



# Hiring Practices & At-Will Employment

PALMER KAZANJIAN WOHL HODSON LLP

# Palmer Kazanjian

Palmer Kazanjian Wohl Hodson LLP **Attorneys**

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Member of the Labor and Employment Law Sections of the State and County Bar Associations

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# Agenda

1. At-Will Employment Relationship
2. Equal Employment Opportunity Laws
3. Managing the Hiring Process
4. Minimizing Liability Risks
5. Q & A

# Equal Employment Opportunity Laws

# At-Will Employment

California Labor Code § 2922:

- ***“An employment, having no specified term, may be terminated at the will of either party on notice to the other. Employment for a specified term means an employment for a period greater than one month.”***
- Means that absent an express agreement specifying the length of employment or grounds for termination, either the employer or the employee can terminate the working relationship at any time, with or without cause or advance notice.

# Equal Employment Opportunity Laws

- Federal Law prohibits the denial of employment opportunities based on certain personal attributes unrelated to one's ability to perform a job.
- Equal Employment Opportunity (EEO) laws apply both to hiring and to the terms and conditions of employment.
- Federal Law generally defines workers' rights. However, states have EEO laws that may offer more protection.

# Title VII of the Civil Rights Act of 1964

- Principal Federal Statute prohibiting employment discrimination based on race, color, religion, national origin, and sex.
- Makes it illegal to retaliate against a person because they complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- Enforced by the Equal Employment Opportunity Commission (EEOC).
- Applies to most private employers with 15+ employees.



# California's FEHA Statute

- The Fair Employment and Housing Act (FEHA) is California's version of Title VII.
- FEHA prohibits unlawful discrimination, harassment, and retaliation in the workplace based on statutorily protected characteristics:
  - Race; color; national origin; religion; sex; familial status; handicap (disability); age; ancestry; citizenship; gender identity and gender expression; genetic information; immigration status; marital status; primary language; sexual orientation; source of income; or other arbitrary basis.
- FEHA's anti-discrimination provisions apply to employers with 5+ employees.
- FEHA's anti-harassment provisions apply to employers with 1+ employees.

# Managing the Hiring Process

# California Minimum Wage Increase

- Due to the enactment of Senate Bill 3, the California minimum wage increased to \$15.50 per hour, effective January 1, 2023, for all employers.
- Some cities and counties have higher minimum wages than the state's rate. Example: San Francisco minimum wage increased to \$18.07 based on Section 12R.4 of the San Francisco Administrative Code, effective July 1, 2023.

# Pay Scale Disclosure Requirements

- Senate Bill 1162 requires employers with 15 or more employees to disclose the pay scale for any position in their job postings, effective January 1, 2023.
  - “Pay scale” means the salary or hourly wage range that an employer reasonably expects to pay for the position.
- This bill requires employers to provide employees with the pay scale for their current position upon request.

# Pay Data Reporting Requirements

- Senate Bill 1162 requires private employers with 100 or more employees to submit an annual pay data report to the Civil Rights Department (CRD).
- This bill mandates that pay data reports include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category.

# Job Descriptions

- Well-written job descriptions focus on objective criteria.
- Ensure that job postings do not contain discriminatory language.
  - Example: An ad seeking “recent college graduates” or “females” may discourage men and people over 40 from applying and would violate the law.
- Note: Advertising exclusively in certain venues may indicate a preference or limitation based on a protected category.

# Interviews

- Employers should not seek information that would reveal a protected characteristic.
  - Examples: birth date; graduation date; race, color or national origin; citizenship; or information about injuries, illnesses or disabilities.
- Structure interviews to solicit only information concerning the candidate's qualifications and ability to perform the essential job functions.
  - Ask candidates the same set of defined questions during interviews.
- Inquiries about past compensation should be carefully crafted to avoid pay equity issues: what compensation are you expecting? (rather than what compensation have you been paid previously?)

# Pre-Employment Testing

- Pre-employing tests must be conducted fairly and consistently for all applicants for a position within a specific job class. Examples: drugs testing, medical testing, aptitude testing.
- To demonstrate that a pre-employment test is valid, an employer must:
  - Specify the trait or characteristic that the test is meant to identify.
  - Ensure that the trait or characteristic is an important component of the job.
  - Ensure that the test predicts or correlates with that element.



# Background Checks

- Conduct background checks in a manner that complies with all relevant state and federal laws.
  - Fair Credit Reporting Act (FCRA)
  - California Investigative Consumer Reporting Agencies Act
  - Fair Chance Act

# Fair Credit Reporting Act

- Federal law that governs the collection, usage, and sharing of consumer credit reports by credit reporting bureaus and agencies.
- Promotes accuracy, privacy, and transparency of personal data and other sensitive information collected by credit reporting bureaus and agencies.

# Investigative Consumer Reporting Agencies Act

- Only allows the reporting of criminal convictions and limits the conviction information to seven years from the date of disposition, release or parole.
- Definition of an “investigative consumer report” is expanded to include information obtained through “any means.”
- Applicants must be notified in writing “of the nature and scope of the investigation requested.”

# Fair Chance Act

- California law that generally prohibits employers with 5+ employees from asking about a candidate's conviction history before making a job offer.
- Known as a "Ban the Box" law.
- Enacted to reduce barriers to employment for individuals with conviction histories.

# Employment Offers

- A conditional offer of employment is a job offer contingent on the applicant meeting certain requirements before starting the job. Examples: background checks, drug screenings, or aptitude tests.
- A conditional offer can be withdrawn if the applicant does not meet the conditions of the offer, or after the time limit passes.

# Minimizing Liability Risks

- Understand Federal and State Laws that protect applicants' rights.
- Establish the at-will employment relationship through company hiring policies and procedures
- Reserve the right to modify policies and procedures at any time.
- Periodically audit your policies, procedures and practices.
- Document all personnel actions and decisions.



Q & A

# Thank you for joining us!

We'll see you next time.  
Have a great day!

**Palmer Kazanjian**  
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