?**

California law requires employers with five or more employees to provide harassment prevention training to all employees every two years.

**8. Are you inadvertently making your employment agreements vulnerable to being found void and unenforceable by including a noncompete provision?**

Most employers are aware that noncompetes are unenforceable in California. But many do not know that courts do not blue-line such provisions and therefore including them within other employment agreements puts the entire contract at risk. California employers need to use separate assignment of inventions and nondisclosure agreements without any noncompete provisions for California employees.

**9. Are you paying final wages – including all accrued and unused paid time off (e.g., vacation, floating holidays, personal days) – on the last day of employment or within 72 hours of when an employee resigns without notice?**

Failure to timely pay final wages results in so called “waiting time” penalties whereby the employee’s daily wage continues until all wages are paid, or for 30 days, whichever is earlier.

**10. Are your employee handbooks and policies creating a class-action risk?**

The plaintiff’s bar likes nothing better than a noncompliant policy when seeking class certification. Making sure you have updated, and California-compliant policies is an easy step to help reduce the risks of wage-and-hour class action liability.

## Contact us

For further insight into these and other questions, please contact experienced California litigators, Amberly Morgan and Jennifer Hinds; experienced class and collective action litigator A.J. Weissler; or your Husch Blackwell attorney. The team is well-versed in handling these issues, and others.

## **Your Comprehensive COVID-19 Legal Resource**

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.