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CALIFORNIA EMPLOYMENT LAW HANDBOOK

THE INDISPENSABLE GUIDE FOR INDEPENDENT BUSINESS

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Small Business Legal Library

Volume 1
Issue 1
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LEGAL FOUNDATION

*Protecting the Rights of
America's Small Business Owners*



The Voice of Small Business®

The NFIB Legal Foundation is pleased to provide you with this ***California Employment Law Handbook for Independent Business***. As you know, various California and federal laws regulate your business and your relationship with your employees. That is why we have worked in cooperation with DLA Piper Rudnick Gray Cary US LLP to provide you with a description of those California and federal laws in a concise format.

If you would like to know more about any of the enclosed information you should contact an attorney licensed to practice law in California. If you would like assistance finding an attorney, visit the *American Bar Association Lawyer Referral Service* www.abanet.org/referral/home.html or call (800) 285-2221. You may also access *The State Bar of California* at www.calbar.ca.gov.

*The information contained in this handbook has been compiled as a helpful guide for independent businesses. This handbook should not be considered a legal resource. While we have attempted to provide accurate and complete information, the authors and publishers of this handbook cannot be responsible for any errors or omissions in its contents. **Note: This handbook is provided with the understanding that neither the authors nor the publisher are engaged in rendering legal or professional advice.***



LEGAL FOUNDATION

*Protecting the Rights of
America's Small Business Owners*

The **NFIB Legal Foundation** is a 501 (c)(3), non-profit public interest law firm dedicated to the principles of justice and equity for small business. The Legal Foundation protects the rights of America's small-business owners by providing guidance on legal issues and by ensuring that the voice of small business is heard in the nation's courts. For more information on the Foundation's courtroom activity or how to support this worthy cause, please call (800) 552-6342 or visit www.nfiblegal.com.



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HOURS OF WORK AND PAYROLL PRACTICES

OVERVIEW

California and federal law establish minimum wage requirements, overtime pay, recordkeeping, and child labor standards for full and part-time employees. Where California and federal law conflict with one another, the more employee-friendly law (the law most generous to the employee) applies. Some local jurisdictions have a higher minimum wage, sometimes referred to as a “living wage” (e.g., San Francisco). Employers should check their locale for the applicable wages.

MINIMUM WAGE

As of January 1, 2008, the California minimum wage will increase from \$7.50 per hour to \$8.00 per hour.

The federal minimum wage, as of the date indicated, is:

- Beginning on July 24, 2007, the minimum wage will be \$5.85 per hour
- Beginning on July 24, 2008, the minimum wage will be \$6.55 per hour
- Beginning on July 24, 2009, the minimum wage will be \$7.25 per hour

Variations of this rate are:

- The higher rate if federal and state minimum wage rates differ
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Wage-Hour office of the Department of Labor

EMPLOYEE CLASSIFICATIONS

The following terms are used to describe employees and their status:

Exempt Employees: Exempt status is determined by federal and state law. In general, exempt employees are

those engaged in executive, managerial, high-level administrative and professional jobs who are paid a fixed salary and perform certain duties. Exempt employees are not subject to the minimum wage and overtime laws.

Nonexempt Employees: All employees who are covered by the federal or state or minimum wage and overtime laws are considered nonexempt. Employees working in nonexempt jobs are entitled to be paid at least the minimum wage per hour and a premium for overtime.

OVERTIME PAY

California nonexempt employees are paid a premium for overtime hours as follows:

- One and one-half times their regular rate of pay for all hours worked in excess of 8 per workday, up to 12, or in excess of 40 in a workweek
- One and one-half times their regular rate of pay for the first 8 hours on the seventh consecutive day of work in a workweek

- Double the regular rate of pay for all hours worked in excess of 12 in a workday and after 8 hours on the seventh consecutive day of work in a workweek

Some exceptions to the overtime pay and minimum wage requirements include:

- Executive, administrative, and professional employees (the “white collar exemption”)
- Outside sales employees
- Seasonal amusement or recreational establishments
- Casual babysitters and certain farm workers

For a full list of exceptions, visit the California Division of Labor Standards Enforcement website at www.dir.ca.gov/dlse.



CHILD LABOR

Employment of minors is regulated under various California and federal authorities. Almost all workers under 18 years of age are subject to California and federal child labor protections. Certain limited industries are exempt from coverage of child labor protections (e.g., agriculture, entertainment, newspaper delivery, certain home makers, and farming), however, the vast majority of industries/occupations are subject to the child labor protections. No matter the industry you are in, you should always consult with legal counsel before employing a worker less than 18 years of age.

REST AND MEAL PERIODS

Nonexempt employees are entitled to one paid 10-minute rest period for every four-hour period of work. To the extent possible, each rest period should be taken in the middle of the four-hour work period.

Nonexempt employees scheduled to work more than five hours in a workday are entitled to a 30-minute, unpaid, duty-free meal period. If an employee works 10 or more hours in a workday, the employee is entitled to a second 30-minute meal period. Under certain circumstances, meal period may be waived. Contact legal counsel for further information.

TIME CARDS

California employees who are nonexempt are required to keep an accurate and complete record of their attendance and hours worked. Time cards are official business records and should not be altered or falsified in any way.

The following guidelines pertain to nonexempt employee time cards:

- a) All time worked must be accurately and completely recorded on the time card on a daily basis. The start and end of the workday as well as the start and end of the meal period and any personal time off must be recorded.
- b) Coworkers may not record time for, or alter the time card of, another employee.

- c) All time cards must be signed by both the employee and his/her immediate supervisor attesting to the accuracy of the time card.
- d) Employees should receive prior approval from their supervisor before working overtime.

RECORDKEEPING REQUIREMENTS

If an employee is subject to the minimum wage provisions and/or the overtime provisions, an employer must keep extensive payroll records. Please refer to the section titled, "Record Retention Guidelines," for more detailed information.

NOTICE

A California employee's rights under California and federal law must be posted where employees can readily see them. Copies of the required notices are provided in Appendix A.

ADDITIONAL INFORMATION

To locate additional information regarding Hours of Work and Payroll Practices, visit www.dol.gov and www.dir.ca.gov/dlse/dlsc.html.

II. EQUAL PAY ACT

OVERVIEW

The 1963 federal Equal Pay Act prohibits wage and benefit discrimination between men and women in substantially equal jobs within the same establishment.

APPLICATION

The Equal Pay Act applies to all employers.

PERMITTED ACTS

There are limited exceptions for pay differentials, such as:

- The difference is due to a seniority or merit system or
- The difference is due to an employee's education, training, and experience

ADDITIONAL INFORMATION

To locate additional information regarding Equal Pay, visit www.eeoc.gov.



III. INTERVIEWING DO'S & DON'TS

When interviewing job candidates, to avoid liability it's important your questions focus exclusively on the skill and experience needed for the position. Following is an "Employment Inquiries" chart produced by the California Department of Fair Employment and Housing (DFEH).



EMPLOYMENT INQUIRIES

ACCEPTABLE	SUBJECT	UNACCEPTABLE
Name	NAME	<ul style="list-style-type: none"> • Maiden name
Place of residence	RESIDENCE	<ul style="list-style-type: none"> • Questions regarding owning or renting
Statements that hire is subject to verification that applicants meet legal age requirements.	AGE	<ul style="list-style-type: none"> • Age • Birth date • Date of attendance/completion of school • Questions which tend to identify applicants over 40
Statements/inquiries regarding verification of legal right to work in the United States.	BIRTHPLACE, CITIZENSHIP	<ul style="list-style-type: none"> • Birthplace of applicant or applicant's parents, spouse or other relatives • Requirements that applicant produce naturalization or alien card prior too employment
Languages applicant reads, speaks or writes if use of language other than English is relevant to the job for which applicant is applying.	NATIONAL ORIGIN	<ul style="list-style-type: none"> • Questions as to nationality, lineage, ancestry, national origin, descent or parentage of applicant, applicant's spouse, parent or relative
Statement by employer of regular days, hours, or shifts to be worked.	RELIGION	<ul style="list-style-type: none"> • Questions regarding applicant's religion. • Religious days observed
<p>Name and address of parent or guardian if applicant is a minor.</p> <p>Statement of company policy regarding work assignment of employees who are related.</p>	SEX, MARITAL STATUS, FAMILY	<ul style="list-style-type: none"> • Questions to indicate applicant's sex, marital status, number/ages of children or dependents • Questions regarding pregnancy, child birth, or birth control • Name/address of relative, spouse or children of adult applicant
	RACE, COLOR, SEXUAL ORIENTATION	<ul style="list-style-type: none"> • Questions to applicant's race, color, or sexual orientation • Questions regarding applicant's complexion, color of eyes, hair or sexual orientation
	CREDIT REPORT	<ul style="list-style-type: none"> • Any report which would indicate information which is otherwise illegal to ask, e.g , marital status, age, residency, etc.
Statement that a photograph may be required after employment.	PHYSICAL DESCRIPTION, PHOTOGRAPHS, FINGERPRINTS	<ul style="list-style-type: none"> • Questions as to applicant's height/weight • Requiring applicant to affix a photograph to application or submit one at his/her option • Require a photograph after interview but before employment

EMPLOYMENT INQUIRIES CONTINUED

ACCEPTABLE	SUBJECT	UNACCEPTABLE
<p>Employer may inquire if applicant can perform job-related functions.</p> <p>Statement that employment offer may be made contingent upon passing a job-related mental/physical examination.</p>	<p>MENTAL/PHYSICAL DISABILITY, MENTAL CONDITION (APPLICANTS)</p>	<ul style="list-style-type: none"> Any inquiry into the applicant's general health, medical condition, or mental/physical disability Requiring a psychological/medical examination of any applicant
<p>A medical/psychological examination/inquiry may be made as long as the examination/inquiry is job-related and consistent with business necessity and all applicants for the same job classification are subject to the same examination/inquiry.</p>	<p>MENTAL/PHYSICAL DISABILITY, MEDICAL CONDITION (POST- OFFER/ PREEMPLOYMENT)</p>	<ul style="list-style-type: none"> Any inquiry into the applicant's general health, medical condition, or physical/mental disability, if not job-related and consistent with business necessity
<p>A medical/psychological examination/inquiry may be made as long as the examination is job-related and consistent with business necessity.</p>	<p>MENTAL/PHYSICAL DISABILITY, MEDICAL CONDITION (EMPLOYEES)</p>	<ul style="list-style-type: none"> Any inquiry into the employee's general health, medical condition, or mental/physical disability, if not job-related and consistent with business necessity
<p>Job-related questions about convictions, except those convictions which have been sealed, or expunged, or statutorily eradicated.</p>	<p>ARREST, CRIMINAL RECORD</p>	<ul style="list-style-type: none"> General questions regarding arrest record
<p>Questions regarding relevant skills acquired during U.S. military service.</p>	<p>MILITARY SERVICE</p>	<ul style="list-style-type: none"> General questions regarding military service such as dates/type of discharge Questions regarding service in a foreign military
<p>Requesting lists of job-related organizations, clubs or professional societies omitting indications of protected bases.</p>	<p>ORGANIZATIONS, ACTIVITIES</p>	<ul style="list-style-type: none"> General questions regarding organizations, clubs, societies and lodges
<p>Name of persons willing to provide professional and/or character references for applicant.</p>	<p>REFERENCES</p>	<ul style="list-style-type: none"> Questions of applicant's former employers or acquaintances which elicit information specifying applicant's race, etc
<p>Name and address of person to be notified in case of accident or emergency.</p>	<p>NOTICE IN CASE OF EMERGENCY</p>	<ul style="list-style-type: none"> Name, address, and relationship of relative to be notified in case of accident or emergency

Note: Any inquiry, even though neutral on its face, which has an adverse impact on persons on a basis enumerated in the Fair Employment and Housing Act, is permissible only if it is sufficiently related to an essential job function to warrant its use.

IV. EMPLOYMENT DISCRIMINATION LAW

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 (TITLE VII)

CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT (FEHA)

OVERVIEW

Title VII (federal law) prohibits employment discrimination on the basis of race, color, religion, sex, or national origin in hiring, employment (all terms, conditions, and benefits), and termination.

If a complainant is successful ... remedies that may be available include reinstatement, back pay, damages for future loss of earnings, emotional pain and suffering, and attorneys' fees.

APPLICATION

The FEHA prohibits employment discrimination on the basis of race/color, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, and sexual orientation.

Title VII applies to businesses with 15 or more employees.

The FEHA generally applies to employers that:

- Employ, or have employed, 5 or more employees within California during 20 or more calendar weeks within the calendar year preceding an alleged violation of the act
- Are a public employer, regardless of the numbers of employees
- For harassment cases only, regularly employ one or more persons, or regularly receive the services of one or more independent contractors (see the Sexual Harassment section on page 11 for more information)

EXAMPLES OF DISCRIMINATION

Below are some examples of discrimination covered under Title VII and the FEHA:

- Harassing a person because of their friends', relatives', or associates' race, skin color, religion, gender, national origin, age, or disability

- Treating people in similar jobs differently because of their race, sex, religion, etc.
- Making assumptions about the abilities of persons based on stereotypes, physical characteristics, or age
- Retaliating against a person because a discrimination complaint was filed

REMEDIES AVAILABLE

If a complainant is successful in a Title VII or FEHA cause of action, remedies that may be available include reinstatement, back pay, damages for future loss of earnings, emotional pain and suffering, and attorneys' fees.

ADDITIONAL INFORMATION

To locate additional information regarding Employment Discrimination Law, visit www.eeoc.gov and www.dfeh.ca.gov.

AGE DISCRIMINATION

OVERVIEW

The Age Discrimination in Employment Act (ADEA) prohibits age discrimination against individuals (applicants and employees) who are 40 years of age or older. Likewise, in California, the FEHA protects individuals (applicants and employees) who are 40 years of age or older.

PROHIBITED ACTS

Employers should not discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

Employers must not include age preferences, limitations, or specifications in job notices or advertisements unless age is inseparable from the job.

ADDITIONAL INFORMATION

For additional information regarding Age Discrimination, visit www.eeoc.gov and www.dfeh.ca.gov.

PREGNANCY DISCRIMINATION

OVERVIEW

The Pregnancy Discrimination Act (PDA) prohibits discrimination on the basis of pregnancy, childbirth or related medical conditions. Women who are affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations. California law (FEHA) is consistent with the PDA.

APPLICATION

The PDA applies to employers with 15 or more employees. FEHA generally applies to employers that employ 5 or more employees (see the Employment Discrimination Law section on page 7 for a more detailed discussion regarding the application of FEHA).

PROHIBITED ACTS

An employer should not:

- Refuse to hire a woman because she is pregnant, as long as she is able to perform the major functions of her job
- Refuse to hire a pregnant woman because of its prejudices against pregnant workers or the prejudices of co-workers, clients or customers
- Fire or force a worker to leave because she is pregnant
- Take away credit for previous years, accrued retirement benefits, or seniority because of maternity leave
- Fire or refuse to hire a woman because she has an abortion

ADDITIONAL INFORMATION

For additional information regarding Pregnancy Discrimination, visit www.eeoc.gov and www.dfeh.ca.gov.

California law requires supervisors, who work for employers that employ 50 or more employees, to complete at least two hours of training in the prevention of sexual harassment every two years.

SEXUAL HARASSMENT

OVERVIEW

Title VII and the FEHA prohibit sex discrimination and sexual harassment in the workplace.

The FEHA extends to independent contractors, as well as employees, regarding sexual harassment.

EXAMPLES OF SEXUAL HARASSMENT

Sexual harassment covers behavior that creates a *hostile work environment* such as:

- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical conduct of a sexual nature
- Sexually suggestive or offensive personal references about an individual

And behavior that creates a *quid pro quo* situation, such as:

- Where a supervisor or manager conditions an employment benefit or continuing employment on the employee's acquiescence in the form of sexual behavior

Note:

- *The victim or harasser may be male or female*
- *The victim does not have to be of the opposite sex*
- *The harasser can be the victim's supervisor, an agent of the employer, a supervisor of another area, a co-worker, or a non-employee*
- *The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct*
- *Unlawful sexual harassment may occur without economic injury to or discharge of the victim*

SEXUAL HARASSMENT TRAINING

California law requires supervisors, who work for employers that employ 50 or more employees, to complete at least two hours of training in the prevention of sexual harassment every two years. New supervisors must complete the sexual harassment training within six months of assuming a supervisory position.

ADDITIONAL INFORMATION

For additional information regarding Sexual Harassment, visit www.eeoc.gov and www.dfeh.ca.gov.

V. WORKERS WITH DISABILITIES

OVERVIEW

The Americans with Disabilities Act (ADA) and the FEHA prohibit employers from discriminating against qualified individuals with disabilities. An individual with a disability is someone who:

- Has a physical or mental impairment that limits one or more of the major life activities
- Has a record of such an impairment
- Is regarded as having such an impairment
- Is regarded or treated by the employer as having some condition that has no present disabling effect but may become a physical disability
- Has any health impairment that requires special education or related services

Persons discriminated against because they have a known association or relationship with a disabled individual are also protected.

A “reasonable accommodation” is any modification or adjustment in a job, an employment practice, or the work environment, that allows an individual with a disability to enjoy an equal employment opportunity.

REQUIREMENTS

An employer must make reasonable accommodations in certain circumstances for a disabled employee who is otherwise qualified for the job. A “reasonable accommodation” is any modification or adjustment in a job, an employment practice, or the work environment, that allows an individual with a disability to enjoy an equal employment opportunity. A person may be “otherwise qualified for the job” if:

- The person meets the educational, experience, skill, and other job-related requirements
- The person can perform the essential job functions (with or without reasonable accommodations)

Note: It is a good idea to identify the essential job functions and propose a job description before beginning the hiring process.

If an employee is otherwise qualified for the position, there are 3 areas where an employer should provide reasonable accommodations:

- To permit the employee to perform the essential job functions
- Testing and application procedures
- To permit the enjoyment of general work privileges such as access to restrooms and customary employee work-related activities

Some examples of reasonable accommodations include:

- Part-time or modified work schedules
- Acquisition or modification of equipment
- Reassignment of marginal job functions

Note: An employer may not have to provide reasonable accommodations if it can establish “undue hardship” (i.e., that it would be unduly expensive, disruptive, or affect the business) or a fundamental alteration of the essential functions of the job in question.

ADDITIONAL INFORMATION

To locate additional information regarding Workers with Disabilities, visit www.ada.gov and www.dfeh.ca.gov.

VI. IMMIGRATION REFORM AND CONTROL ACT (IRCA) (I-9)

OVERVIEW

The IRCA prohibits any employer from hiring, recruiting, or referring for employment, any person who is not legally authorized to work in the United States and it requires employers to verify the employment eligibility of all new employees.

The IRCA also makes it unlawful for employers to discriminate in hiring and discharge based on national origin (as does Title VII and the FEHA) and on citizenship status.

APPLICATION

The IRCA applies to all employers that employ four or more people.

PROCEDURAL AND RECORDKEEPING REQUIREMENTS

Employers must ensure that employees and the employer complete an Employment Eligibility Verification Form (I-9). A new Form (I-9) has been introduced and will be required to be used as of December 26, 2007. Section 1 of the I-9 must be completed at the time of hire, while Section 2 must be completed within three business days after the employee begins work. In addition, please refer to the Record Retention Guidelines section on page 26 for more information regarding I-9s and the associated recordkeeping requirements.

ADDITIONAL INFORMATION

For additional information regarding immigration, visit www.uscis.gov.

VII. FAMILY AND MEDICAL LEAVE

FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA) CALIFORNIA FAMILY RIGHTS ACT (CFRA)

OVERVIEW

The FMLA and the CFRA require private employers with 50 or more employees within 75 miles to provide up to 12 weeks of unpaid, job-protected leave for employees who have worked for at least 12 months (not necessarily consecutive) and have worked at least 1,250 hours during the 12 months immediately prior to the family and medical leave of absence.



LEAVE REQUIREMENT

An employee is entitled to unpaid leave for any of the following reasons:

- To care for the employee's child after birth, or placement of a child with the employee for adoption or foster care
- To care for the employee's spouse or registered domestic partner, child, or parent with a "serious health condition"
- The "serious health condition" of the employee

A "serious health condition" is one that requires inpatient care in a hospital or other medical care facility or continuing treatment or supervision by a health care provider.

An employer may require 30-days advance notice prior to the family and medical leave of absence and medical certification of the serious health condition. In the event of an emergency, notice should be given as soon as possible.

EMPLOYMENT AND BENEFIT PROTECTIONS

Upon return from leave under the FMLA and the CFRA, an employee should be restored to his/her original, or an equivalent, position with equivalent pay, benefits, and other employment terms.

An employee's use of leave under the FMLA and the CFRA may not result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

Employers must maintain the employee's health coverage under any "group health plan" during the employee's FMLA or CFRA leave.

PREGNANCY DISABILITY

A critical difference between the FMLA and the CFRA relates to pregnancy disability leave. Under the FMLA, an employee's pregnancy-related disability is a "serious health condition" and as such, the pregnancy-related time off is counted against the employee's FMLA leave entitlement. However, under the CFRA, an employee's own dis-

ability due to pregnancy is not a "serious health condition" and is exempt from the CFRA. In California, an employee's pregnancy-related disability is covered under California's Pregnancy Disability Leave (PDL) law (see page 18 for a more detailed discussion regarding PDL).

ADDITIONAL INFORMATION

For additional information regarding Family Leave, visit www.dol.gov and www.dfeh.ca.gov.

VIII. PREGNANCY DISABILITY LEAVE (PDL)

OVERVIEW

California's PDL applies to all California employers that employ 5 or more employees. California's PDL covers all female employees, regardless of length of employment, who are disabled by pregnancy, childbirth, or related medical conditions. Female employees entitled to PDL, may take up to four months, not necessarily consecutively, of unpaid leave due to disability.

LEAVE REQUIREMENT

A female employee is entitled to unpaid leave for any of the following reasons:

- Prenatal care
- Severe morning sickness
- Doctor ordered bed rest
- Childbirth and recovery from childbirth
- Employment and Benefit Protections

Upon return from PDL, a female employee should be restored her original position, unless excused by legitimate business reasons. If legitimate business reasons prevent reinstatement to the female employee's original position, then the employer must restore the female employee to a comparable position, unless excused by legitimate business reasons.

ADDITIONAL INFORMATION

For additional information regarding California's PDL, visit www.dfeh.ca.gov.

IX. INTERACTION OF THE FMLA/CFRA & PDL

OVERVIEW

Leave provided for pregnancy disability is treated separately from a leave required by the CFRA (the California family and medical leave law). However, the first 12 workweeks of PDL should be treated concurrently as a leave pursuant to the FMLA (the *federal* family and medical leave law), if the pregnant employee qualifies for FMLA and CFRA.



APPLICATION

The following graphic examples illustrate the interaction of the FMLA/CFRA and PDL.

EXAMPLE 1:

Doctor places employee on disability two weeks before due date. Normal delivery (for which there is a six-week presumption of disability). Then employee requests CFRA leave. Leave total of 20 weeks is required by law.

NORMAL DELIVERY						
JAN	FEB	MAR	APR	MAY	JUN	JUL
PDL 8 weeks		CFRA 12 weeks				
FMLA 12 weeks						
Insurance 12 weeks						

EXAMPLE 2:

Due to complications, doctor places employee on disability in the 7th month of pregnancy. She delivers via caesarean on due date, then takes CFRA leave. (For Caesarean delivery, presume eight weeks of disability but may be longer if other medical complications.) Leave total of four months plus 12 weeks is required by law.

CAESAREAN DELIVERY							
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG
PDL 4 months				CFRA 12 weeks			
FMLA 12 weeks							
Insurance 12 weeks							

EXAMPLE 3:

Assume complications in third month of pregnancy and doctor ordered bed rest. Assume July 1 delivery.

CAESAREAN DELIVERY									
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
PDL 4 months				CFRA (Optional 12 weeks)					
FMLA 12 weeks									
Insurance 12 weeks									

X. MISCELLANEOUS CALIFORNIA LEAVE LAWS

NOTE:

The brief summaries of California's miscellaneous leaves provided below are intended to give you a brief overview. California counsel should be contacted before any leave policy is put in place because various leaves under federal and California law overlap and create nuances that are not addressed in this handbook.

JURY DUTY

U.S. citizens have a civic obligation to provide jury duty service when called. California law prohibits employers from discharging, threatening to discharge, or taking disciplinary action that could lead to the discharge, against an employee who is summoned to serve as a juror as long as (1) the employee gave reasonable notice of the summons before beginning the jury service, and (2) the employee's absence from work was because of the actual jury service.

An employer cannot make or ask an employee to use his/her annual vacation or sick leave for time spent responding to a summons for jury duty, participating in the jury selection process, or serving on a jury.

WITNESS DUTY

If an employee is required by law to appear in court as a witness, the employer must allow such employee to take unpaid time off for such a purpose. An employee should give his/her manager reasonable advance notice and an employer may require that evidence, such as a subpoena, be provided.

VOTING TIME

Employers must provide employees who are registered voters and who do not have sufficient time outside of their working hours within which to vote in any statewide elec-



tion, adequate time off from work to vote. Up to two hours of this time must be with pay. Employers should request employees to provide at least two working days' notice when voting time off is required and employers should remind employees of the availability of voting by mail.

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Employers must provide unpaid time off to employees who are victims of domestic violence or sexual assault for the purpose of appearing in court to obtain legal relief or in response to a subpoena or other court order to appear as a witness. Victims of domestic violence or sexual assault should provide reasonable advance notice when possible; otherwise, they must provide within a reasonable time evidence from the court, prosecuting attorney, police or medical professional, domestic violence advocate or advocate for victims of sexual assault, health care provider or counselor, as appropriate.

LEAVE FOR CRIME VICTIMS

Employers must provide unpaid time off to employees who are victims of certain felonies for the purpose of attending judicial proceedings related to the crime. The employee must provide a copy of the judicial proceeding notice and provide as much advance notice as possible to the employer.

SCHOOL VISITATION LEAVE

Employers must allow employees who are parents, guardians, or grandparents with custody to take off up to 40 hours (unpaid) each calendar year to participate in school activities of their children in a licensed day care facility and grades K-12. Employers should require reasonable advance notice to be given by their employees and may require documentation from the school verifying the employee's attendance.

MILITARY LEAVE

Military leave must be provided to eligible employees who enter the Uniformed Services of the United States, includ-

ing the National Guard and the Commissioned Corps of the Public Health Service, or the state military forces, or the reserve components of the same, to participate in active or inactive duty or training. Time off must also be provided to employees to determine one's fitness for duty in any of the federal military forces.

California employers with 25 or more employees must allow an employee who is a spouse of a member of the Armed Forces, National Guard, or Reserves to take up to 10 days of unpaid leave during a "qualified leave period" when the employee's spouse is home on leave.

XI. OCCUPATIONAL SAFETY AND HEALTH

OCCUPATIONAL SAFETY AND HEALTH ACT (OSH ACT)

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ACT (CAL/OSHA)

OVERVIEW

The OSH Act requires that employers provide a safe and healthy workplace.



The CAL/OSHA Program is charged with imposing California's laws and regulations regarding workplace health and safety and with affording aid to employees and workers with workplace health and safety matters.

The CAL/OSHA requires employers to create, implement, and maintain an Injury and Illness Prevention Program (IIPP). For more information regarding the creation and implementation of an IIPP, please visit www.dir.ca.gov/DOSH/EmployerInformation.htm.

APPLICATION

All employers are covered by the OSH Act and CAL/OSHA, except for a few limited exceptions. Consult legal counsel regarding these limited exceptions.

INSPECTIONS

Every business covered by the OSH Act is subject to inspection. Below are some helpful guidelines for the inspection:

- Anything said to the Occupational Safety and Health Administration (OSHA) by a supervisor or manager will be recorded, and if it is adverse to the employer's position it will be construed as an admis-

Do not exaggerate the quality of safety/health conditions when describing them to an OSHA inspector.

sion of liability in the event of a citation proceeding or criminal prosecution

- The employer's representatives need not say anything to the OSHA about the workplace conditions; the representative need only provide logs and other documents required to be kept
- Be familiar with the forms used by the OSHA to record information gained from inspections so that answers to questions will be recorded on those forms as favorably as possible
- Immediately correct any apparent hazards disclosed during the inspection; this will not prejudice the employer's right to later contest a citation, and may enhance the employer's ability to obtain credit for good faith and lessen the chance for issuance of a "willful" citation
- After an inspection, give the inspector a name, title, and address to whom any citations should be sent; otherwise, valuable time will be lost while mail travels within the company
- Occupational Safety and Health (cont'd)
- Do not exaggerate the quality of safety/health conditions when describing them to an OSHA inspector

Visit www.dir.ca.gov/DOSH/EmployerInformation.htm for a list of employer responsibilities under CAL/OSHA.

RECORDKEEPING REQUIREMENTS

There are 5 important steps required by the OSH Act:

1. Obtain a report on injuries requiring medical treatment (except first aid).
2. Record injuries in the log (OSHA Form 300) according to the instructions.
3. Prepare a supplementary record (OSHA Form 301) of occupational injuries and illnesses for recordable cases.
4. Every year, prepare the annual summary (OSHA

Form 300A); post it no later than February 1, and keep it posted until April 30 (A good place to post it is next to the OSHA workplace poster).

5. Keep these records for at least 5 years.

EXEMPTIONS

- Small employers: Although subject to the OSH Act regulations, employers with 10 or fewer employees are exempt from most recordkeeping requirements (unless required by your state). A list of exempt industries can be found at: www.osha.gov/recordkeeping/ppt1/RK1exempttable.html
- Exceptions: Employers exempt from the recordkeeping requirements should:
 - Report fatalities or multiple hospitalization accidents
 - Maintain a log of occupational injuries and illnesses and make reports if notified in writing by the Bureau of Labor Statistics that you have been selected to participate in a statistical survey

STANDARDS

- Walking and working surfaces, ladders, platforms, scaffolds, and means of egress
- Ventilation, noise, radiation, and hazardous or toxic liquids and air contaminants
- Personal protective equipment use and maintenance
- Hazardous materials such as acids, corrosives, explosives, flammable and toxic substances
- Workplace sanitation
- Medical facilities
- Materials handling and storage
- Use, maintenance and construction of cranes and industrial vehicles

- Welding equipment and procedures
- Equipment, tool, and machine guarding
- Electrical apparatus
- Carcinogens
- Hazard communication
- Access to records
- Process safety management
- Blood borne pathogens
- Confined spaces
- Asbestos
- Control of hazardous energy
- Fall control

NOTICES

Employers should post the following notices where employees can readily see them, e.g., in a break room, kitchen, common area, or where other employment notices are posted:

- Job Safety and Health Protections workplace poster (OSHA 3165), or their state's equivalent
- Annual summary of injuries and illnesses (Form 300 by February 1)

ADDITIONAL INFORMATION

For more information, visit <http://www.osha.gov/recordkeeping> and www.dir.ca.gov/DOSH/dosh1.html#CalOSHA.

XII. RECORD RETENTION GUIDELINES

PERSONNEL RECORDS	REQUIRED LENGTH OF RETENTION OF RECORDS*
Unsolicited resumes or job inquiries (i.e., resumes not sent in response to a job posting or advertisement)	<p>If reviewed in the process of making a particular hiring decision, four years from the date received.</p> <p><i>* If not reviewed or customarily kept for review (e.g., the company sends a postcard to the individual stating the company does not consider unsolicited resumes), there is no retention requirement.</i></p>
Solicited resumes, job applications, employment referral records and applicant identification records, test papers completed by an applicant; results of physical exams	Four years.
All payroll records, including individual employee wage records, name, employee number, address, age, sex, occupation, time and day work week begins, regular hourly rate, hours worked each day and total weekly hours daily or weekly straight-time earnings, weekly overtime earnings, deductions from or additions to wages, wages paid each pay period, date of payment and period covered by payment	Four years.
Employee wage records (including time cards, wage rate tables used in computing straight-time and overtime, shift schedules, hours and days of individual employees, records explaining wage differentials between sexes)	Four years.
Child labor certificates and notices	Three years.
Employee personnel files	Four years.
Any advertisements or notices to the public or to employees relating to job openings, promotions, training and opportunities for overtime work	Four years.

PERSONNEL RECORDS CONTINUED	REQUIRED LENGTH OF RETENTION OF RECORDS* CONTINUED
Pension and welfare plan information	Statute of limitation for ERISA claims is six years; Full period plan or benefits in effect and one year after its termination.
Occupational Illness and Injury records (first aid and workplace violence records)	<p>Five years.</p> <p><i>* The OSH Act requires employee medical records be maintained for at least the duration of employment plus thirty (30) years for those employees exposed to "toxic substances or harmful physical agents." This does not include first aid records of one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters, and the like which do not involve medical treatment, loss of consciousness, restriction of work or motion or transfer to another job, if made on-site by a non-physician and if maintained separately from the employer's medical program and its records. Also, if the employee has worked for the employer for less than one year, the employee's medical records need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.</i></p>
Individual employee contracts	Four years following termination of employment.

** The required length of retention of records may be longer if a claim is pending. In that case, the documents must be retained until the claim is resolved.*

Note: Record retention is a complicated area. Counsel should be consulted on all issues.

XIII. CALIFORNIA'S AT-WILL EMPLOYMENT DOCTRINE

The general rule of employment in California is that employment is “at-will”. This means employment with an employer is not for any specified period of time and may be terminated by the employee or the employer at any time, with or without cause or advance notice.

There are limited exceptions to the general rule of at-will employment in California and legal counsel should always be consulted before pursuing any exception to the general rule.



XIV. CALIFORNIA'S WORKERS' COMPENSATION SYSTEM

OVERVIEW

California's Workers' Compensation System provides compensation and payment for medical benefits to employees injured in the course of and arising out of their employment.

Note: California's Workers' Compensation System is a "no-fault" insurance system, meaning that an injured employee does not need to prove employer negligence or fault in order to receive Workers' Compensation benefits.

APPLICATION

All employers that employ one or more employees **MUST** carry Workers' Compensation Insurance. Limited exceptions apply in specific circumstances – please contact California counsel regarding these limited exceptions.

ADDITIONAL INFORMATION

For additional information regarding California Workers' Compensation, visit www.dir.ca.gov.



XV. CALIFORNIA'S UNEMPLOYMENT INSURANCE PROGRAM

OVERVIEW/APPLICATION

An unemployed worker may be eligible for regular unemployment compensation if he/she worked the required amount of time in covered employment, lost his/her job through no fault of his/her own, is available for work, and is actively seeking work.

PAYMENT OF BENEFITS

A person's eligibility for unemployment, as well as the amount of benefits, is determined on a weekly basis.

TIMING FOR FILING AN UNEMPLOYMENT CLAIM

A person can file an application for determination of benefits with the California Employment Development Department (EDD) as soon as he/she becomes unemployed.

ADDITIONAL INFORMATION

For additional information regarding California's Unemployment Insurance Program, visit www.edd.ca.gov.



XVI. CALIFORNIA'S NEW HIRE OBLIGATIONS

OVERVIEW

California requires employers to file a written report with the California EDD within 20 days after an employee or contractor is hired, rehired, or returns to work.

PENALTIES

An employer who fails to make a required report is subject to a \$24 fee for each such failure. If failure to submit a new hire report is a result of a conspiracy between the employer and employee or hiring entity and the independent contractor, the employer is liable to pay a \$490 fine for each occurrence.

ADDITIONAL INFORMATION

For additional information regarding California's New Hire Reporting Obligations, visit www.edd.ca.gov.



XVII. MISCELLANEOUS CALIFORNIA LAWS

GARNISHMENT OF WAGES

Wage garnishment occurs when a court decides (orders a judgment) that someone (the judgment debtor) owes money to someone else (the judgment creditor) and that money is then taken out of the judgment debtor's paycheck before he/she receives it. Once a court orders such a judgment, the judgment creditor can request that the money be taken out of the judgment debtor's paycheck.

Note: California's statutes concerning garnishment of personal earnings are complicated and extremely detailed. Please be aware that this is only a very general overview of this area and California counsel should always be contacted regarding wage garnishment. Deductions from an employee's paycheck, other than for taxes and other legal withholdings, can be a very complicated and serious matter.

TRADE SECRETS

California and federal law prohibit the misappropriation of trade secrets. Generally speaking, a trade secret is information that either derives independent economic value from not being generally known or ascertainable to others, or information that an employer or business has taken reasonable steps to keep secret (e.g., certain customer lists, closely guarded product formulas, marketing strategies).

Note: Trade secrets is a very complex area of the law in California and California corporate counsel should always be consulted regarding trade secret issues.

MEDICAL RECORDS

California law requires employers to create procedures to maintain the confidentiality of employee medical records and to ensure that the medical records are not inadvertently used or disclosed. Failure to establish a procedure regarding medical records is a misdemeanor and California law permits an employee to collect damages, attorney's fees, and litigation costs.

The maintenance of medical records is a sensitive area that requires a comprehensive plan to adequately address the requirements under California law. In addition, individual privacy rights in California are given great deference. California counsel should always be consulted regarding medical records issues to ensure compliance with applicable California laws.

BACKGROUND CHECKS

Background checking may be a useful tool. Employers may use background investigations to obtain criminal records, civil records, credit records, motor vehicle reports, employment references and other information to aid them in selecting employees, so long as they comply with federal and California law. Background checking is very useful, but also a very complicated area of the law. California counsel should always be contacted to assist in the creation of a background checking procedure to be used with prospective employees.

VOLUNTEER FIREFIGHTERS AND PROVIDERS OF EMERGENCY MEDICAL SERVICES

California law prohibits an employer from terminating an employee who is also a volunteer firefighter or a volunteer provider of emergency medical services when that employee misses or is late to work because the employee was responding to an emergency. An employer is not required to pay an employee during time off to engage in such duties.

APPENDIX A

NOTICES

FEDERAL NOTICES

The following federal notices should be posted where employees can readily see them, e.g., in a break room, kitchen, common area, where other employment notices are posted etc.:

1. *Your Rights Under the Fair Labor Standards Act*
2. *Your Rights Under the Family and Medical Leave Act of 1993*
3. *Job Safety & Health Protection and OSHA Form 200*
4. *Equal Employment Opportunity is the Law*
5. *Notices to Workers with Disabilities Paid at Special Minimum Wages (if applicable)*
6. *Migrant and Seasonal Agricultural Worker Protection Act Notice (if applicable)*
7. *Employee Polygraph Protection Act Notice*
8. *Your Rights Under USERRA*

CALIFORNIA NOTICES

The following California notices should be posted where employees can readily see them, e.g., in a break room,

kitchen, common area, where other employment notices are posted, etc.:

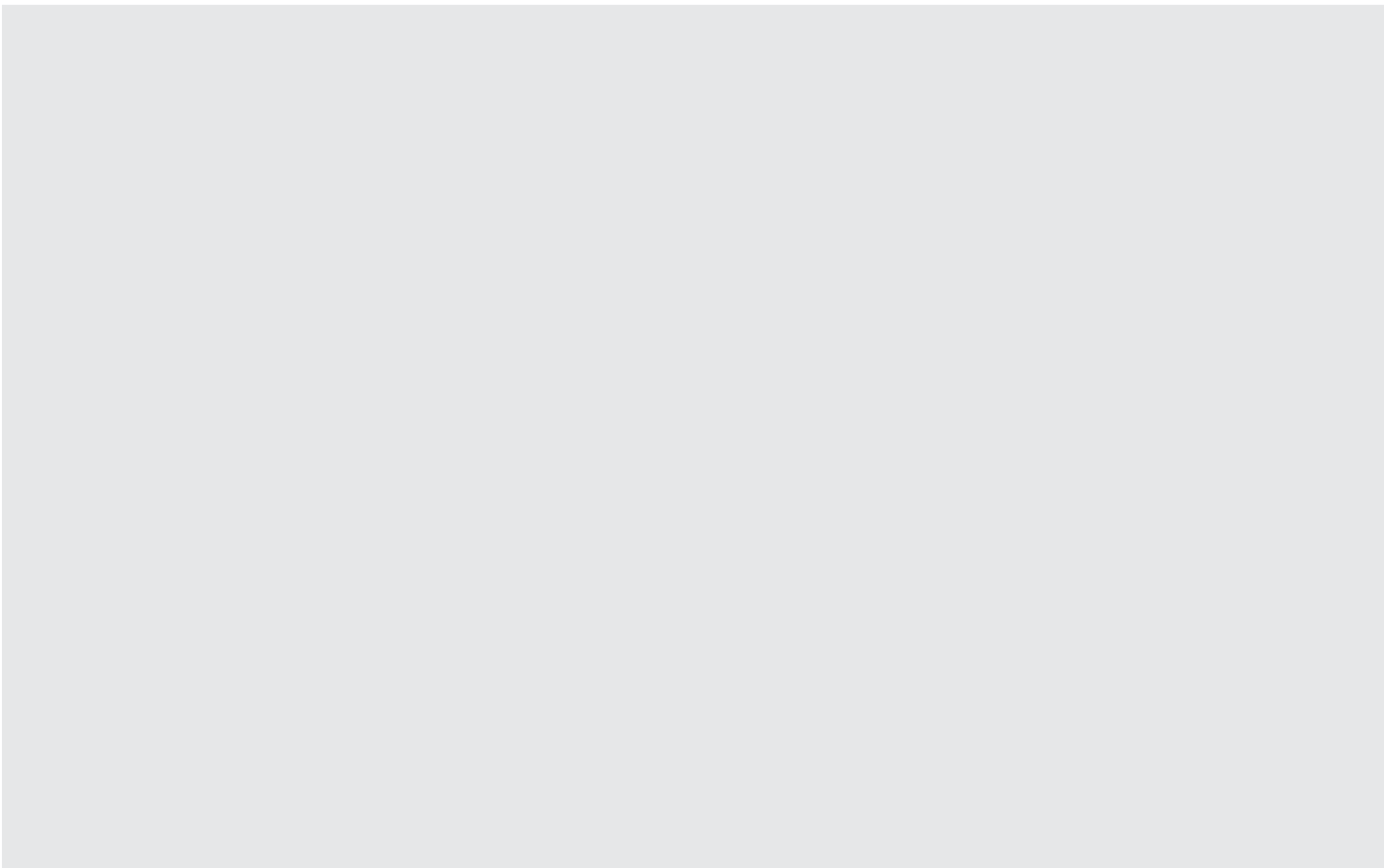
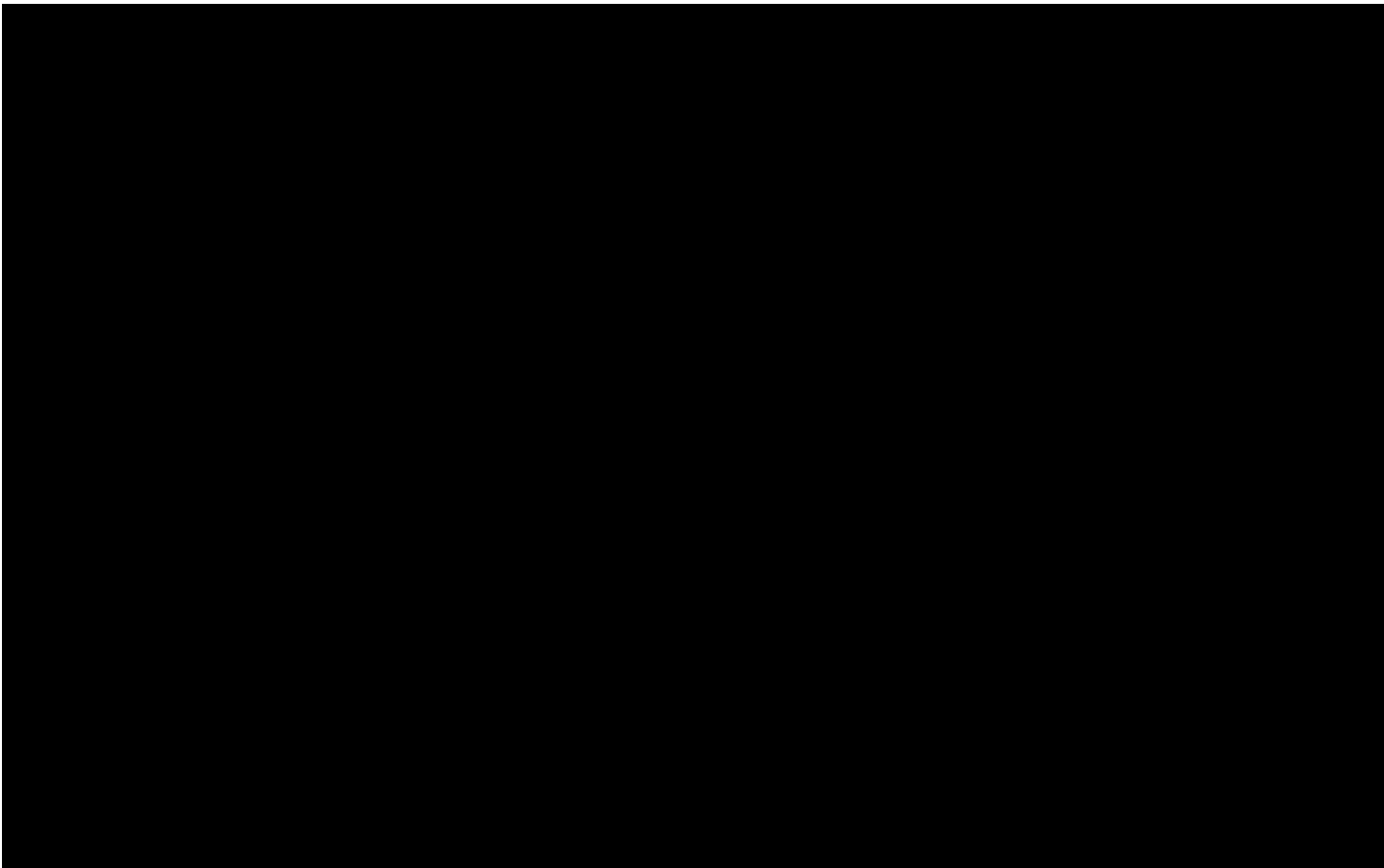
1. *Department of Fair Employment and Housing - Notice A: Pregnancy Disability Leave (if applicable)*
2. *Department of Fair Employment and Housing - Notice B: Family Care and Medical Leave (CFRA Leave) and Pregnancy Disability Leave (if applicable)*
3. *Discrimination and Harassment in Employment are Prohibited by Law*
4. *CAL/OSHA Safety and Health Protection on the Job*
5. *Department of Industrial Relations Notice to Employees – Injuries Caused by Work*
6. *CAL/OSHA Emergency Contact Information*
7. *California Minimum Wage Notice*
8. *Division of Labor Standards Enforcement Payday Notice*
9. *Poster on Time Off For Voting*
10. *Whistleblowers Are Protected*
11. *EDD Notice to Employees*
12. The applicable *Industrial Welfare Commission Wage Order* (Visit <http://www.dir.ca.gov/wp.asp> for more information)

APPENDIX B

FORMS

Employers should maintain the forms listed below:

1. *OSHA Log of Work-Related Injuries and Illnesses (Form 300)*
2. *OSHA Summary of Work-Related Injuries and Illnesses (Form 300A)*
3. *OSHA Injuries and Illnesses Incident Report (Form 301)*
4. *I-9 Form (Employee Eligibility Verification)*





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1201 F Street, NW
Suite 200
Washington, DC
20004

nfib.com