Centricity Solutions Newsletter September 2019

Legislative Update: AB-5 and the Gig Economy

California state senators voted 29-11 Tuesday to pass Assembly Bill No. 5 (AB-5), which would codify the ABC worker classification test for independent contractors in the state first adopted in 2018 by the Supreme Court of California.

If signed into law by Gov. Gavin Newsom, the bill would classify a person providing labor or services as an independent contractor if that person:

a) is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

b) performs work that is outside the usual course of the hiring entity's business; and

c) is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed for the hiring entity.

Governor Newsom will have until October 13, 2019, to sign or veto AB-5. The bill would take effect Jan. 1, 2020 if signed and would make exemptions for several occupations.

California Cleans Up Sexual Harassment Training

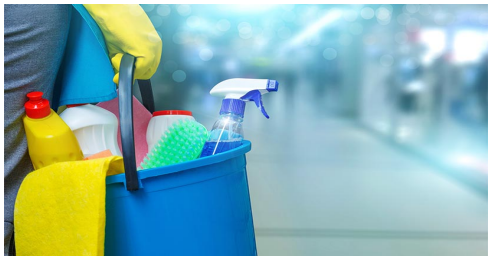
On August 30, 2019, California Governor Gavin Newsom signed clean-up legislation (S.B. 778) clarifying the state's sexual harassment prevention training and education law, particularly when mandatory training must be completed. The legislation was introduced February 26, 2019 and took immediate effect.

Why a Clean-Up Bill?

CA A.B. 1825, enacted in September 2004, made California a leader in workplace sexual harassment prevention training. Most recently, the law was modified by CA S.B. 1343, effective January 1, 2019, which expanded training requirements to include nonsupervisory employees and required that all employees be trained in calendar year 2019. However, the law was confusing, and employers were scrambling to ensure their employees were trained by January 1, 2020.

Now What?

CA S.B. 778 took immediate effect and now, employers with five or more employees have until January 1, 2021, to provide both supervisory and nonsupervisory employees with mandatory sexual harassment prevention training. In other words, employers may utilize calendar year 2020 to ensure they meet the state's requirements. Employees still must be trained within six months of hire and employers may not wait until 2021, as this is a standard established, and not modified, in the original A.B. 1825 law.



What Training is Required Now?

The law specifies that by January 1, 2021, an employer with five or more employees must provide:

- At least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California; and
- At least one hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California.

Thereafter, each covered employer must provide sexual harassment training and education to each employee in California once every two years. It is important to note that new supervisory employees still must be trained within six months of hire and employers may not wait until 2021, as this is a standard established, and not modified, in the original A.B. 1825 law.

What If I Provided Training in 2018 or 2019?

The S.B. 778 clean-up clarifies that employers that provided compliant sexual harassment prevention training in 2018 for nonsupervisory and supervisory employees are not required to retrain their employees in 2019, as was previously required under the language of S.B. 1343. Rather, employers that provided 2018 training (compliant with the current standards) would continue to complete their refresher training and education in 2020. Additionally, employers that provided S.B. 1343-compliant sexual harassment training and education to employees in 2019 are not required to provide refresher training and education again until 2021.

Centricity Can Help!

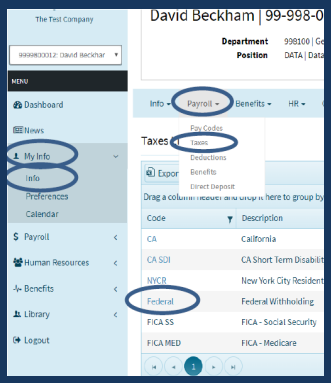
Your Centricity team can assist you in rolling out harassment prevention training for your employees through ThinkHR. We will monitor employee progress and provide regular completion updates.

1. Golden, R. (2019, September) California passes bill codifying 'ABC' classification test. Retrieved from https://www.hrdive.com/news/california-passes-bill-codifying-abc-classification-test/562685/
2. Yurman, S. (2019, September) Cleans Up Sexual Harassment Training. Retrieved from https://www.thinkhr.com/blog/california-cleans-up-sexual-harassment-training/

How to Change your Tax Withholdings in DNet

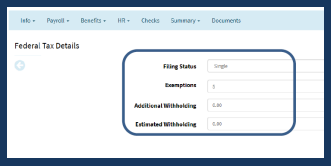
From your DNet Dashboard, select My Info> Info.

Under the Payroll tab, select Taxes.



From this page, you can select your Federal and/or State tax forms.

Update filing status (single, married, etc.), exemptions, additional withholding and estimated withholding as desired and then click save. No further action is required.



Your withholdings will be updated on the next available payroll (no changes are made within 5 business days of the pay date).

The CROWN Act and Workplace Discrimination

Over the summer, the California Legislature passed the Creating a Respectful and Open Workplace for Natural Hair ("CROWN") Act, which extends the protections against racial discrimination in the workplace to natural hairstvles.

In particular, the CROWN Act amends the Fair Employment and Housing Act ("FEHA") to define "race" as "inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." Protective hairstyles include braids, locks, twists and other unspecified hairstyles associated with race.

With the passage of the CROWN Act, California became the first state in the nation to expressly include natural hairstyles in its anti-discrimination law. The preamble of the CROWN Act explains that "[t]he history of our nation is riddled with laws and societal norms that equated 'blackness,' and the associated physical traits … to a badge of inferiority, sometimes subject to separate and unequal treatment." The common understanding of "professionalism" remains closely "linked to European features and mannerisms." "Workplace dress code and grooming policies that prohibit natural hair, including afros, braids, twists, and locks, have a disparate impact on Black individuals as these policies are more likely to deter Black applicants and burden or punish Black employees than any other group." The California Legislature recognizes that "hair today remains a proxy for race" and therefore "hair discrimination targeting hairstyles associated with race is racial discrimination."

The new law that goes into effect on January 1, 2020 clearly ties natural hair with race under the state anti-discrimination law. With the increased scrutiny on more subtle forms of discrimination in the workplace, employers will need to be more proactive in detecting and preventing bias against natural hairstyles and other physical traits associated with race.

Employers with locations outside of California should be aware that California is not alone in prohibiting natural hair discrimination in the workplace and may have signaled a national trend. New York closely followed by amending its human rights law to similarly define "race" as including "traits historically associated with race, including but not limited to hair texture and protective hairstyles.

Multi-state employers are well advised to be watchful for legislative developments of this trend in the states where they operate in order to ensure compliance.

As a result of the CROWN Act, California employers can anticipate increased scrutiny of their policies and practices regulating hairstyles and other potential proxies for racial discrimination. Employers may best prepare themselves by taking these steps:

- Review and amend grooming and appearance policies to eliminate prohibitions or discouragement of natural hairstyles and any other proxies for race.
- Train managers and human resources personnel about the expansion of the anti-discrimination law and about nondiscriminatory concepts of "professionalism" in the workplace.
- Engage in efforts to support a racially inclusive workplace environment, including for employees who desire to wear a protected hairstyle, and consider forming a diversity committee to take the lead in such efforts.

Your Centricity team is available to assist with policy and program development for maintaining compliance under the CROWN Act.

Using Employees' Preferred Gender Pronouns

According to Transgender Inclusion in the Workplace: A Toolkit for Employers, produced by the Human Rights Campaign (HRC), "transgender" is an umbrella term that refers to people whose gender identity, expression or behavior is different from that typically associated with their assigned sex at birth. The term includes nonbinary, gender-fluid and genderqueer but while some nonbinary individuals identify as transgender, others don't. Some transgender and gender-nonconforming individuals prefer to use pronouns other than he/him/his or she/her/hers, such as they/them/theirs or ze/hir.

Their choice goes to the very core of their identity.
Using the pronouns employees prefer is more than common courtesy; it's their civil right.

Federal law on the subject arises out of agency and court interpretations of Title VII of the Civil Rights Act of 1964, which expressly prohibits workplace discrimination on the basis of race, color, religion, sex and national origin. Title VII's prohibition against sex discrimination also bans any employment discrimination based on gender identity or sexual orientation.

1. Hopkins & Carley (2019, September) Prohibiting Discrimination from the Top Down: California CROWN Act Bans Workplace Discrimination Based on Natural Hairstyle. Retrieved from https://www.hopkinscarley.com/blog/client-alerts-blogs-updates/employment-law-client-alerts/prohibiting-discrimination-from-the-top-down-california-crown-act-bans-workplace-discrimination-based-on-natural-hairstyle
2. Clark, M. (2019, August) Using Employees' Preferred Gender Pronouns. Retrieved from https://www.shrm.org/hr-today/news/hr-magazine/fall2019/pages/using-employees-preferred-gender-pronouns.aspx

Training of the Month

We offer a wide variety of web training courses through our training portal, ThinkHR. Courses vary in length and cover an array of topics including workplace safety, diversity, and harassment prevention. The full course catalog is available upon request. All courses are offered at a rate of $10 per participant.
Below is one of our available courses. Please reach out to your Centricity team for more information on this or any courses that interest you.

Leading Teams: Managing Virtual Teams

Studies show that over 80% of workers today are involved in some way with team members who are not physically located in the same office. Leading virtual teams presents new challenges to leaders and managers. This course offers leaders a framework for successfully leading virtual teams. It outlines the key competencies that members of virtual teams should possess and offers guidelines for specific virtual team activities, such as teleconferencing and decision making. It also highlights a variety of tools and technologies that are commonly used for collaboration on virtual teams and presents guidelines for knowing how to choose the right technologies for specific situations.

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Q&A Corner

Are domestic partners eligible for COBRA?

Federal law defines COBRA qualified beneficiaries as the employee (or former employee), spouse, and children if covered under the group health plan at the time of the qualifying event. A domestic partner, therefore, is not a COBRA qualified beneficiary in his or her own right. The employee, however, may elect COBRA for his or her domestic partner, if the group health plan extends eligibility to domestic partners, since COBRA beneficiaries have the same enrollment options as active employees.

Separately, many states have enacted coverage continuation provisions under their state insurance laws. California is one example; Cal-COBRA extends to registered domestic partners.

Do we have to give employees who smoke additional smoke breaks or allow them to return to work smelling strongly of smoke?

No, you're not required to provide additional breaks to employees who smoke, and you also don't have to tolerate them smelling like smoke. These employees can be expected to adhere to the same policies as any other employee. To that end, if you allow for a certain number of breaks of a certain length, employees who smoke aren't entitled to anything extra. And if you have a policy that addresses smells, you can refer to that when addressing the odor of cigarettes.

If you don't have specific policies addressing breaks and smells, there's no time like the present to implement them. Break policies are fairly straightforward, but employers sometimes struggle with delicate issues like hygiene. We recommend saying something like, "The excessive use of perfume or cologne is unacceptable, as are odors that are disruptive or offensive to others or may exacerbate allergies." This language can be added wherever you think is most appropriate.

Our employees are required to attend sexual harassment prevention training. Do we need to pay for their time at training?

If an employer requires attendance at a training, then it generally must be paid. While this training may often be directed because of a state law, it is ultimately an employer-directed activity.

Department of Labor guidance is that trainings and work events can only be non-work time (unpaid under the Fair Labor Standards Act) if all four of the following criteria are met:

- The training occurs outside of the employee's normal work hours;
- The training is completely voluntary (there will be no company-initiated consequences if the employee does not attend);
- The training is not specifically job-related (it may be tangentially related to their job, such as most continuing education, but cannot be specific to how they do their job on a day-to-day basis); and
- No work for the employer is performed during the training (e.g., reading or replying to email or requests).

Given these criteria, nearly all harassment prevention training will be paid time. If possible, we recommend that you offer sexual harassment prevention training during regular working hours so that you can easily track and pay for the time. Providing the training during the workday also sends the message that you value the training and are serious about preventing harassment in the workplace.

We're thinking of requiring employees to keep tattoos covered. Is this something we can do? What considerations should we make?

Yes, you may prohibit visible tattoos entirely or you may simply prohibit those that are offensive, distracting, inappropriate, or over a certain size. Tattoo policies usually depend on the culture of the workplace and are often found within a broader dress code policy. Some employers avoid restrictive dress codes because they may deter impressive job candidates from applying or drive away high-performing employees. Employers who want to maintain a certain company image, however, might prefer a strict dress code. When creating your policy, make sure it doesn't discriminate based on a protected class. This would include, for example, making religious accommodations.

Q&A Stream. Retrieved from https://centricity.myhrsupportcenter.com/app/landing/20/show/list