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BUSINESS LAW ROUNDTABLE

What You and Your Organization Need to Know

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The San Fernando Valley Business Journal has once again turned to some of the leading business attorneys in the region to get their assessments regarding the current state of labor and employment legislation, the new rules of hiring and firing, traps to avoid, and the various trends that they have been observing, and in some cases, driving. What follows is a series of questions the Business Journal posed to these experts and the unique responses they provided – offering a glimpse into the state of business law today – from the perspectives of those in the trenches of our region. Thanks to our superb panel for their expert insights.

BUSINESS LAW ROUNDTABLE

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>
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What are the most significant new laws taking effect in 2019 that could be impactful to businesses?

ROSENBERG: The suite of #MeToo protections. Of those, the new law that forbids employers from including any form of non-disclosure (i.e., confidentiality) provision into a settlement resolving claims of sexual assault, sexual harassment, gender harassment or discrimination unless the settling employee wants confidentiality. Notably, this rule only applies once a claim has been filed in court or with the EEOC or CA Fair Employment & Housing Commission. Pre-litigation settlements with a confidentiality provision are still permissible.

GABLER: The most significant legal change arising in 2019 was the substantial expansion to California's harassment laws and training requirements. SB 1343 (amending California Government Code Sections 12950 and 12950.1) mandates that all employers with five or more employees must provide two hours of harassment training to supervisors and one hour of harassment training to non-supervisory employees every two years, with new supervisors and employees being trained within six months of starting the position. Additional obligations apply for temporary or seasonal employees as well as agricultural workers. The legislature added a number of additional prohibitions and mandates in 2019, including voiding any contractual or settlement agreement which prevents a party from testifying regarding alleged sexual harassment in future matters or prevents the disclosure of factual information regarding harassment or discrimination claims, enhancing professional relationship liability for harassing conduct, and related retaliation and tax law provisions. These laws represent a growing recognition in California, as well as nationwide, that workplace harassment is a serious problem which has received insufficient attention in companies of all sizes and in all industries. With ever-increasing harassment claims in administrative agencies and civil courts, employers must be mindful of their training and policy requirements. Now, more than ever, complaints of harassment must be taken seriously and must result in swift and serious disciplinary action.

Which of California's newer employment laws are most likely to land employers in court?

BENDAVID: We anticipate a surge in wage claims by "independent contractors" seeking to obtain employee status and corresponding benefits, such as overtime, meal and rest period penalties, and PAGA (Private Attorney General Act) penalties. The California Supreme Court's 2018 landmark Dynamex decision made it extremely difficult to categorize workers as independent contractors. Now, employers face even greater exposure following the Ninth Circuit's recent decision in Vasquez v. Jan-Pro Franchising Int'l, which ruled that the restrictive Dynamex test applies retroactively. Employers should take a proactive approach and audit not only the classification of their workforce but their wage and hour compliance.

GABLER: Because California's employment laws are so burdensome and hiring employees can be so costly, many companies try to avoid employees altogether by retaining independent contractors to do the company's work. Unfortunately, misclassification of a worker creates tremendous liability for the employer from a variety of sources, including state and federal government agencies as well as civil liability to employees. The idea that an "independent worker" is the same as a lawful "independent contractor" is simply incorrect. This legal risk expanded exponentially with the California Supreme Court's decision in Dynamex Operations West, Inc. v. Superior Court (2018), in which the Court developed t far more burdensome "ABC Test" regarding the classification of workers as independent contractors. In short, workers who perform the day-to-day operations of the business are highly likely to be employees rather than contractors. Whether the employer could control the worker has far more relevance than whether the employer actually chooses to do so. Employers must be mindful of the fact that letting workers come and go as they please or honoring the worker's request to be treated as a contractor does not support a valid independent contractor classification or save the employer from what could amount to six figures or more in damages.

ROSENBERG: There are three biggies. First, is the misclassification of workers as independent contractors. Last year, the CA Supreme Court decided to considerably narrow who can be treated as a contractor. This affects tens of thousands of CA workers. The class action suits for overtime pay and benefits are already coming. Second, employees are challenging the company's time keeping policy of "rounding" to the nearest quarter or tenth of an hour. Third, many common commission or performance pay programs qualify as "piece rate" work under a statute passed in 2017. By law, employees who are paid this way also must receive segregated minimum wage payments for their non-commission earning work and documented enhanced rest break compensation. Employers who pay employees this way face huge liability if these rules are not followed to the letter.

What should employers know about mediation in the context of employment disputes?

GABLER: Employers often believe that mediation, or any other form of alternative dispute resolution, is an indication of "rolling over" or "being extorted." In fact, one of the most significant expenses in any litigation matter is the attorneys' fees incurred to defend against the employee's claim, and, in most cases, early settlement will typically cost far less than it would cost to win the case. Most employment disputes have far more to do with psychology than with employment law, and are often the result of miscommunication, assumptions, hurt feelings and other aspects of human communication that fall outside the law. Bringing both sides to the table can resolve those issues, make people feel heard on both sides, and create a path to resolution that allows both parties to move forward without further stress or expense. Unfortunately, the mandatory attorneys' fee awards associated with most employment law matters can prompt employers to settle disputes merely to avoid financial risk that has little to do with potential liability. Waiting until the eve of trial to put maximum pressure on the opposing party merely means that the opposing party's attorney now requires tens of thousands in fee recovery to make settlement worthwhile. In some cases, hotly contested litigation is necessary, such as when an opposing party is wholly unreasonable, or when other employees are waiting in the wings for their bite at the apple. In most cases, however, an attorney who insists on fighting with his opposing counsel, and who exacerbates a case for personal gain rather than to serve the client, is simply lacking in skill or finesse. Business owners should seek out not only attorneys who are skilled litigators, but who also can truly act as counselors, serving the interests of the client rather than themselves, and negotiate viable resolution options that allow the employer to focus its resources on the business instead of on its former employees and its legal counsel.

BENDAVID: Mediation gives employers the opportunity to resolve a case confidentially without the costs and risks associated with a trial. Mediators are often former attorneys or judges who use their experience as practitioners to work with the parties to come to a mutually agreeable solution. During the mediation, employers can expect the mediator to "shuffle" between parties and discuss the factual and legal weaknesses in the respective cases, helping each to understand the potential risks if the case moves further along in the litigation process. Employers today face unprecedented public relations issues that can quickly result in the ruin of a business' reputation or the onslaught of new claimants. Mediation allows employers to sometimes incorporate confidentiality clauses as part of a mediated settlement, which employers should seriously consider. Given the challenges posed by litigating in today's public eye, the benefits of a mediated outcome are significant.

ROSENBERG: Court statistics show that fewer than 5% of all employment cases go to trial. That means that almost nearly 95% of all cases will eventually settle. Mediation is a voluntary process that will enable parties to explore resolution confidentially before they have run up a drawer full of legal bills. Legal claims are costly to defend and time consuming. mediation can be a great escape valve allowing the company to move forward while minimizing the cost and hassle of the litigation process.

How do you advise clients regarding the implementation and enforcement of non-competes?

GABLER: Non-compete clauses are generally unenforceable in California, except in certain limited circumstances (such as in the sale of a business). While employers can prohibit competition during employment, a departing employee has the right to work with any employer of his choice in the future. However, an employees is not permitted to use the trade secrets of the former employer to compete, nor to benefit himself or others. The same applies to solicitation of co-workers and customers. Employers should have clear non-solicitation and non-competition agreements which prohibit the employee from taking, disclosing or using the employer's trade secrets to unfairly compete, or to solicit others to leave. In other words, a salesperson can sell the same widgets for another company, but he cannot take the former employer's customer lists or contact information, marketing plans, business models or financial data in order to do it. Similarly, an employee can encourage a former co-worker to apply for an opening at his new company, but he cannot inform the co-worker that the new company provides greater compensation and benefits than what he knows is provided at the old company. While this is a fairly narrow protection for employers, the side benefit is that there need not be any geographical or chronological limitations on these prohibitions. Many agreements state that the employee cannot compete or solicit for two years, or within a certain radius. By adding "by use of the company's trade secrets" to the restriction, the prohibition can continue indefinitely, as there is no time period when the company's trade secrets are suddenly open season.

BENDAVID: Under California law, non-compete agreements are seen as "anti-business" and generally unenforceable. With limited exception, employers cannot lawfully restrict employees from engaging in a trade or business once they leave the job.

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We advise clients to arm themselves with strong confidentiality or trade secret agreements while implementing policies that safeguard company information. This includes creating internal practices, such as limiting digital and physical access to those who need to know, and enforcing relevant provisions in the employer's handbook. This way, an employer can show the steps it took to protect its confidential and proprietary information and be better positioned to take action against an employee who improperly uses such information, both as a breach of contract and violation of the Uniform Trade Secrets Act.

What are your views on using arbitration agreements as an alternative to employment litigation?

BENDAVID: There are advantages and disadvantages to arbitration, which is not right for every employer. One of the key benefits to arbitration is having a say in who arbitrates the dispute, which also means escaping what are typically employee-sided juries. However, the cons for some employers may outweigh the pros. Arbitration is incredibly expensive and employers have to foot the bill. Another significant downside of arbitration is the limited ability to appeal. And while class action waivers may be included in arbitration agreements, an arbitration agreement may not waive an employee's right to bring a representative claim under PAGA. If after a thorough analysis, an employer elects to use arbitration agreements, the agreement should be a standalone contract that includes a class action waiver.

What are the most frequent mistakes made by employers when disciplining employees?

ROSENBERG: Not documenting the reasons why discipline is being issued and not giving employees what a jury would see as a fair chance for the employee to succeed before being fired.

GABLER: The most significant error made by employers is neglecting to document performance issues and any resulting disciplinary action. Employers must remember that "if you can't prove it, it didn't happen!" When the employer fails to document its reasons for discipline or termination, the employer loses the chance to tell that story and thus loses control of the situation: the employee is now able to tell the story of what the employer did to him, and the employer promptly finds herself on the defense. Additional mistakes include: (1) being too nice, and (2) being too mean! Some employers fail to convey any negativity, for fear of rocking the boat, hurting the employee, causing a fight, or simply to avoid confrontation. When employees are not given clear information about where they are falling short, they lose the opportunity to grow, to improve, and to progress in the job. Similarly, the employer who fails to convey its dissatisfaction to the employee loses the opportunity to train and support an existing employee and instead must invest additional resources in recruiting, hiring and training when things don't work out. On the other hand, some employers express too much personal opinion, frustration, anger or other negative emotions, and the discipline becomes a personal attack rather than a productive discussion of areas of growth. When an employee is attacked and deemed to be incompetent, he simply becomes resentful and shuts down. At that point, improvement is unlikely, and the relationship will continue to deteriorate.

BENDAVID: A frequent mistake employers make is failing to document corrective action. Remember, "if it is not in writing, it didn't happen." Employers should think of documentation as future evidence, so a thorough and complete report of what occurred is key. Employers should include such things as the date and approximate time of the incident, the individuals involved (including position and name), what occurred, the location, any witnesses, and statements made regarding the incident. Employees should then sign the disciplinary document to show they received and acknowledged it. If an employee refuses to sign, it should be noted directly on the memo. The memo should then be stored in the employee's personnel file. Note, however, that employers should always refrain from disciplining employees for legally protected activities, such as taking sick leave or submitting a workers compensation claim.

What should a new company with respect to the creation of an employee handbook?

BENDAVID: A legally compliant employee handbook serves multiple purposes. It is one of the best shields against an employment-related lawsuit and communicates a company's expectations to its employees. We cite both the handbook and the employee's acknowledgment of receipt of it in almost every lawsuit we defend to demonstrate both the employer's compliance with the law and that the employee knew about the specific policy. Additionally, if a policy expressly informs employees of the company's expectations, and the employee failed to meet those expectations, the handbook violation can be used to justify a firing and reduce the risk of a wrongful termination claim. As employment laws are always changing, it's imperative that employers regularly update their handbooks to reflect these changes. Handbooks more than a year old likely contain outdated policies no longer in compliance with local, state and federal laws.

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ROSENBERG: Use a labor law expert. Handbooks are legal documents that must be written with great care and updated as laws change. Leaving this to consultants or in- house personnel without considerable legal background is risky because a typical handbook has 100+ legal regulations that must be accounted for and done correctly. Policy mistakes can easily land an employer in court.

GABLER: Employee handbooks should be created (or reviewed) by qualified employment law counsel, and should be updated on an annual basis. Sample handbooks can easily be obtained through a variety of services or on-line resources. That said, a generic handbook created without the benefit of legal oversight provides little protection and may even create liability. When prepared properly and updated regularly, handbooks can protect the employer, educate the employee, defend against a claim and support management efforts. They can provide clear evidence of the employer's policies and practices, and satisfy the employer's obligation to provide clear notice of employee rights and benefits. A quality handbook incorporates not only the basic legal requirements, but also should include legally strategic language and policy options designed to thwart employee complaints and avoid lawsuits. Updating handbooks on an annual basis allows the employer to incorporate new laws and cases, and provides evidence that employees were reminded of important company policies each year. Annual acknowledgements are terrific evidence that the employee was well aware of the employer's handbook and could legitimately be expected to operate within its terms. There is simply no substitute for the protection of a compliant and enforceable handbook prepared or reviewed by expert employment law counsel.

Are there any issues businesses need to be aware of in drafting agreements with an independent contractor?

ROSENBERG: Yes. The agreement will be valuable evidence if the worker's contractor status is ever challenged. The best agreements are those that clearly lay out the facts demonstrating why the service provider qualifies to be treated as an independent contractor. Employers also should add tight protections for the protection of the trade secrets that a contractor may encounter when doing the contracted-for work. Finally, be sure there is language that protects the company if the contractor does something that places the company in legal jeopardy.

GABLER: Although the existence of an independent contractor agreement will not automatically create a contractor relationship, it is nevertheless critical to have an enforceable agreement in place to defend the worker's contractor status. This has become even more important in light of the California Supreme Court's recent decision in Dynamex Operations West, Inc. v. Superior Court (2018), in which the Court developed a far more burdensome three-part "ABC Test" regarding the classification of workers as independent contractors. Ideally, contractor agreements should include, without limitation, reference to the worker's status as a contractor (without calling the worker "employee" in the agreement!), the contractor's right to set the work schedule and hire its own staff, the contractor's obligation to pay its own expenses, the contractor's obligation to invoice the company for services rendered and the timing of payment for services (without using company payroll!), the contractor's obligation to pay its own taxes and procure its own insurance, the contractor's right to work with any other clients (provided there is no conflict of interest of competition), and the obligation to arbitrate disputes under the agreement. Random buzzwords or misstated phrases can severely undercut the contractor classification, and employers would be well served to develop the agreement with the assistance of employment law counsel.

BENDAVID: Employers should remember the ABCs of Dynamex Operations West, Inc. v. Superior Court, which now applies retroactively following the Ninth Circuit's recent decision in Vasquez v. Jan-Pro Franchising Int'l. If you are confident in your classification, make sure your contract demonstrates that: (A) The worker is free from your control and direction; (B) The worker performs work that is outside the usual course of your business; and (C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for you, as the hiring entity.

What are some legal issues that companies often overlook during a layoff or termination process?

GABLER: Employers must be able to justify the legitimate business reasons for the decision – then, actually justify it with written documentation. Why must the business eliminate positions at all? Why is the employee losing his job? Is his position being eliminated? If so, will you re-open the position later? Is he a poor performer? If so, has he been warned about any deficiencies and given an opportunity to improve? If not, why not? Is the decision in line with internal memoranda and prior performance reviews? Does he fall into any protected categories that will give him a reason to complain that his separation from employment was discriminatory or retaliatory? If asked, how will we prove that we had a legitimate, non-discriminatory reason to remove him? Falling back on "at will employment" is not enough – failing to provide the reason for the separation from employment allows the employee to fill in that blank with an unlawful reason, creating legal risk and cost for the employer.

BENDAVID: There are some rules of thumb to reduce the risk of litigation for unlawful termination or retaliation when downsizing through layoffs. First, companies should establish and document criteria for identifying workers to be laid off – determining whether the decision will be based on seniority, experience, job performance or disciplinary history. Next, ensure the layoff candidates meet your criteria and that you have supporting documentation. Review personnel files to ensure there are no "red flags" that might cause employees to believe they were selected for unlawful reasons, e.g. previous complaints of harassment, in which case a layoff may be misconstrued as retaliation. That doesn't mean a person who previously made a complaint can't be laid off – it just means employers should ensure they have legitimate reasons for their decisions – that

can be proven by evidence. The same basic rules apply for terminations. Document the reasons and ensure an employee is fired for lawful reasons. Don't sugar coat performance reviews and exit interviews. Telling an employee they are doing a wonderful job and then subsequently firing the employee leads to shock, anger and potential employee lawsuits.

ROSENBERG: Many employers believe that a company can lay off whomever it wants without legal recourse. Actually, employees selected for layoff can sue (and win!) if they were selected: (i) on account of a protected status (such as age, gender, race); (ii) because they voiced opposition to any practice that the employee reasonably believed was illegal; or (iii) in retaliation for having availed themselves of a legal right (e.g., taking a pregnancy or work injury leave). Businesses should develop clear criteria for who stays and who goes. A well-documented layoff file is worth its weight in gold if you have to fight an employee claim or wish to convince an inquiring lawyer to turn down your former employee's case. Timing is also critical. For example, laying off someone who just returned from maternity leave or who recently complained about workplace harassment is very risky.

What accommodations must an employer offer to employees who are parents of school age children if there is a school closure due to a violent threat?

BENDAVID: Having personally experienced this with my own children, I can tell you – it's simple: do everything you can to accommodate those employees. Employers with less than 25 employees are not required by law to allow staff members to leave, but imagine the resentment and disruption to operations if you DO NOT allow them to go. For companies with 25 or more employees, you are required to provide up to eight hours of unpaid leave to participate in a child's school or daycare activities – as well as leave in case of emergencies such as violent threats and national disasters.

ROSENBERG: California's Family-School Partnership Act gives employees of school age children up to 40 hours of time off per year time for matters relating to parenting such as attending school functions. That law also specifically provides for emergency leave for parents to address "child care provider or school emergency" situations such as a school closure due to a "violent threat." To mitigate the impact on employers, the law permits employers to limit usage of this time off to just 8 hours per month. However, that limit is suspended in a real emergency situation. And. even if your employee has already used all 40 hours, we would still recommend giving the employee whatever time they need to address the emergency. and deal with the attendance issue later. No employer wants to defend a case where an employee's child was placed in danger because the employer would not allow the employee to leave work.

How have the changes in marijuana laws affected your clients?

GABLER: From a practical standpoint, the legalization of recreational marijuana created a need for substantial updates to the employer's substance abuse policy. Most drug and alcohol policies address unlawful drugs, alcohol, and prescription drugs. Marijuana, while still unlawful under federal law, is no longer an unlawful drug under California state law. Thus, policies must be re-written to incorporate this newly legal drug to ensure clear policy language. Nevertheless, despite the legalization of marijuana for medical or recreational use, California employers still need not permit employees to use or be under the influence of marijuana in the workplace (although medicinal use implicates the need to consider reasonably accommodating the employee with a leave of absence or other options until he can stop using marijuana). This naturally calls into question the issue of "what does it mean to be under the influence?" Alcohol provides an easy answer, as it may temporarily impair the employee and then quickly leaves the body. Marijuana can remain in the user's system for many weeks, creating positive test results long after the user is no longer discernibly impaired. We can expect to see litigation and future legislation on this issue, and employers must be sure to define "under the influence" in their substance abuse policies. Beyond these legal issues, there are hotly debated questions about the viability and efficacy of marijuana use (or derivatives thereof) for a variety of medical issues, and future legislation will have to consider where the use of marijuana may be more useful than detrimental.

ROSENBERG: This is a huge source of concern. Cannabis use remains a federal offense even in states like California where voters have legalized its medicinal and recreational use. Also, the new CA law specifically preserves the right of a company to insure that employees do not come to work under the influence and are not using, possessing or distributing the drug on company premises. However, there is no uniform drug testing standard for evaluating whether a person is impaired. And, since cannabis remains in a user's system and is detectable in a drug test weeks even after its ingestion, employers will have to work with local authorities and their drug testing labs to develop defensible standards for measuring impairment.

Which pay practices are most likely to result in a company being sued in a wage-hour class action?

GABLER: Class actions can arise from a wide variety of wage and hour violations, and every employer in California will have violations from time to time due to simple human error. The most common class action claims arise from meal and rest period violations. Claims for "off the clock" work, failure to properly itemize the paystub, failure to record all used or accrued paid time off, failure to pay overtime and the corresponding failure to pay minimum wage are common as well. To protect the company, the employer must develop clear, enforceable policies on wage issues, which demonstrates that the company was aware of the law and made every effort to enforce it. Claiming that the employee "chose" not to take a meal or rest break is risky; any employee can argue that they were too busy with work to be able to do so even if management though the break was "provided." Then, the employer must track compliance and take action on any violations. Courts have held that a company with no penalty payments to any employee at any time must be in violation of the wage and hour laws, because every employee misses a break or a meal period or fails to accurately record their time at some point. It is actually a better defense to record and pay for the occasional penalty, so that you can show the court that you are aware of the rules and any violations of those rules, and are fully prepared to pay the applicable penalty to the employee in the normal course of business.

ROSENBERG: Number one is off the clock work. Starbucks found out the hard way that asking employees to clock out before they are completely done working — even for a few minutes —can result in a huge liability. Number two is meal and rest breaks. Our Supreme Court clarified that rest breaks must be absolutely duty free. Employers may not require (or even ask) employees to remain on site or to remain on call in the event of an emergency. Number three is paystub deficiencies. Every paycheck must have the required data or the company faces a fine.

BENDAVID: The most common class action claims are the failure to provide proper meal and rest breaks; failure to properly pay overtime; misclassification (exempt/non-exempt or employee/independent contractor), reimbursement of expense claims, and corresponding claims for pay stub violations and waiting time penalties. Employers should regularly review their pay practices and ensure they are up to date with relevant law. Even well intentioned actions (e.g., letting employees have the flexibility to schedule lunches whenever they want) may result in claims for huge penalties. Though these may be defensible in the long run, the litigation costs are expensive and can be overwhelming.

Can an employer legally impose a rule barring the employment of job applicants with criminal records?

ROSENBERG: No. Employers in California with just 5 or more employees must comply with the State's "Ban the Box" law. This law prohibits these private employers from even asking a job applicant to disclose prior criminal convictions until after a conditional offer of employment is made. Where an employer wishes to delve into the applicant's criminal record and deny employment based upon that information, the employer must provide the applicant a mandated "fair chance process" which allows the applicant time to respond to the employer's concerns before filling the position. Employers in this situation must be prepared to show there is sufficient connection between the criminal offense and the applicant's intended job duties to justify revoking the job offer.

GABLER: A blanket prohibition against applicants with criminal records is unlawful discrimination, and the employer's ability to find out about criminal convictions in the hiring process is limited. As of January 1, 2018, California implemented the "Ban the Box" rule on a statewide basis with California Government Code Section 12952, preventing employers with five or more employees from including in their employment applications questions about criminal history, or inquiring about an applicant's criminal history during the initial interview stage, before a conditional offer of employment has been made. Even after a conditional offer of employment has been made, if an employer decides to deny employment based solely (or in part) on the criminal history, the employer must make an individualized assessment as to whether the applicant's criminal history has a direct adverse relationship on the specific job duties the applicant would perform. Employers may consider felony convictions only to the extent that the conviction is reasonably related to the job position, among other factors. For instance, applicants with felony child abuse convictions might be rejected for a preschool position, and applicants with felony embezzlement convictions might be rejected for an accounting position. On the other hand, applicants with felony DUI convictions could not reasonably be rejected for a job that does not involve driving on behalf of the company. If a conviction appears on a legitimate post-offer background check, employers must analyze whether the timing, nature, scope and outcome of the conviction are sufficiently relevant to the job position that the offer can be lawfully revoked.

BENDAVID: Both California and Los Angeles have passed "Ban the Box" laws that restrict employers from inquiring into, and making employment decisions based on, conviction histories of job applicants. Under the California Fair Chance Act, employers with five or more employees are prohibited from including on any application for employment, before the employer makes a conditional offer of employment, any question regarding the applicant's conviction history and inquiring into or considering the conviction history of applicants, until after a conditional offer of employment. If, following a conditional offer of employment, an employer conducts a background check and intends to deny a position due to its results, the law requires the employer to first conduct an "individualized assessment" of whether the applicant's conviction history "has a direct and adverse relationship with the specific duties of the job." If the employer answers in the affirmative, the applicant must then be given the opportunity to explain why the conviction should not bar employment. The City of Los Angeles has similar rules and procedural hoops that employers must follow before denying employment.

Are there new issues arising with immigration-related claims?

ROSENBERG: Yes. The Social Security Administration's "No-Match" letters are back after an eight year hiatus. Employers receiving one should consult with a legal expert before responding. Also, ICE is on a tear with stepped up workforce enforcement actions (i.e., "raids"). Also, new CA laws make it illegal for members of management and supervisors to threaten employees with deportation or reports to immigration.

What can employers do to remain current on the ever-evolving business and employment law trends?

BENDAVID: Employment law is one of the fastest evolving legal areas on the local, state and federal levels. It's critical that employers hire top-notch human resources professionals that have their finger on the pulse of this ever-changing legal landscape. These HR professionals should regularly attend seminars, read articles and blogs, and be aware of major pending court cases. It's also important for employers to regularly audit their company policies and practices with a skilled employment law attorney.

GABLER: First, work with qualified employment law counsel (not your CPA or corporate lawyer) to update the employee handbook and other human resource documents each year, and distribute those documents to employees. A fully compliant employee handbook serves as a risk management treatise for employers as well as a guide for employees. Second, attend the myriad of employment law seminars available today, both online and in person. New laws, cases and administrative opinions are released every week, and regular education is critical to keeping up with new laws and workplace trends. Ignorance of the law is not a valid excuse for employment law violations, and continuing education goes a long way toward protecting the workplace. Third, develop and maintain a relationship with a skilled employment law attorney to address ongoing workplace issues and disputes. Although the Internet has a wealth of information about employment law issues, much of it is inaccurate, overly generalized, inapplicable to California employers or inappropriate for your business. There is no substitute for solid legal advice from a trusted advisor who knows you and your company.