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Employment-law 101 for law-firm management

A SUMMARY OF ETHICAL – AND LEGAL – BEHAVIOR AS IT APPLIES TO YOUR LAW-FIRM EMPLOYEES

Lawyers aren't just lawyers: they are also frequently employers. Running a law firm and employing employees requires adherence to the laws governing the employer-employee relationship. It is just as important, if not more important, for lawyer employers to know and follow the rules of employment. Imagine the optics of an employment law firm who fights for the rights of mistreated employees but violates the law with respect to its own employees. Consider the personal injury attorney who vindicates the rights of those disabled by an accident but discriminates against its own disabled employees.

All employers need to ethically run and manage their business, but not all employers, including those with law degrees, know or understand the basic rules of the road. Keep your employees happy, and yourself out of trouble, by learning and understanding the basics of employment law.

You pay your employees. You may pay some of your employees very generously. Paying a generous base rate makes for happier, more loyal employees, but is no substitution for making sure you are in compliance with the most basic of wage and hour laws. Not only will it help with employee retention, but it may keep you from being a defendant in a wage-and-hour lawsuit.

Don't misclassify your employees as independent contractors

This is a common mistake made by many businesses, and law firms are no exception. Before you classify any of your employees as "independent contractors," remember that an employer-employee relationship with one who works for you is *presumed*. That means, if an employer claims its worker is an independent contractor, the *employer* bears the burden of proving that is the case as an affirmative defense. (See CACI 2705; *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 916.) Willful misclassification of an employee as an independent contractor can subject the employer to significant penalties ($5,000 to $25,000 per employee!), on top of the penalties to which it may be subject by virtue of having violated other wage-and-hour laws in the process. (See, Lab. Code, § 226.8.)

"The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfied each of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; and (b) that the worker performs work that is outside the usual course of the hiring entity's business; and (c) that the worker is

customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." (*Dynamex*, 4 Cal.5th at 955-956.) The hiring entity's failure to prove *any one* of these three elements is sufficient to establish that the worker is an employee, and not an independent contractor. (*Id.* at 964.)

Under this test, nearly all office staff are employees as most employees do not have an independently established trade, occupation or business (the "C" prong of the test). The ABC test set forth in *Dynamex*, applies retroactively, so an employer should immediately revisit any of its so-called "independent contractors" to ensure they are in compliance with the law. (*Vazquez v. Jan-Pro Franchising International, Inc*. (2021) 10 Cal.5th 944, 958 [*held*, *Dynamex* applies retroactively].)

Don't misclassify your employees as exempt

Even more frequent than misclassification as an independent contractor, employees are routinely misclassified as exempt, and paid a salary instead of an hourly wage, with overtime and other similar benefits. An employee is *presumed* to be non-exempt and entitled to overtime, rest periods, meal periods and itemized wage statements. The employer bears the burden of proving, as an affirmative defense, that an employee is exempt and, thus, not entitled to overtime, rest periods, meal periods and itemized wage statements. (See, CACI 2720-2721; *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 794-795.) "Exemptions are narrowly construed against the employer and their application is limited to those employees plainly and unmistakably within their terms." (*Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562.)

Determining whether an employee is properly classified as exempt is trickier than the ABC test. Law firms fall under Industrial Welfare Commission Order No. 4-2001 ("Wage Order 4"), which provides three possible exemptions: Executive, Administrative and Professional. (Lab. Code, § 515, subd. (a).) The Executive and Professional Exemptions under the Wage Orders are the less complicated of the exemptions. The one element that all exemptions have in common is that the allegedly exempt employee must earn a monthly salary that is no less than two times the minimum wage. (Lab. Code, § 515, subd. (a); Cal. Code Regs., tit. 8, §§ 11040(1)(A)(1)(f), 11040(1)(A)(2)(g), 11040(1)(A)(3)(d).) For firms employing fewer than 25 persons, any employee classified as exempt must earn $4,506.67 per month ($54,080 per year) or they are not exempt as a matter of law. Beginning January 2022, that amount goes up to $4,853.33 per month ($58,240 per year), once the minimum wage for businesses employing fewer than 25 persons increases to $14.00/hour. If your firm employs more than 25 persons, the $4,853.33 monthly rate applies now (based on a minimum wage rate of $14.00/hour), and will increase to $5,200 per month ($62,400 per year) starting January 1, 2022.

Assuming the minimum base salary requirement is met, the analysis of proper classification as exempt is thereafter more complicated. Nearly all lawyers will fall under the Professional Exemption, which merely requires they be licensed to practice law, and customarily and regularly exercise discretion and independent judgment in the performance of duties. (Cal. Code Regs., tit. 8, § 11040(1)(A)(3).) This same rule does not apply to law clerks or other law school graduates who are not licensed to practice law. (See, e.g., *Campbell v. PricewaterhouseCoopers, LLP* (E.D. Cal. 2009) 602 F.Supp. 2d 1163 [unlicensed accounting assistants assisting licensed accountants are not exempt because they are not licensed].)

Your non-attorney managers

Most of the non-attorney department heads or managers, such as the office manager or accounting managers, will fall under the Executive Exemption, provided they (1) regularly supervise two or more persons, (2) have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight, (3) customarily and regularly exercise discretion and independent judgment; and (4) spend more than 50% of their time performing non-exempt tasks. (Cal. Code Regs., tit. 8, § 11040(1)(A)(3).) Be careful, however – merely giving an employee the title of "manager" or "supervisor" does not convert a non-exempt employee into an exempt employee. The actual job duties must be scrutinized to determine if they are exempt or non-exempt tasks.

The most difficult exemption to unpack is the Administrative Exemption. The Administrative Exemption applies only to those employees (1) who perform office or non-manual work directly related to management policies or general business operations; (2) who customarily and regularly exercise discretion and independent judgment; (3) who assist a proprietor or bona fide executive or administrator; (4) who perform only under general supervision; *and* (5) spend more than 50% of their time performing non-exempt tasks. (Cal. Code Regs., tit. 8, § 11040(1)(A)(2).) Most of the confusion arises from the first element, and whether the employee's job duties are "directly related to management policies or general business operations."

"Work qualifies as 'directly related' if it satisfies two components. First, it must be qualitatively administrative. Second, quantitatively, it must be of substantial importance to the management or operations of the business. Both components must be satisfied before work can be considered 'directly related' to management policies or general business operations in order to meet the test of the exemption." (*Harris v. Superior Court* (2011) 53 Cal.4th 170, 181-182.) "Directly related to the management or general business operations" "[i]ncludes, but is not limited to, work in functional areas such as tax; finance; accounting;

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budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities." (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1256 (italics omitted), quoting 29 C.F.R. § 541.201(b).)

Further, "an employee acting in an administrative capacity directly related to the management policies or business operations of the employer need not directly participate in 'the formulation of management policies or in the operation of the business's enterprise as a whole. [Citation.] An employee whose responsibility is to 'execute or carry' out management policies may also be considered within the scope of the exemption, even though his or her responsibilities are limited to only 'a particular segment of the business.'" (*United Parcel Service Wage & Hour Cases* (2010) 190 Cal.App.4th 1001, 1030.)

As an example, the executive or administrative assistant to a business owner or senior executive of a large business "generally meets the duties requirements for the administrative exemption if such employee, *without specific instructions or prescribed procedures*, has been delegated authority regarding matters of significance." (*Gofron v. Picsel Technologies, Inc.* (N.D. Cal. 2011) 804 F.Supp.2d 1030, 1042 (emphasis added).) "The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.... The exercise of discretion and independent judgment also does not include ... performing ... mechanical, repetitive, recurrent or routine work." (29 C.F.R. § 541.202(e); see, *Combs*, 159 Cal.App.4th at 1257.)

Under these guidelines, most legal assistants, even those supporting the firm owner or equity partner, will *not* meet the criteria of the Administrative Exemption, unless they spend more than half of their time assisting with actual administration or management of the firm. At the end of the day, a detailed factual analysis of each particular employee's job duties is required to determine if they do or do not fit within the Administrative Exemption.

Don't interrupt those meal and rest breaks

Assuming your employees do *not* fall within any exemption, they are non-exempt and, thus, entitled to all of the protections provided by Wage Order 4, including statutory meal and rest breaks.

Every employer must authorize and permit all employees to take meal periods of 30 consecutive minutes, uninterrupted, and completely relieved of all duty per every five hours of work. An employer's duty with respect to meal breaks is to relieve its employees of all duty, relinquish control over their activities and permit them a reasonable opportunity to take an *uninterrupted* 30-minute break. If the employee works ten hours per day or more, the employee is entitled to a second meal period of not less than 30 consecutive minutes, uninterrupted, and completely relieved of all duty. (Lab. Code, § 512, subd. (a); Cal. Code Regs., tit. 8, § 11040(11)(A).)

It does not matter when the meal break is taken, so long as it is taken before the start of the sixth hour of work or, if applicable, a second meal between the sixth and eleventh hours. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-1042.) This means an employee has received a proper meal break even if the meal break is taken within the first hour of employment, and the employee works more than five hours thereafter without another meal break. (*Id.* at 1048-1049.) Unless the employee is relieved of all duty during the 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. (*Id.*, at 1035.)

Further, every employer must authorize and permit all employees to take paid rest periods of 10 consecutive minutes, uninterrupted, and completely relieved of all duty per every four hours or major fraction thereof (e.g., shifts longer than two hours), unless the total work day is three-and-one-half hours, or less. (Cal. Code Regs., tit. 8, § 11040(12)(A); *Brinker Restaurant Corp.*, 53 Cal.4th at 1028-1030.) Several shorter rest breaks throughout the day cannot be aggregated to fulfill this requirement. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1199.)

An employer's duty with respect to meal and rest breaks is to relieve its employees of all duty, relinquish control over their activities and permit them a reasonable opportunity to take the uninterrupted 30- or 10-minute break, and does not impede or discourage them from doing so. While an employer is not required to monitor the employee to make sure the meal or rest break is taken or that no work is actually done, it is the employer's obligation to clearly communicate to its employees the right to take these meal and rest breaks relieved of all duty, and thereafter the employer may not take any action of any kind to prevent or discourage the employee from taking an authorized break. (*Bufil,* 162 Cal.App.4th at 1199; *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 963.)

If you require your employee to be on-call during a meal or rest break, such as reachable by cell phone, the employee is not "completely relieved of all duty," and the employer has violated the obligation to provide an uninterrupted break, even if the employer does not actually interrupt the employee. (*Augustus v. ABM Security Services, Inc*. (2016) 2 Cal.5th 257.)

The consequence for failing to provide a statutory meal or rest break is one additional hour of pay at the employee's regular rate of compensation, for each day on which a violation occurs, which is considered wages, not a penalty. (Lab. Code, § 226.7, subd. (c); *Murphy v.*

Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1102-1111.) "Regular rate of compensation" encompasses all nondiscretionary payments, not just hourly wages. (*Ferra v. Loews Hollywood Hotel, LLC* (Cal., July 15, 2021, No. S259172) __ P.3d __, 2021 WL 2965438.) If an employee is deprived of one or more rest breaks on a given day, that employee is entitled to the extra hour of pay. And if that same employee is also deprived of one or more meal breaks on that day, the employee is entitled to a second extra hour of pay for the second type of violation.

Payment of overtime wages

Labor Code section 510 requires employers to pay their non-exempt employees one-and-one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime compensation for the first eight hours of work done on the seventh consecutive day of work done in any work week, and double-time compensation for any work done beyond the first eight hours on the seventh consecutive day of work.

Most employers are aware of this obligation. However, if you have misclassified your employee as exempt and that employee works more than eight hours in a day or more than forty hours per week, but you are only paying a salary, you have violated the overtime and minimum wage laws. Pursuant to Labor Code section 515, subdivision (d)(2), salary is deemed to provide compensation only for the employee's regular, non-overtime hours, notwithstanding any private agreement to the contrary. This means an agreed-upon salary only covers eight hours of work per day, or 40 hours in a week, and the employee is paid no wages at all, for hours beyond eight in a day, or 40 in a week. The employee's salary is converted to an hourly rate as 1/40th of the employee's weekly salary. (Lab. Code, § 515, subd. (d)(1).)

To illustrate how costly this can be to the employer, consider a misclassified employee whose salary is $56,000 per year, who works 10-hour days for a 50-hour week. That employee's hourly rate for purposes of calculating overtime is $26.92 ($56,000÷52 weeks÷40 hours), with the resulting overtime premium rate totaling $40.38. Ten unpaid overtime hours per week equals $403.80, or $20,997.60 a year, not including the attorney's fees you would have to pay upon losing that lawsuit.

An employer may not make any unauthorized deductions from an employee's wages. (Lab. Code, §§ 221-224.) This includes docking the pay of a salaried employee who works only a partial day, regardless of the reason. (*Conley v. Pacific Gas & Elec. Co*. (2005) 131 Cal.App.4th 260, 267.) An employer may, however, require a salaried employee to use accrued vacation time for those hours not worked in a partial day, as part of its vacation-use policy. (*Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1575-1576.)

Pay departing employees promptly

Finally, all accrued wages and other compensation due and owing, including unused but accrued vacation time, must be paid to a departing employee *immediately* upon termination or within 72 hours of resignation. (Lab. Code, §§ 201-203, 227.3.) The willful failure to pay these wages when required subjects the employer to waiting time penalties in the form of wage continuance for each day the wages remain unpaid, up to 30 days. (Lab. Code, § 203.)

Reimbursement of expenses

Pursuant to Labor Code section 450, subdivision (a), "no employer…may compel or coerce any employee…to patronize his or her employer, or any other person, in the purchase of anything of value." Further, pursuant to Labor Code section 2802, subdivision (a), "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." This means that an employer must reimburse an employee for all work-related expenses and expenditures that the employer is required to pay him/herself.

When considering reimbursement of expenses, the items that typically come to mind are mileage and parking. The items that are typically forgotten are: (1) use of personal cell phone for work (*Cochran v. Schwan's Home Service, Inc*. (2014) 228 Cal.App.4th 1137); (2) use of personal laptop or computer, scanners, and printers if required to use for work; (3) cost of an internet connection if needed to perform work (*Aguilar v. Zep Inc*. (N.D. Cal., Aug. 27, 2014, No. 13-CV-00563-WHO) 2014 WL 4245988); (4) infrastructure costs associated with home office/work space if employee is required to work from home. For purposes of calculating reimbursement for home office, employers can use the standard by which a home office deduction is taken for purposes of preparing federal tax returns.

Accurate timekeeping records

Wage Order 4 requires employers to keep *accurate* timekeeping records that show the times an employee begins and ends each work period, begins and ends each meal period, and the total daily hours. (Cal. Code Regs., tit. 8, § 11040(7)(A).) This obligation is imposed on the employer, not the employee, so an employer who shifts this obligation to the employee and relies upon the accuracy of the employee's timekeeping does so at its peril.

Lawful workplace basics

In addition to the obligation to properly pay your employees' wages under the wage-and-hour laws, there are numerous other workplace laws that

govern how you may ethically and legally run your law firm.

Don't discriminate, harass or retaliate, and be sure to investigate related claims

There are numerous laws that protect employees from discrimination, harassment and/or retaliation by the employer.

One of the more recent laws is the California Fair Pay Act, which updated the existing Equal Pay Act, and now requires that employers pay male and female employees the same wage if they are engaged in "substantially similar work," not necessarily the same work. The updated Equal Pay Act now also prohibits race- and ethnicity-based wage disparagement. (Lab. Code, §§ 432.3, 1197.5.) Simply stated, law firms should not be paying their male attorneys more than their female attorneys, or attorneys of a certain ethnicity more than attorneys of other ethnicities.

The most well-known anti-discrimination statutory scheme is the Fair Employment and Housing Act (the "FEHA"), Government Code sections 12940, et seq., which prohibits discrimination against employees within protected classes (race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status), prohibits retaliation against employees who engage in protected activities such as reporting suspected discrimination or harassment or requesting a disability accommodation, and prohibits harassment of employees based on the same protected classes. Note that, unlike claims for discrimination or retaliation, even contractors, not just employees, are protected by the FEHA's anti-*harassment* provisions. (Gov. Code, § 12940, subd. (j)(1).) Employers are strictly liable for harassment by supervisors, and are liable for harassment by non-supervisors if the employer "knew or should have known" of the conduct and failed to take immediate and appropriate corrective action.

The FEHA also affirmatively requires employers to take all reasonable steps to prevent discrimination, retaliation and harassment from occurring. (Gov. Code, § 12940, subd. (k); CACI 2527; *Taylor v. City of Los Angeles Dept. of Water & Power* (2006) 144 Cal.App.4th 1216, 1240 [confirming retaliation is a form of discrimination under this subsection].) This obligation goes beyond the lawyer employer not sexually harassing his/her own employees, or having a clear statement against discrimination, retaliation or harassment in the handbook. "'The employer's duty to prevent harassment and discrimination is affirmative and mandatory. [Citation.]

Prompt investigation of a discrimination claim is a necessary step by which an employer meets its obligation to ensure a discrimination-free work environment. [Citations.]' [Citation.] The FEHA mandates that [employers] acting in good faith, conduct an investigation that is appropriate under the circumstances. [Citation.]" (*Choochagi v. Barracuda Networks, Inc*. (2020) 60 Cal.App.5th 444, 462.) To execute this obligation, all complaints and reports of harassment, discrimination and retaliation should be investigated in good faith, and immediate and appropriate corrective action taken. "The employer's obligation to take prompt corrective action requires (1) that temporary steps be taken to deal with the situation while the employer determines whether the complaint is justified and (2) that permanent remedial steps be implemented by the employer to prevent future harassment . . . ." (*M.F. v. Pacific Pearl Hotel Management LLC* (2017) 16 Cal.App.5th 693, 701.)

Multiple other statutes prohibit retaliation against employees for engaging in specific types of conduct. Most applicable to a law practice, these include, but are not limited to: reporting or refusing to engage in suspected unlawful conduct (Lab. Code, § 1102.5, subds. (b)-(c)); making a workers' compensation claim (Lab. Code, § 132a); reporting or refusing to work in unsafe working conditions (Lab. Code, §§ 6310-6311); protesting non-payment of wages or other Labor Code violations (Lab. Code, § 98.6, subd. (a)); engaging in lawful conduct occurring during nonworking hours and away from the employer's premises (Lab. Code, § 98, subd. (k)); taking off time for jury duty, for a crime or domestic violence victim to appear in court or work to obtain relief to ensure his/her safety or that of his/her children (Lab. Code, §§ 230, 230.5); taking time off work for children's school activities or meetings (Lab. Code, §§ 230.7, 230.8); disclosing the employee's wages or working conditions (Lab. Code, § 232, 232.5); using or attempting to use accrued sick leave (Lab. Code, §§ 233, 246.5); exercising rights under state lactation accommodation laws (Lab. Code, §§ 1030-1033); refusing to work excess hours (Lab. Code, § 1198.3); requesting or taking CFRA leave (Gov. Code, § 12945.2.).

Accommodate your employees as required by law

Multiple laws require employers to provide reasonable accommodations to qualifying employees. The purpose of these laws is to enable an employee to continue working and/or remain employed despite a disability or other situation or condition that makes working more difficult. Many of these laws also require the employer to engage in an "interactive process" with the employee for purposes of determining a reasonable accommodation.

The most common accommodations are those for physical and mental disabilities, and pregnancy/childbirth-related disabilities/conditions, and are governed by the FEHA. (See Gov. Code, §§ 12940(m)-(n), 12945.) Again, the purpose of these laws is to find creative but reasonable ways that will permit a disabled employee to continue or return to work, or remain employed while they recover from a disabling condition, and *all* reasonable accommodations must be considered, except those that cause "undue hardship," which is an affirmative

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defense on which the employer bears the burden of proof. (Cal. Code Regs., tit. 2, § 11068; CACI 2545.)

Examples of accommodations that an employer might be able to provide are reduced hours, temporary light duty/assignments, reassignment to a vacant position, an assistive device or equipment, ergonomic chair or keyboard, time off for medical appointments, and a finite leave of absence if the employee cannot work at all.

Do not rely on your own internal policies or CFRA/FMLA to determine how much of a leave of absence you are willing to grant to a disabled employee. "When the employee cannot presently perform the essential functions of the job, or otherwise needs time away from the job for treatment and recovery, holding a job open for an employee on a leave of absence *or extending a leave provided by the CFRA, the FMLA, other leave laws, or an employer's leave plan* may be a reasonable accommodation provided that the leave is likely to be effective in allowing the employee to return to work at the end of the leave, with or without further reasonable accommodation, and does not create an undue hardship for the employer." (Cal. Code Regs., tit. 2, § 11068(c) (emphasis added).) Further, an employer may not require that an employee take a leave of absence if the employee can work with some other reasonable accommodation. (*Ibid*.)

Multiple other statutes require an employer to provide accommodations as necessary, unless it would cause undue hardship: accommodation for religious belief or observance (Gov. Code, § 12940(l)); lactation (Lab. Code, §§ 1030, et seq); for crime and domestic violence victims to secure safety at the workplace and home, get medical/psychological treatment, obtain services from a victim organization (Lab. Code, §§ 230(f), 230.1); voluntarily enter and participate in an alcohol or drug rehabilitation program (Lab. Code, §§ 1025, et seq.). A few of these laws only require accommodation by employers with 25 or more employees.

Mandatory benefits

While offering employment benefits to employees varies from firm to firm, the majority of benefits firms typically offer are voluntary, such as dental/vision/life/disability insurance, vacation pay, paid holidays, and tuition assistance. There are certain employment "benefits" that are mandatory, and which must be provided to employees.

- Health insurance: Firms employing 50 or more full-time employees must provide health insurance to its employees, and that health insurance must comply with the requirements of the Affordable Care Act. Firms employing fewer than 50 full-time employees are not required to provide health insurance *but, if they choose to*, the coverage must comply with the requirements of the Affordable Care Act.
- Sick leave: Firms of any size must provide a minimum of three days of paid sick leave per year to all employees (including temporary, part-time and full-time), starting with the employee's 30th day of employment, which the employee can start using beginning on the 90th day of employment. Accrual begins the first day of employment, at the rate of one hour per every 30 hours worked, and must carry forward to the following year (unless all three days are provided at the beginning of each calendar year), although the employer can cap the amount of accrued sick leave at six days, and limit use to three days per year. Unused sick time does not need to be cashed out upon separation of employment, although it must be reinstated if the employee is rehired within one year. (Lab. Code, § 246.) The sick leave may be used for the employee or family member (child, parent, spouse, spouse's parent, registered domestic partner, grandparent, grandchild or sibling) for diagnosis, care or treatment of an existing health condition or for preventative care, and for specified purposes for an employee who is a victim of domestic violence, sexual assault, or stalking. (Lab. Code, §§ 245.5, 246.5.)
- Workers' compensation insurance: All employers in California must carry workers' compensation insurance to protect their employees, or be certified as self-insured. (Lab. Code, § 3700.)
- Rest break facilities and seating: All employers must provide on-site suitable resting facilities that are in an area separate from the bathrooms, which must be available to employees during work hours, as well as sufficient toilets. (Cal. Code Regs., tit. 8, §11040(13)(B); Lab. Code, § 2350.) All employers must provide seats or seats in reasonable proximity to the work area that employees are permitted to use when it does not interfere with performance of their duties. (Cal. Code Regs., tit. 8, § 1104014(B).)

Conclusion

Like it or not, as officers of the court and purported champions of justice, lawyer employers are held to a higher standard, and are expected to conduct themselves and their firms ethically, and in strict compliance with all laws. California's laws are highly protective of the employees, so when in doubt, always weigh in favor of protecting the employee.

Christina M. Coleman launched her solo practice of the Law Offices of Christina M. Coleman, APC *in April 2017. With nearly 25 years of experience representing employees, consumers, and businesses in enforcement and protection of their rights, her practice areas include: employment litigation, including discrimination, retaliation, wrongful termination, whistleblower retaliation, civil assault & battery, rape/sexual assault, sexual harassment, civil rights, personal injury, and appellate work.*