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EMPLOYMENT LAW UPDATE

SOUTHERN CALIFORNIA MEDIATION ASSOCIATION | 2026 CIVIL AND EMPLOYMENT MEDIATION INSTITUTE

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PHYLLIS W. CHENG, ESQ.

JUNE 13, 2026

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The Speaker

Phyllis W. Cheng

- Mediator at ADR Services: employment, civil rights, education/Title IX, appeals, and other matters.
- Partner, DLA Piper, Employment Group.
- Director, Department of Fair Employment and Housing (DFEH, renamed Civil Rights Department), Governors Arnold Schwarzenegger and Jerry Brown.
- Vice Chair & Commissioner, Fair Employment and Housing Commission (FEHC), Governor Pete Wilson.
- Commissioner, Commission on the Status of Women, Governor George Deukmejian
- Vice Chair, Comparable Worth Task Force.
- Deputy Attorney General, Civil Rights Enforcement Section.
- Research Attorney, California Court of Appeal.
- Responsible for enactment of FEHA legislative reforms, promulgation of FEHA regulations, and enactment of California's version of the Title IX law.
- Author, California Case Law Alert, Cases Pending before the California Supreme, California Labor & Employment Law Review, Bender's Labor & Employment Bulletin, The Rutter Group, Daily Journal, etc.
- Member, College of Labor & Employment Lawyers.

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Overview

I. 2026 Employment Laws
II. 2025-26 Employment Cases
III. 2026 Employment Regulations

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Overview: Federal Policies' Impact on California

- 2025 Executive Orders: 225 signed in 2025 (EO 14147-EO 14371); see also Heritage Foundation's Mandate for Leadership: 2025 Presidential Transition Project (Project 2025)

Federal policies changes likely to matter most in day-to-day practice:

- The tax treatment of tips and overtime.
- Medicaid changes that may affect low-wage workers.
- The broader shift toward federal deregulation.

Federal policies did not change:

- California FEHA.
- PAGA.
- California wage-and-hour law.
- The Fair Labor Standards Act's overtime requirements.
- Federal employment discrimination statutes.

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I. 2026 Employment Laws

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- **2025 legislative session:**

- Response to federal initiatives
- Housing
- Elections
- Healthcare and resources for women
- Online safety
- Artificial intelligence

- **917 bills sent to Governor:**

- 794 bills signed (86%) and 124 vetoed (13.4%)
- About 70 employment bills signed, an approximate 30% decline
- Effective January 1, 2026, except for emergency measures effective immediately or otherwise noted
- Veto reasons: fiscal, redundancy, policy disagreement

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AB 250 by Assemblymember Aguiar-Curry (D-Napa) – Sexual assault: statute of limitations

- Revives and extends the time for commencing claims seeking damages for sexual assault, where the plaintiff also alleges that one or more entities engaged in a cover up of the assault, so that such actions may proceed if already pending on January 1, 2026, or, if not filed by that date, are commenced between January 1, 2026 and December 31, 2027.
- Specifies that the above revival period also revives claims against the person who committed the sexual assault if the plaintiff also alleges, among other things, that one or more entities or persons are legally responsible for damages arising out of the sexual assault, and that the entity or entities engaged in a cover up or attempted cover up of the sexual assault by the alleged perpetrator.
- Provides that public entities are not required to indemnify perpetrators of sexual assault.

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AB 288 by Assemblymember Tina McKinnor (D–Inglewood) – Employment: labor organization and unfair practices

- Expands PERB's jurisdiction by authorizing a worker, to petition PERB to protect and enforce prescribed rights under specified circumstances, including if the worker is employed in a position subject to the NLRA but the NLRB has expressly or impliedly ceded jurisdiction.
- Authorizes PERB to, among other things, decide unfair labor practice cases pursuant to a specified timeline and order all appropriate relief for a violation, including civil penalties. In order to pursue relief from PERB, requires a covered worker or their representative to file an unfair practice charge or petition that includes specified information, including, where applicable, the original charge or petition filed with the NLRB. Requires PERB to hold the supporting documentation and evidence confidential and maintain it as part of its investigatory file and would exempt this documentation and evidence from the California Public Records Act. If PERB determines it has insufficient resources to process certain cases or doing so would prevent it from meeting specified statutory deadlines, requires PERB to process and prioritize charges.
- Establishes the Public Employment Relations Board Enforcement Fund in the State Treasury, requires the above-described civil penalties to be deposited into the fund, and makes moneys in the fund available upon appropriation by the Legislature to PERB for the purpose of administering the above-specified provisions. Authorizes PERB to rely on its own decisions and precedent under the NLRA and authorizes review of its decisions by a state appellate court.

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AB 406 by Assemblymember Pilar Schiavo (D-Baldwin Park) – Employment: unlawful discrimination: victims of violence

- Recasts and restores specified Labor Code sections that AB 2499 deleted regarding employees' rights to use take time off work for jury duty, to serve as a witness or answer subpoenas, or to obtain relief related to being a crime victim. Repeal these sections on January 1, 2035.
- Clarifies that pending cases arising from employer violations of the above rights occurring on or before December 31, 2024, are still valid and within the jurisdiction of the DLSE. Transfers jurisdiction to the CRD for such cases arising from employer violations on or after January 1, 2025.
- Moves to the Government Code from the Labor Code, the mandate that, commencing January 1, 2026, an employer may not discharge or in any manner discriminate or retaliate against an employee who is a victim or a family member of a victim for taking time off from work in order to attend judicial proceedings related to that crime, including, but not limited to, any delinquency proceeding, a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding where a right of that person is an issue. Retains the DLSE's jurisdiction over claims arising from employer violations of these rights on or before December 31, 2025.
- Aligns specified Labor Code sections with the new Government Code section to allow crime victims to use paid sick leave for crime-related purposes.

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AB 858 by Assemblymember Alex Lee (D-Milpitas) – Employment: rehiring and retention: displaced workers

1. Extends the sunset date of the recall and reinstatement rights for employees laid off as a result of the COVID-19 pandemic, as specified, until January 1, 2027.
2. Deletes the new recall right for workers laid off on or after January 1, 2025 for a reason related to a state of emergency, and all related provisions.
3. Changes the extended sunset date of the recall and reinstatement rights for employees laid off as a result of the COVID-19 pandemic from December 31, 2027 to January 1, 2027.
4. Specifies that, notwithstanding the sunset date above, a violation occurring on or before December 31, 2026, shall continue to be enforceable by the Division of Labor Standards Enforcement (DLSE) pursuant to existing enforcement provisions.

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AB 1340 by Assemblymember Buffy Wicks (D-Oakland) – Transportation network company drivers: labor relations

- Establishes the Transportation Network Company Drivers Labor Relations Act (act) which provides that Transportation Network Company (TNC) drivers have the right to form, join, and participate in the activities of TNC driver organizations, to bargain through representatives of their own choosing, and to engage in concerted activities for the purpose of bargaining or other mutual aid or protection.
- The Public Employment Relations Board (PERB) administers the act, including overseeing a driver organization election process, sectoral bargaining, and the determination of unfair practices.

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SB 53 by Senator Scott Wiener (D-San Francisco) – Artificial intelligence models: large developers (Transparency in Frontier Artificial Intelligence Act (TFAIA))

- Enacts the Transparency in Frontier AI Act (TFAIA) and requires large AI frontier model developers to publish safety frameworks, discloses specified transparency reports, and reports critical safety incidents to the Office of Emergency Services (OES).
- Requires large artificial intelligence (AI) developers to publish safety frameworks, discloses transparency reports, and reports critical safety incidents to OES.
- Creates enhanced whistleblower protections for employees reporting AI safety violations and establishes a consortium to design a framework for “CalCompute,” a public cloud platform to expand safe and equitable AI research.

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SB 294 by by Senator Anna Caballero (D-Merced) – The Workplace Know Your Rights Act

1. Requires employers to provide a stand-alone written notice annually to each employee informing them of their rights under state and federal law;

2. Directs the Labor Commissioner (LC) to develop a template notice, as well as videos for employers and employees informing them of their responsibilities and rights;

3. Requires employers, if authorized by an employee, to contact an employee's designated emergency contact if the employee is arrested or detained; and

4. Authorizes various penalties for noncompliant employers.

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SB 303 by Senator Lola Smallwood-Cuevas (D-Los Angeles) – Employment: bias mitigation training: unlawful discrimination

- Existing law, the California Fair Employment and Housing Act, prohibits various forms of employment and housing discrimination, including various types of discrimination because of national origin. Existing law empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices.

- This new law provides that an employee's assessment, testing, admission, or acknowledgment of their own personal bias that was made in good faith and solicited or required as part of a bias mitigation training does not constitute unlawful discrimination.

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SB 464 by Senator Lola Smallwood-Cuevas (D-Los Angeles) – Employer pay data

This law, for existing pay data reporting requirements of private employers:

- Requires employers to collect and store demographic information gathered separately from employees' personnel records;
- Beginning January 1, 2027, increases the number of job categories that employers must report on to provide a more accurate picture of the workforce; and
- Removes the annual pay data and demographic reporting requirements of public employers.

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SB 642 by Senator Monique Limón (D-Santa Barbara) – Employment: payment of wages

This law aims to strengthen California's Equal Pay Act by:

- Revising the definition of "pay scale" to mean an estimate of this expected wage range that an employer reasonably expects to pay for the position upon hire and is made in good faith.
- Prohibiting an employer from paying employees at wage rates less than the rates paid to employees of another sex instead of the opposite sex, and requiring a civil action to recover wages to be commenced no later than 3 years after the last date the cause of action occurs. The law provides that an employee is entitled to obtain relief for the entire period of time in which a violation of its provisions exists, but not to exceed 6 years.
- Specifying that a cause of action occurs when an alleged unlawful compensation decision or practice is adopted, when an individual becomes subject to the decision or practice, or when an individual is affected by the application of the decision or practice.

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SB 648 by Senator Lola Smallwood-Cuevas (D-Los Angeles) – Employment: gratuities: enforcement

- Existing law prohibits employer (and their agents, such as managers) from collecting, taking, or receiving any or all of a paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit any or all of the amount of a gratuity against and as a part of the wages due the employee from the employer.
- Also prohibited is an employer deducting from the employee gratuities any amount for credit card payment processing fees or costs that may be charged to the employer by the credit card company.
- Existing law also requires that payment of gratuities made by patrons using credit cards must be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.
- This law authorizes the Labor Commissioner to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of the above-described provisions.

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SB 693 by Senator Dave Cortese (D-San Jose) – Employees: meal periods

- Existing law generally prohibits an employer from employing an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than 30 minutes, with an exception from this prohibition for employees in specified occupations, including employees of an electrical corporation, a gas corporation, or a local publicly owned electric utility covered by a valid collective bargaining agreement meeting certain conditions.
- SB 693 creates an additional exception from the above-described prohibition for employees of a water corporation, defined as a corporation or person owning, controlling, operating, or managing any water system for compensation within California, covered by a valid collective bargaining agreement meeting certain conditions.

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II. Employment Cases

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II.A U.S. Supreme Court

E.M.D. Sales, Inc. v. Carrera, 604 U.S. 45 (2025) Fair Labor Standards Act

- Employees, who were sales representatives for distributor of international food products, brought action alleging that employer violated the Fair Labor Standards Act (FLSA) by failing to pay them overtime wages. Following bench trial, the United States District Court for the District of Maryland concluded that employer failed to prove by clear and convincing evidence that employees qualified as outside salesmen exempt from FLSA, and therefore ordered employer to pay overtime wages and liquidated damages. Both parties appealed. The United States Court of Appeals for the Fourth Circuit affirmed. Certiorari was granted.
- Holding: In a unanimous opinion, the Supreme Court, Justice Kavanaugh, held that the preponderance-of-the-evidence standard applies when an employer seeks to show that an employee is exempt from the minimum-wage and overtime-pay provisions of the FLSA.
- Reversed and remanded.
- Justice Gorsuch filed a concurring opinion, in which Justice Thomas joined.


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II.A U.S. Supreme Court

Montgomery v. Caribe Transport II, LLC , 146 S.Ct. 1199 (2026) Transportation Broker Liability for Negligent Hiring

Petitioner sustained severe and permanent injuries after his tractor trailer was struck by a truck driven by a driver. That driver was driving a load of plastic pots through Illinois for a motor carrier. A transportation broker had coordinated the shipment. Petitioner sued all respondents in Federal District Court. Defendants argued preemption under the Federal Aviation Administration Authorization Act (FAAAA).

- Holding: A claim that one company negligently hired another to transport goods is not preempted by the FAAAA, because States retain authority to regulate safety "with respect to motor vehicles" under the Act.

BARRETT, J., delivered the opinion for a unanimous Court. KAVANAUGH, J., filed a concurring opinion, in which ALITO, J., joined.

The unanimous ruling exposes freight brokers and logistics companies to significantly higher litigation risks and potential liability for personal injuries tied to their carrier-selection processes.


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II.A U.S. Supreme Court

Flowers Food, Inc. v. Brock , 608 U.S. ---, ---- S.Ct. ----, 2026 WL 1485669 (May 28, 2026)

FAA Exemption | Workers Engaged in Interstate Commence

- The Federal Arbitration Act (FAA) requires courts to enforce many private arbitration agreements, but it also provides that "nothing" in the law shall be used to compel arbitration in disputes involving the "contracts of employment" of any class of workers "engaged in . . . interstate commerce." 9 U. S. C. §1. This case poses the question whether someone can qualify as a worker under the §1 exemption if he never crosses state lines and never interacts with vehicles that do. Flowers Foods, Inc., is a large producer of packaged baked goods with bakeries in 19 States. To get its products to market, the company depends in part on franchisees who buy the distribution rights to Flowers's products in specific geographic territories. Angelo Brock is one such franchisee serving the Denver area; he picks up Flowers's products from a warehouse in Colorado and delivers them to local stores, all without leaving the State. In 2022, Brock sued Flowers in federal district court alleging that the company had underpaid him and other distributors in violation of various federal and state laws. Flowers moved to compel arbitration, arguing that the FAA generally requires courts to stay or dismiss cases when the parties have agreed to resolve their disputes by arbitration and that Brock had signed a distribution agreement promising to arbitrate any disagreement. The district court denied Flowers's motion, and the Tenth Circuit affirmed. Resting its decision on 9 U. S. C. §1, the Tenth Circuit reasoned that Brock belonged to a class of workers engaged in interstate commerce and thus the court lacked authority to compel arbitration.
- Holding: A worker who transports goods on an intrastate leg of an interstate journey can qualify for §1's exemption without crossing state lines or interacting with vehicles that do.
- GORSUCH, J., delivered the opinion for a unanimous Court.

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II.B California Supreme Court

Fuentes v. Empire Nissan, 19 Cal.5th 93 (2026)

A job applicant signed a document containing a provision mandating arbitration of "all disputes which may arise out of the employment context" and that any future modification of its terms must be "in writing" and "signed by the President of the Company." The document was printed in a very small font, and its text was so blurry and broken up that it is nearly unreadable. She was given five minutes to sign the application packet. Later, that employee went on medical leave for cancer treatment. A year later, she requested a brief extension of her leave before returning to work. The employer terminated her and compelled arbitration.

Holding:

1. Providing a contract in tiny, nearly unreadable print that has been heavily photocopied heightens the procedural unconscionability of an agreement.
2. Employers cannot hide behind a signature if the contract is visually impenetrable.
3. Courts cannot simply point to a general, federal/state policy favoring arbitration to validate a contract.
4. Courts must carefully evaluate the terms themselves to ensure they are not unfairly one-sided.

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II.B California Supreme Court

Iloff v. Lapaille, 18 Cal. 5th 551 (2025)

The California Supreme Court issued two key holdings regarding state wage-and-hour laws.

1. To establish a "good faith" defense against liquidated damages for minimum wage violations under Labor Code section 1194.2, an employer must prove they made a reasonable, affirmative attempt to determine the requirements of the law; mere ignorance of the law or a mutual, mistaken belief that no wages were owed is legally insufficient.

2. An employee is permitted to raise a claim for administrative penalties under the state's Paid Sick Leave law for the first time during a superior court *de novo* appeal of a Labor Commissioner ruling, even though the statute does not create a private right of action in standard civil lawsuits.

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II.C California Courts of Appeal

Carranza v. City of Los Angeles, 111 Cal. App. 5th 388 (2025)

1. The California Court of Appeal held that an employee can establish a hostile work environment claim under the Fair Employment and Housing Act (FEHA) based on second-hand knowledge of sexual harassment, ruling that direct, face-to-face interaction or exposure to the offensive material is not a prerequisite for liability.

2. The court affirmed a $4 million verdict for an LAPD captain after colleagues circulated a doctored, explicit photo falsely purported to be her, concluding that a workplace environment is legally poisoned when an employer fails to take immediate and appropriate corrective action against widespread digital misconduct and gossip, even if the target only learns of the behavior indirectly.

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II.C California Courts of Appeal

Kruitbosch v. Bakersfield Recovery Serv., Inc., 114 Cal. App. 5th 200 (2025)

The California Court of Appeal clarified the boundaries of employer liability under the Fair Employment and Housing Act (FEHA) for off-site coworker harassment. The court issued a two-fold ruling:

1. An employer cannot be held liable for a nonsupervisory coworker's egregious sexual advances if the conduct occurred entirely outside the physical workplace, off-duty, and without any work-related nexus or use of employer-sanctioned equipment.

2. An employer's dismissive, inadequate, or mocking response to such a complaint—such as failing to investigate, refusing to separate the employees, or having HR staff mock the victim—can independently alter the working environment severely enough to create an actionable hostile work environment claim.

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II.C California Courts of Appeal

Lampkin v. County of Los Angeles, 112 Cal. App. 5th 920 (2025)

Clarified remedies under the state's whistleblower protection law (Labor Code Section 1102.5).

In this case, Los Angeles County Sheriff's Deputy D'Andre Lampkin sued the county alleging that he faced retaliatory actions, such as suspension and termination of medical benefits, after reporting a contentious traffic stop involving a retired deputy. At trial, the jury agreed that Lampkin's whistleblowing was a contributing factor to the department's actions, but they also found that the County successfully established its "same-decision defense" by proving it would have made the exact same disciplinary choices for legitimate, independent reasons anyway.

Because this defense resulted in Lampkin being awarded zero damages, the appellate court ultimately reversed a lower court's award of over $400,000 in attorney's fees, establishing a clear precedent for California employers that a whistleblower action is not considered "successful" if the plaintiff obtains no actual relief.

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II.C California Courts of Appeal

Hirdman v. Charter Comm., LLC, 113 Cal. App. 5th 376 (2025)

- Outside sales employees are properly considered “exempt employees” under California’s paid sick leave law.
- Employers may calculate paid sick leave for outside salespeople based on the same method used for other types of paid leave.
- There is no legal requirement to include commissions or use the “regular rate of pay” method reserved for nonexempt employees.

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II.C California Courts of Appeal

Casey v. Superior Court, 108 Cal. App. 5th 575 (2025)

An employee sued her employer for sexual harassment alongside unrelated claims like wage-and-hour violations, but the trial court compelled arbitration because her employment contract specified it would be governed by California law. The Court of Appeal reversed, ruling that:

- The federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) preempts state law.
- Employers cannot use a choice-of-law provision to contract around EFAA or circumvent its protections. Ultimately, the court concluded that a pre-dispute choice-of-law clause cannot be used as a workaround to force arbitration.
- When a lawsuit contains at least one claim falling under the EFAA, the entire case is exempt from arbitration and may be heard in court.

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II.D Ninth Circuit Court of Appeals

Lui v. DeJoy, 129 F.4th 770 (9th Cir. 2025)

- The Ninth Circuit reversed a summary judgment for the U.S. Postal Service, ruling that a plaintiff satisfies the fourth element of a Title VII prima facie case simply by showing they were replaced by someone outside their protected class, without needing additional proof of "similarly situated" employee treatment.

- Furthermore, the court held that the employer failed to articulate a legitimate, nondiscriminatory reason for the demotion because its internal review relied entirely on written complaints and failed to investigate explicit warnings that the accusations were motivated by racial animus, creating a genuine dispute of material fact regarding subordinate bias.


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II.D Ninth Circuit Court of Appeals

McMahon v. World Vision, Inc., 147 F.4th 959 (9th Cir. 2025)

- The Ninth Circuit unanimously held that the First Amendment's ministerial exception bars employment discrimination claims brought against a religious organization by a remote customer service representative (CSR).

- The Ninth Circuit expanded the scope of the ministerial exception to a non-traditional, customer-facing role, clarifying that an employee's specific job title or the percentage of time spent on administrative tasks is not dispositive. Instead, the court applied a functional approach, holding that because the CSRs were expected to perform vital religious duties central to the organization's mission—such as communicating its ministry to supporters and engaging in personal prayer with donors—they legally qualified as "ministers," thereby insulating the religious employer from discrimination liability.

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II.D Ninth Circuit Court of Appeals

Lister v. City of Las Vegas, 148 F.4th 690 (9th Cir. 2025)

- In this case, a jury found that a supervisor's degrading actions toward the plaintiff were "severe or pervasive" and "objectively and subjectively offensive," yet separately concluded that the incident was not motivated by race or gender, and that no retaliation occurred.
- The Ninth Circuit Court of Appeals affirmed a judgment in favor of the employer, holding that egregious or offensive workplace behavior cannot establish liability under Title VII unless the conduct is explicitly motivated by a protected characteristic.
- Despite these findings of no liability, the jury still awarded the plaintiff $150,000 in emotional distress damages. The Ninth Circuit held that because Title VII damages require an underlying legal violation, the district court acted within its discretion by polling the available jury to confirm their findings, reconciling the inconsistent verdict by striking the financial award as surplusage, and entering judgment for the City.

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III. Employment Regulations

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III.A California Legislation & Regulations: Employment & AI

California's Civil Rights Department (CRD) regulations (Cal. Code Regs., tit. 2, §§ 11008.1-11009) dictate how employers must use artificial intelligence and automated decision systems (ADS) in the workplace. The rules prohibit algorithmic discrimination against applicants or employees in hiring, promotion, and termination, while holding businesses directly accountable for bias, even when using third-party vendor tools.

The regulations clarify the application of existing antidiscrimination laws in the workplace in the context of new and emerging technologies, like artificial intelligence. Among other changes, the Civil Rights Council's regulations aim to:

- Make it clear that the use of an automated-decision system may violate California law if it harms applicants or employees based on protected characteristics, such as gender, race, or disability.
- Ensure employers and covered entities maintain employment records, including automated-decision data, for a minimum of four years.
- Affirm that automated-decision system assessments, including tests, questions, or puzzle games that elicit information about a disability, may constitute an unlawful medical inquiry.
- Add definitions for key terms used in the regulations, such as "automated-decision system," "agent," and "proxy."

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III.B California Legislation & Regulations: PAGA Regulations (pending)

LWDA PAGA Pending Regulations

LWDA's proposed rulemaking:

- Establishes requirements for filing PAGA notices with the Agency;
- Provides guidance concerning the investigation and early resolution procedures administered by the Agency; and
- Implements statutory litigation-reporting obligations PAGA plaintiffs owe to the Agency.

Public Notice Materials:

- Notice of Proposed Regulatory Action – contains information about the proposed regulatory changes and procedural information.
- Express Terms of the Proposed Regulatory Text – the text of the proposed regulations.
- Initial Statement of Reasons – explains why the proposed regulatory changes are being made.


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III.B California Legislation & Regulations: PAGA Regulations (pending)
LWDA PAGA Pending Regulations

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III.B LWDA PAGA Pending Regulations (cont.)

Timeline:

- February 6, 2026: Notice of this proposed rulemaking.
- March 23, 2026: Written comment period closed.
- April 9, 2026: Public hearing via Zoom.
- Summer-Fall 2026: Regulations become final.

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III.B LWDA PAGA Pending Regulations (cont.)

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III.B LWDA PAGA Pending Regulations (cont.)

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III.B LWDA PAGA Pending Regulations (cont.)

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- 5.4. Proposed Subchapter 3. Small Employer Cure Procedures

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Questions

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