



CALIFORNIA

QUICK AND EASY GUIDE TO LABOR & EMPLOYMENT LAW

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Employment Contracts

In California, a contract for employment is a “contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.” Cal. Lab. Code § 2750. Employment contracts for commission-based roles must be in writing. *Id.* § 2751.

At-Will Employment

In California, there is a presumption of at-will employment absent an express agreement specifying the length of employment or grounds for termination. *Foley v. Interactive Data*, 47 Cal. 3d 654, 677 (1988). Employment for a specified term means for a period greater than one month. Cal. Lab. Code § 2922. This means that either party may terminate the relationship at any time, with or without cause. *Id.*

In California, an at-will employee who is dismissed is only entitled to compensation for their services rendered up to the time of the dismissal by the employer. *Id.* § 2926. An at-will employee who quits during their employment is also only entitled to compensation up to the date of their quitting. *Id.* § 2927.

California courts have recognized numerous limitations and exceptions to at-will employment. An employee termination may not be “motivated by legally proscribed, invidious discriminatory attitudes, such as animus toward a particular race or gender.” *Jie v. Liang Tai Knitwear*, 89 Cal. App. 4th 654, 660 (2001).

Additionally, an employee may maintain a tort claim against their employer if their termination violates an important public policy. To succeed on a claim of wrongful termination under the public policy exception, an employee must prove: (1) the policy they were in violation of or refused to violate is set forth in law, either by statute or constitutional provision; (2) the policy benefits the public; (3) the policy is fundamental and substantial; and (4) the policy was well established at the time of termination. *City of Moorpark v. Superior Court*, 18 Cal. 4th 1143, 1159 (1998) (quoting *Stevenson v. Superior Court*, 941 P.2d 1157, 1165). Furthermore, the employee must be able to show a clear connection between their actions in support of the policy and their termination. *Turner v. Anheuser-Busch*, 7 Cal. 4th 1238, 1251 (1994).

The presumption of at-will employment may be overcome by implied contract. *Foley* 47 Cal. 3d at 677. Whether an implied contract exists between an employer and employee depends on what the parties intended the terms of employment to be. *Id.* The court considers numerous factors when determining whether an implied contract exists, such as the employer’s general practices, the length of employment, behavior or communications by the employer reflecting assurance of continued employment, and the practice industry the employee is in. *Id.* at 680.

Finally, if an employment contract existed, either express or implied, an employee may have a tort claim against their employer for wrongful termination under the implied covenant of good faith and fair dealing. The covenant of good faith and fair dealing is violated when an employer acts in bad faith to intentionally frustrate an employee’s right to continue employment without good cause for termination. *Kelecheva v. Multivision Cable T.V.*, 18 Cal. App. 4th 521, 531–32 (1993).

California Fair Employment and Housing Act

The California Fair Employment and Housing Act (FEHA) prohibits discrimination based on 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, reproductive health decision-making, or veteran or military status. Cal. Gov’t Code § 12921.

“Gender expression” is defined as a person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. “Gender identity” is defined as a person’s internal understanding of their gender, or the perception of a person’s gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person’s sex assigned at birth, or transgender. “Sex” includes, but is not limited to, pregnancy; childbirth; medical conditions related to pregnancy, childbirth, or breastfeeding; gender, gender identity, and gender expression, or perception by a third party of any of the aforementioned. Cal. Code Regs. tit. 2, § 11030.

Employers are also prohibited from discriminating against an employee who is transitioning. “‘Transitioning’ is a process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth. This process may include, but is not limited to, changes in name and pronoun usage; facility usage; participation in employer-sponsored activities (e.g., sports teams, team-building projects, or volunteering); or undergoing hormone therapy, surgeries, or other medical procedures.” *Id.*

Starting January 1, 2025, per SB 1100, the CFEHA will prohibit employers from including in employment materials that an applicant must have a driver’s license unless the employer reasonably expects the duties of the position to require driving and the employer reasonably believes that satisfying that job function using an alternative form of transportation would not be comparable in travel time or cost to the employer.

California Freelance Protection Act

SB 988 will impose minimum requirements, beginning on January 1, 2025, related to contracts between a hiring party and a freelance worker. A “freelance worker” is defined as a person who is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than \$250. Specifically, SB 988 requires a hiring party to pay a freelance worker compensation specified by a contract for professional services on or before the dates specified in the contract or, if there is no contract, no later than 30 days following completion of the worker’s services. The bill also prohibits a hiring party from discriminating or taking adverse action against a freelance worker for taking specified actions related to the enforcement of these provisions.

Immigration Verification

Except for those employers required to do so under federal law or as a condition of receiving federal funding, an employer cannot use E-Verify to check the employment authorization status of an existing employee or an applicant who has not been offered employment. Cal. Lab. Code § 2814(a)(1). An employer can use E-Verify in accordance with federal law after an offer has been extended to an applicant to check their employment authorization status.

If an employer receives a tentative non-confirmation, the employer must give the employee notice as soon as practicable of any tentative non-confirmation or notification issued by the Social Security Administration or Department of Homeland Security containing information specific to the employee’s case. *Id.* § 2814(b).

Failure to comply with the E-Verify law may result in a civil penalty of up to \$10,000 for each violation. *Id.* § 2814(c).

Drug Testing

California allows employers to drug test employees as a condition of employment. *Loder v. City of Glendale*, 14 Cal. 4th 846, 896–97 (1997). Once someone is employed, their employer may require drug testing if there is reasonable suspicion of drug use by a specific employee. However, an employee’s constitutional right to privacy prevents an employer from instituting random drug testing except in narrow circumstances, such as for public jobs with a high degree of responsibility and jobs where public safety is concerned.

Each employer that receives medical information must establish procedures to ensure confidentiality from unauthorized use and disclosure of that information. Cal. Civ. Code § 56.20(a). No employee shall be discriminated against due to the refusal to sign an authorization. However, an employer may disqualify an applicant or employee who refuses to authorize the employer to view the results of a drug test. *Id.* § 56.20; *Loder*, 14 Cal. 4th at 862.

Jury Duty Leave

It is unlawful for an employer to discharge or in any manner discriminate against an employee for taking time off to serve as required by law on a jury if the employee gives reasonable notice that they are required to serve. Cal. Lab. Code § 230(a). Employers are not required to pay their employees while on jury duty leave; however, an employee may use vacation, personal leave, or compensatory time off for the purpose of jury

service. *Id.* § 230(i). The statute does not specify the amount of jury duty leave an employee may take each year.

Voting Leave

Employees in California are eligible for paid time off for the purpose of voting if they do not have sufficient time outside of working hours to vote. Cal. Elec. Code § 14000(a). A maximum of two hours of that time is required to be paid leave. *Id.* § 14000(b). If an employee has reason to believe they will need time off to vote on election day, they must provide their employer with two working days' notice. *Id.* § 14000(c).

Political Activities

California law prohibits employers from making, adopting, or enforcing any rule, regulation, or policy that would forbid or prevent an employee from engaging or participating in politics or from becoming a candidate for public office. Cal. Lab. Code § 1101. It also prohibits employers from controlling or directing the political activities or affiliations of employees. *Id.*

Witness Duty and Victims of Crime Abuse Leave

Employers may not discriminate or retaliate against an employee who is a victim of a crime for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding. Cal. Lab. Code § 230(b). Likewise, employers may not discriminate or retaliate against an employee who is a victim, from taking time off work to obtain or attempt to obtain any relief. *Id.* § 230(c). Relief includes but is not limited to, a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the victim or their child. *Id.*

In addition, employers with 25 or more employees may not discharge, discriminate, or retaliate against an employee who is a victim for taking time off to: seek medical attention for injuries caused by crime or abuse; obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse; obtain psychological counseling or mental health services related to an experience of crime or abuse; or participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation. *Id.* § 230.1. As a condition for taking time off, the employee must give the employer reasonable advance notice of intent to take time off, unless that is not feasible. *Id.*

School Activity Leave

An employer may not discharge or discriminate against an employee who is the parent of a pupil for taking time off with reasonable advance notice to appear at the school of a pupil because the pupil was suspended. Cal. Lab. Code § 230.7.

An employer with 25 or more employees working at the same location may not discharge or discriminate against an employee who is a parent of one or more children from K–12, or a licensed childcare provider, for taking up to 40 hours per year for the purpose of certain child-related activities: find, enroll, or re-enroll their child in a school or with a licensed child care provider, or participate in activities of the school or child care provider if the employee, before taking time off, gives reasonable notice to the employer of the planned absence (this time off may not exceed eight hours in a calendar month); or address a child care provider or school emergency if the employee gives notice. *Id.* § 230.8.

Volunteer Firefighter, Reserve Police, Emergency Rescue Personnel, and Civil Air Patrol Leave

All California employees are entitled to time off to perform emergency duty as volunteer firefighters, reserve peace officers, or emergency rescue personnel. Cal. Lab. Code § 230.3 (a). If, however, the employer is a public safety agency or provides emergency medical services and it determines the employee's absence would hinder the availability of public safety or emergency medical services, this entitlement is inapplicable. *Id.* § 230.3 (c)(1).

Employers with 50 or more employees must permit employees who are volunteer firefighters, reserve peace officers, or emergency rescue personnel to take temporary leaves of absence, not to exceed 14 days per calendar year, for the purpose of performing those duties. *Id.* § 230.4.

Employers with 15 or more employees may not discriminate against or terminate a member of the Civil Air Patrol because of such membership and cannot hinder or prevent a member from performing service as part of the California Wing of the Civil Air Patrol during an emergency operational mission of the Patrol. *Id.* §§ 1501, 1502. Eligible employees are those who have been employed for at least 90 days with that employer prior to their leave. *Id.* § 1501.

Alcohol and Drug Rehabilitation Leave

Every employer with 25 or more employees must reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcohol or drug rehabilitation program, provided this does not impose an undue hardship on the employer. Cal. Lab. Code § 1025.

Paid Kinship Care Leave

Employers who provide sick leave for employees must permit employees to use their accrued sick leave, in an amount accrued during at least a six-month period at the employee's current rate of entitlement, to attend to an illness or the preventive care of a family member, including for care related to domestic violence, sexual assault, or stalking. Cal. Lab. Code § 233.

Organ and Bone Marrow Donation Leave

Employers with 15 or more employees must provide a paid leave of absence to an employee who is an organ donor (not to exceed 30 business days in a one-year period) or a bone marrow donor (not to exceed five business days in a one-year period), for the purpose of donating an organ or bone marrow to another person. Cal. Lab. Code §§ 1509, 1510. An additional 30 business days of unpaid leave in a one-year period is available for an employee's subsequent organ donation. *Id.* § 1510. An employer may require that the employee take up to five days of earned but unused leave for bone marrow donation and up to two weeks of earned but unused leave for organ donation. *Id.*

Pregnancy Disability Leave

It is unlawful for an employer to refuse to allow an employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable period of time, not to exceed four months, and thereafter return to work. Cal. Gov't Code § 12945. Employees are entitled to use any accrued leave during this time. *Id.* A reasonable period of time means that period during which the employee is disabled on account of pregnancy, childbirth, or a related medical condition. *Id.*

Moreover, it is unlawful for any employer with one or more employees, to harass, discriminate against, deny, interfere with, or restrain an employee's rights to reasonable accommodation, or to transfer, or take pregnancy disability leave, including retaliating against the employee because she has exercised her right to a reasonable accommodation. Cal. Code Regs. tit. 2, § 11039 (2024). This applies to an employee or applicant's pregnancy, perceived pregnancy, childbirth, breastfeeding, or any related conditions. A woman is "disabled by pregnancy" if, in the opinion of her health care provider, she is unable because of pregnancy to perform any one or more of the essential functions of her job or to perform any of these functions without undue risk to herself, her pregnancy's successful completion, or other persons. *Id.* § 11035 (2024). An employee also may be considered to be disabled by pregnancy if, in the opinion of her health care provider, she is suffering from severe morning sickness or needs to take time off for prenatal or postnatal care; bed rest; gestational diabetes; pregnancy-induced hypertension; preeclampsia; post-partum depression; childbirth; loss or end of pregnancy; or recovery from childbirth or loss or end of pregnancy. *Id.* The preceding list of conditions is intended to be non-exclusive and illustrative only. *Id.* Nothing in this Article shall exclude a transgender individual who is disabled by pregnancy. *Id.*

There are no eligibility requirements (length of employment, etc.) for a person to be eligible for reasonable accommodation, transfer, or disability leave. *Id.* § 11037 (2024).

California Family Rights Act

The California Family Rights Act (CFRA) makes it unlawful for California public employers and private employers with five or more employees to refuse to grant a request from an employee who meets specific requirements to take up to a total of 12 work weeks in any 12-month period for personal medical leave or to care for a family member. Cal. Gov't Code § 12945.2. In 2022, the California legislature expanded the term "family member" to include a designated person. "Designated person" means any individual related by blood or whose association with the employee is the equivalent of a family relationship. *Id.* The designated person may be identified by the employee at the time the employee requests the leave. *Id.* An employer may limit an employee to one designated person per 12-month period for family care and medical leave. *Id.*

Employees are eligible for leave if they have been employed 12+ months for at least 1,250 hours during the previous 12-month period. *Id.* Eligible employees may take leave for the birth of a child; placement of a child with the employee for adoption or foster care; caring for the serious health condition of the employee, employee's child, or child of the employee's registered domestic partner; employee's parent; employee's spouse or registered domestic partner; or for a qualifying exigency. *Id.*

Parental Leave

An employee who has worked for an employer that directly employs five or more people to perform services for a wage for more than 12 months and has worked at least 1,250 hours during the previous 12-month period is entitled to take up to 12 workweeks in any 12-month period for family care or medical leave. Cal. Gov't Code § 12945.2. However, California employers are not required to provide paid parental leave. An employee may elect or be required to use vacation leave or other accrued time off during their leave. *Id.* § 12945.2(d). Starting January 1, 2025, per AB 2123, an employer may not require an employee to use accrued vacation leave first. An employer must maintain an employee's health insurance coverage during family care or medical leave. *Id.* § 12945.2(e)(1).

California has a paid family leave program operated by the Employment Development Department where employees can receive partial wage replacements during leave. To qualify for the program, an employee must have earned at least \$300 or more in wages during the preceding 12-month period and must be taking leave to care for a seriously ill family member, to bond with a new child, or to participate in a qualifying event resulting from a family member's military deployment to a foreign country. Eligible employees will receive 60 – 70 percent of their average weekly earnings, for up to eight weeks, up to a maximum set by California law.

For details, visit edd.ca.gov/disability/paid-family-leave/.

Military and Military Spouse Leave

Any public employee who is a member of the Reserve Corps of the Armed Forces, National Guard, or Naval Militia is entitled to temporary unpaid military leave for up to 180 calendar days while engaged in certain military duties. Cal. Mil. & Vet. Code § 395(a). The employee will have an absolute right to be restored to their former position upon return. *Id.* § 395(c). If that position ceases to exist, the employee will be entitled to a position of similar seniority and status. *Id.*

Employers who employ 25 or more employees must allow a qualified employee up to ten days of unpaid leave during a qualified leave period. *Id.* § 395.10. A qualified employee is the spouse of a deployed military member; works for an average of 20 or more hours per week; provides written notice to the employer within two business days of receiving official notice that the qualified member will be on leave from deployment of their intent to take leave; and submits written documentation certifying the spouse's leave from deployment. *Id.*

Paid Sick Leave

An employee who has worked for an employer full-time, part-time, or temporarily for at least 30 days is entitled to paid sick leave. Cal. Lab. Code § 246(a). As of January 1, 2024, employers are required to provide at least 40 hours or 5 days of paid sick leave per year. Sick leave accrues at the rate of one hour per every 30 hours worked, beginning on the first day of employment. *Id.* § 246(b)(3). An employee can begin using paid sick leave on the 90th day of employment. *Id.* § 246(c). Paid sick leave may be carried over into the next year, *Id.* §

246(d), but may be limited to 80 hours. *Id.* § 246(j). If five days or 40 hours of leave is given to the employee at the beginning of the 12-month period, no accrual or carryover is required. *Id.* § 246(d).

Vacation Leave

Employers in California are not required to provide employees with either paid or unpaid vacation time. If an employer provides paid vacations, all earned and unused vacation days must be paid out at termination, and vacation pay cannot be forfeited. Cal. Lab. Code § 227.3.

Smoking Laws

In California, the smoking of tobacco products at a place of employment or in an enclosed space is prohibited. Cal. Lab. Code § 6404.5(c). Employers must take reasonable steps, such as posting signage, to prevent smoking in enclosed workspaces. *Id.* § 6404.5(d)(1).

Break Time to Express Milk

Employers must provide a reasonable amount of break time to accommodate an employee who seeks to express breast milk for each time needed. Cal. Lab. Code § 1030. The break time shall run concurrently with other allotted time for rest and meals, and if additional time is needed, will be unpaid. *Id.* In addition, an employer must provide a breastfeeding employee with the use of a room, other than a restroom, to express breast milk. Cal. Lab. Code. § 1031. An employer with fewer than 50 employees may be exempt from these provisions if such accommodation would impose undue hardship by causing the employer serious difficulty or expense in relation to their operation. *Id.* §1031(i).

Meal Breaks

Employees who work for longer than five hours per day must be provided with a meal period of no less than 30 minutes; however, an employee can waive this break if they do not work more than six hours in the workday. Cal. Lab. Code § 512(a). Employees who work in excess of ten hours a day are entitled to a second meal period of no less than 30 minutes. *Id.* An employee can waive their second break if the workday is under 12 hours and they did not waive their first meal break. *Id.* However, in January 2021, the Ninth Circuit held that federal law pre-empted the meal rules as applied to drivers of property-carrying commercial motor vehicles. *Int'l Brotherhood of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F.3d 841 (9th Cir. 2021).

Minimum Wage, Overtime, and Wage Recordkeeping

Regardless of the number of employees, California employers are required to pay their employees at least \$15 per hour. Cal. Lab. Code § 1182.12(b). Moreover, an employer cannot take, collect, or receive a tip left for an employee, nor may an employer reduce a tipped employee's wages on account of gratuity. *Id.* § 351.

If an employee works more than eight hours a day or 40 hours in one work week, they must be compensated at a rate of one and one-half times the regular rate of pay at which they are employed. Cal. Lab. Code § 510(a). Any work in excess of 12 hours a day will be compensated at a rate of two times the regular rate of pay. *Id.*

Every employer shall make and keep, for a period of not less than three years, a record of any employee who is employed a record of the name, address, and occupation of each of their employees, the rate of pay, daily gratuities, the age of minor employees, and the amount paid each pay period to each employee. *Id.* § 2052.

Final Payments

The State of California requires an employer who discharges an employee to issue a final paycheck immediately for wages earned and unpaid at the time of discharge. Cal. Lab. Code § 201(a). If an employer lays off a group of employees for termination of seasonal employment in curing, canning, or drying of perishable foods, immediate payment has been achieved if they are paid within a reasonable time as necessary for computation, as long as that time does not exceed 72 hours. *Id.*

Unemployment Insurance

Unemployment insurance benefits provide income to individuals who have lost work through no fault of their own. The benefits are intended to partially offset the loss of wages while an unemployed worker searches for suitable work or until an employer can recall the employee to work. Nothing is deducted from the employee's wages to pay for this coverage. Cal. Unemp. Ins. Code § 976. Unemployment benefits are administered by the California Employment Development Department and additional information regarding the benefits may be accessed at <https://edd.ca.gov/unemployment/>.

Workers' Compensation

In California, an employer is liable to compensate for any injury sustained by their employees arising out of and in the course of their employment, and for the death of any employee if the injury proximately causes the death. Cal. Lab. Code § 3600(a). This is the sole remedy for an employee against their employer. Cal. Lab. Code. § 3602(a). Additional information regarding workers' compensation may be accessed at www.dir.ca.gov/dwc/dwc_home_page.htm.

Child Labor

Generally, 14 years is the minimum age for legal employment in certain occupations under California state law. Cal. Lab. Code § 1294.3. Minors between the ages of 14 – 17 seeking employment in the entertainment industry must obtain a work permit. Cal. Lab. Code. § 1700.52. There are restrictions for places of work dealing with minors, as well as restrictions on the hours of the day the minor may work. The laws may be found at www.dir.ca.gov/dlse/minorssummarycharts.pdf.

Apprenticeships

"An apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer." Cal. Lab. Code § 3075(a). "Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment." *Id.* "Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing." *Id.* "Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives." *Id.*

Gun Laws

California does not have a "guns at work" law requiring employers to allow employees with conceal-carry permits to leave guns in their locked vehicles in the employer's parking lot. Therefore, an employer may ban an employee from bringing weapons into the workplace.

Polygraph Testing

Private employers cannot require a potential employee to submit to a polygraph or lie detector test as a condition of employment; this does not apply to federal, state, or local government/agencies. Cal. Lab. Code § 432.2.

Equal Pay

An employer cannot discriminate on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility. Cal. Lab. Code § 1197.5. A pay differential between opposite-sex employees with equal work on similar jobs can be justified if an employer demonstrates a system based on seniority, merit, quantity or quality of production, or differences in training, education, or experience. *Id.*

Non-Compete Agreements

California broadly bans non-compete agreements, including non-solicitation agreements. Cal. Bus. & Prof. Code § 16600 provides that "every contract by which anyone is restrained from engaging in a lawful profession, trade[,] or business of any kind is to that extent void." There are very narrow exceptions.

Termination of Employment

Death and Incapacity

Employment terminates in California, upon notice to the employee of either death of the employer or legal incapacity of the employer to transact a contract. Cal. Lab. Code § 2921. An employee must continue their duties of employment, despite death or incapacity of the employer to transact a contract, when it is necessary to protect the employer's successor in interest from serious injury, until a reasonable time after notice of the facts has been communicated to the successor. Cal. Lab. Code. § 2923. The employee will be compensated by the successor for this time in accordance with their employment contract. *Id.*

Employment for a Specified Term

In California, where a valid employment contract is found and the employment is not at-will, the employer may terminate the employment before the end of the specified time in the contract if the employee has engaged in a willful breach of duty, habitual neglect of duty, or continued incapacity to perform duty. Cal. Lab. Code § 2924. Termination is not permitted for an honest but mistaken belief of breach. *Khajavi v. Feather River Anesthesia Med. Grp.*, 84 Cal. App. 4th 32, 57 (2000). An employee may terminate a contract for a specified term for a willful or permanent breach of duty by the employer. Cal. Lab. Code § 2925.

Marijuana

Effective January 1, 2024, an Employer cannot discriminate against an employee in any employment action (hiring, termination, or conditions of employment) based on the employee's use of cannabis away from work or the employee's cannabis use prior to employment. Cal. Gov. Code § 12954. However, employers are still able to maintain a drug-free workplace and terminate employees for using cannabis while at work or who are impaired while at work. *Id.*; Cal. Health & Saf. Code § 11362.785.