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Labor & Employment Roundtable 2021

What Business Owners and Executives Need to Know

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As the workplace continues to shift and change after the unpredictable events of the last year, the San Fernando Valley Business Journal has once again turned to some of the leading employment attorneys and experts in the region to get their assessments regarding the current state of labor legislation, what changes have come to the labor law landscape in light of the COVID pandemic, the new rules of hiring and firing, and the various trends that they have been observing, and in some cases, driving.

Here are 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 employment in 2021 – from the perspectives of those in the legal trenches of our region today.

Now that many employees are in the process of returning to work, what are some of the key issues that employers should consider?

HREN: Vaccination requirements are a top priority as we reopen our businesses. The United States Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing have suggested it is permissible to mandate vaccination, so long as employers make reasonable accommodations for those with religious objections or medical conditions prohibiting the vaccination. Nonetheless, there have been several lawsuits filed against employers who have mandated the vaccine. One lawsuit has already been thrown out by the court, but mandatory vaccine policies do not come without risk. Aside from the legality question, each company must decide whether a vaccine mandate is right for the organization. With a tight labor market, a vaccine mandate could result in valuable employees leaving (or not coming back) and create morale problems as employees are forced to choose between their personal beliefs and their jobs. For these and other reasons, thus far only a few of our clients have opted for a vaccine mandate.

BENDAVID: Most importantly – take steps to promote the health and safety of your employees. Employers should review and comply with the applicable orders and guidance from the State of California and local health departments related to COVID-19 hazards and prevention. Comply with the newly modified CAL/OSHA Emergency COVID-19 regulations and create and implement COVID-19 Prevention Plans. Among other things, the Cal/OSHA regulations specify when employees must use face coverings, what employee training should include, and when employees must be excluded from work, which varies depending on vaccination status.

GABLER: The first and most important issue to consider is whether the company is fully prepared to bring people back to work. Has the company prepared its COVID-19 Mandatory Prevention Plan, and is it updated for current circumstances? Has it been distributed to employees, and has the employer conducted its mandatory COVID-19 training? Does the company have a solid COVID-19 policy in place regarding the current status of face coverings, and does it have a supply of face coverings and respirators available to distribute to employees as needed? Once the workplace is prepared for the return of its workforce and all policies and procedures are in place, the company also must address interpersonal issues amongst employees. Remind employees that vaccination status, as with other medical circumstances and decisions, is private and confidential and employees may not question each other about their medical choices or opinions. Reiterate the company's anti-harassment, discrimination and retaliation policies, as well as the prohibition against bullying or abusive communications. Provide employees with the names and contact information for several members of the management team to whom they can raise complaints, and encourage employees to bring any issues to the attention of management rather than directly to each other. Remember as well that the pandemic has been difficult and stressful for everyone in one way or another, and has been deeply painful for those who were ill or have lost family and friends. Encourage employees to be gentle with themselves and with each other, and remind them to treat each other with respect and courtesy at all times.

Do you think remote and hybrid practices that companies were at first forced to apply are here to stay?

BENDAVID: Yes. Remote and hybrid practices are likely to continue for the foreseeable future, to at least some degree. Many employees consider remote work to be a work-related benefit. Some businesses may favor remote work due to its cost saving effects. One advantage of remote work models that will continue to incentivize employers is the ability to employ individuals from other states or even around the world, significantly expanding the pool of qualified candidates. However, employers should consider which laws apply to employees working in other jurisdictions, and whether employees can be properly managed when working remotely. Employers would also need to comply with relevant tax rules (i.e., employee withholdings, employer's contributions, etc.) in the respective jurisdictions. While both remote and on-site models have advantages, it is the employers' duty to make sure employment laws are followed – including those pertaining to reimbursement of work-related expenses, timely meal and rest breaks, recording of work time, and provisioning employees with the necessary tools and supplies needed to perform their jobs.

ROSENBERG: Absolutely. Employees have had 16 or more months to become accustomed to these flexible working styles and now demand it. Companies will have difficulty recruiting and retaining employees if they do not utilize some sort of remote or hybrid practices going forward.

GABLER: Prior to the onset of the COVID-19 pandemic, numerous companies took the position that remote work would limit productivity and was an ineffective way to conduct business. After being forced to implement remote work options for emergency purposes, many companies have discovered that remote work is not only viable, but may be desirable. Remote work can lead to greater productivity, foster positive employee morale, and improve employee satisfaction. It also can save substantial leasing and equipment costs for the company by allowing the company to downsize its physical space. When remote work is an option, companies also can expand their resources by recruiting out-of-area talent. Of course, remote work is not appropriate for all positions and may not be a success for all personnel. It should be evaluated on a case-by-case basis, and employers must document specific procedures and requirements to ensure its effectiveness. That said, it seems that the proverbial train has left the station, and remote work options may not be easily revoked in a post-pandemic world. Employers and employees alike have learned that remote work may offer substantial mutual benefits and is worthy of serious consideration.

Moving forward, what are some best practices for handling employee leave and accommodation requests related to COVID concerns?

GABLER: As with any other request for leave or accommodation, the first step in addressing a COVID-19 need is to request a medical certification of the employee's general condition, any workplace restrictions, and the anticipated duration of those restrictions (or, medical certification of caretaker status if applicable). This documentation is critical to the employee's health and safety as well as to the employer's legal protection. Next, hold an interactive discussion with the employee to review the nature of their request and brainstorm on possible accommodations or available leaves of absence. Document in writing the request made, the relevant conditions and circumstances, and the leave rights or accommodation options available to the employee. Distribute any necessary materials on applicable benefits, including state brochures and notices on leave benefits. Provide clear instructions and detailed information to the employee, and maintain ongoing contact with the employee regarding their status and available options. Contact your employment law counsel to discuss any questions about applying appropriate leaves and providing all required compensation and benefits to the employee.

BENDAVID: Employers should stay current with applicable rules and regulations to determine what leaves and accommodations employees may be entitled to. Senate Bill 95 expanded Supplemental Paid Sick Leave in California to include employers with 26 or more employees, with retroactive application to January 1, 2021. Los Angeles also provides additional paid sick leave related to COVID-19 vaccines. Some employees may be entitled to "exclusion pay" under CAL/OSHA's Emergency Temporary Standards, which require certain employees to be excluded from the workplace due to COVID-19 exposure. Also, there may be circumstances when a COVID-19 infection (of an employee or an employee's family member) entitles the employee to protected leave under CFRA/FMLA and/or state and local paid sick leave. Employers should document the time off to demonstrate compliance with these laws.

How should employers handle employee travel needs today?

HREN: At a minimum, employers should continue to follow all CDC travel guidelines. Additionally, employers may impose stricter restrictions such as requiring even vaccinated employees to quarantine after travel to an area where the infection rate is still high. If so, then employers should con-

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> -KATHERINE A. HREN

sider allowing employees to work remotely after returning from travel. Having a clear policy will help.

How should employers handle communication of a confirmed COVID case among employee populations?

BENDAVID: Employers should review applicable travel restrictions whenever employees need to travel for work. For example, for travel within or outside of California, both the California and Los Angeles County Departments of Public Health recommend travelers follow certain guidelines. Considering the recent lift of pandemic restrictions in California, there may be some concern over another surge of COVID-19 cases. Depending on the statistics and resultant restrictions in the coming months, employers should be mindful of future directives on travel. Similarly, if employees travel for pleasure, depending on vaccination status, they may need to be tested or excluded from work upon their return, e.g., if they develop COVID-19 symptoms. Relevant guidance is constantly changing and may be further updated.

GABLER: The medical status of an employee is confidential and private information. Employers may inform employees that a member of the workforce has tested positive for COVID-19, but may not disclose the name of the positive employee, even if workers already have this information on an informal basis. Employers should remind employees that discussion of any employee's medical condition is not appropriate. When informing staff of a positive COVID-19 case, employers should provide clear information about the protective measures taken to sanitize the workplace and protect employees from exposure, to reassure employees of their safety as much as possible under the circumstances. Remind employees that those believed to have been in direct contact with the positive case will be informed of the need to monitor themselves for symptoms, and unvaccinated persons who have been exposed to the positive case will be required to quarantine for 10 days after exposure.

Any suggestions for companies that want to encourage their employees to get vaccinated?

ROSENBERG: There are a lot of way to encourage employees to get vaccinated and the new Cal-OSHA standards require employers to do so. Companies should be training employees on the benefits of the vaccination and providing employees with useful information. Also, employers should remind vaccine hesitant workers that they will be paid for the time to get vaccinated, as well as any time off needed to recover from side effects of the vaccine. Finally, many employers have opted to offer a modest monetary incentive to get vaccinated, such a prize raffle or flat sum bonus or additional time off. However, companies must remember that any additional cash compensation provided to hourly employees must be factored into their rate of pay when calculating overtime pay.

BENDAVID: As a general matter, employers are required to provide effective training and instruction to its employees, including info regarding access to COVID-19 testing and vaccination, and about the effectiveness of the vaccine. Employers who want to encourage, and not necessarily mandate, vaccinations should consider ways of incentivizing employees with certain benefits, such as by providing an extra vacation day; free ridesharing services to and from vaccination appointments, etc. Employers should use caution in creating and implementing said benefits, as any employer policy or practice may not be used to harass or discriminate against employees or applicants based on protected categories, such as disability or religion.

GABLER: Companies that want to encourage employee vaccinations should consider offering incentives to employees to do so. Monetary incentives (such as vaccination bonuses) typically are the most attractive to employees, followed by additional time off work (such as providing vaccinated employees with an extra day of vacation). For those employees who are willing to be vaccinated but do not wish to take time off work or haven't bothered to set up an appointment, coordinating vaccination clinics in the workplace can be an effective tool to increase vaccination rates, particularly when the employee is paid for the time spent being vaccinated. Similarly, offering to allow employees to be vaccinated off site during working hours and compensating employees for their vaccination time and mileage can be helpful. Employers should discuss their vaccination incentive plans with employment counsel to address related wage and hour issues. For example, monetary vaccination benefits likely would be considered non-discretionary bonuses and may increase the applicable overtime rates in the relevant pay period.

What can employers expect from the California legislature in the second half of 2021 and moving into 2022?

BENDAVID: There are several telecommuting bills pending that may provide much needed flexibility and clarification for remote work situations. For example, Assembly Bill 513 aims to permit mailing of final wages to separating employees who work remotely. Senate Bill 657, which was presented to Governor Gavin Newsom on July 6, 2021, aims to permit employers to email required posters to remote employees. Another interesting bill is Assembly Bill 1028, which aims to enact the Telework Flexibility Act. Among others, this bill would permit a remote employee to ask for a flexible work schedule of up to 10 hours per day within a 40-hour workweek without overtime pay requirement, and to choose when to take any meal or rest breaks during the workday. Assembly Bill 1028 may not pass this legislative season, but we may see it in other forms in the future. Other interesting bills seek to expand protected time off. For example, Assembly Bill 95 would require covered employers to provide up to 10 business days of unpaid bereavement leave. Assembly Bill 1041 would include a "designated person" in the list of individuals an employee may take paid sick leave/family care leave to care for. It is unclear if these bills will move forward but they do signal a trend by the California Legislature to expand time off protections. Senate Bill 995 (which will not go forward this year but may in the future) goes a step further and seeks to increase the amount of paid sick leave provided under state law (from 24 hours or three days, to 40 hours or five days). We are also seeing a few bills aimed to scale back Private Attorneys General Act (PAGA) claims (Assembly Bill 385 and Assembly Bill 530), but unclear if these will move forward this year.

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

GABLER: Classification of workers as employees or independent contractors will continue to be a hot button issue after the substantial legislation in this area in 2020-21, and

correcting past errors (or failing to do so) likely will lead to an increase in misclassification cases. The 2021 changes to the California Family Rights Act (CFRA), applying the law to employers with five or more employees, created substantial additional burdens and requirements for thousands of employers previously unfamiliar with the CFRA. This has led to numerous employer errors in handling employee leave requests, all of which will subject employers to liability. We also can expect that employer errors in applying the flood of COVID-19 laws to employees in the workplace will lead to substantial litigation in the next few years. The federal Families First Coronavirus Response Act, Consolidated Appropriations Act 2021 and American Rescue Plan Act of 2021, as well as the state's California Supplemental Paid Sick Leave (CSPSL), AB 685 and SB 1159, imposed hundreds of pages of legislation covering numerous complex and rapidly-changing benefits and mandatory employee notice provisions. As employers focused on surviving the pandemic without entirely losing their businesses, mistakes made along the way will likely be the subject of future claims for loss of wages, benefits and employment status.

BENDAVID: In February 2021, the California Supreme Court in Donohue v. AMN Services, LLC ruled that an employer cannot "round" an employee's meal break times. The Court also held that time records showing noncompliant meal periods raise a rebuttable presumption of violations. The practical implications are that employers should review their time keeping practices moving forward and record meal breaks counting every minute no matter how slight. Wage and hour lawsuits, including regarding alleged meal and rest break violations, continue to cause grief for employers.

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.

ROSENBERG: Mediation works and in most cases proves to be a much better method of conflict resolution that going to court. Court statistics in Los Angeles show that fewer than 5% of all employment cases actually 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 and both sides become too committed to their positions. Because legal claims are costly to defend and time consuming, mediation can be a great escape valve allowing the company and the employee to move forward while minimizing the cost and hassle of the litigation process.

BENDAVID: Mediation can be a cost-effective alternative to litigation, as it can help resolve claims in far less time, often saving the employer energy and money. While not every attempt at mediation is guaranteed to be fruitful, the benefits of it as opposed to engaging in continuous litigation often outweigh the risks associated with mediation. An experienced mediator can evaluate the claims and defenses and provide objective insight about the factual as well as legal weaknesses to each side. Moreover, due to the mediator's unique position as a third-party neutral, a mediator can defuse many points of contention, thereby bringing them closer to resolution. A good mediator can also effectively communicate to both sides why settlement may be a more economical or better course of action, depending on the circumstances.

How do you advise clients regarding the implementation and enforcement of non-competes and other restrictive covenant agreements?

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.

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> -KAREN GABLER

BENDAVID: Non-compete agreements in California are generally unenforceable. With some exceptions, employers cannot lawfully restrict employees from engaging in a trade or business once they leave their job. This is considered against public policy. In light of that, employers should instead consider protecting themselves through strong confidentiality and trade secret agreements while implementing policies that safeguard company information, including limiting digital and physical access. Doing so will place the employer in a better position to protect itself against employees who improperly use such information, whether that is through a claim for breach of contract or for violation of the Uniform Trade Secrets Act.

HREN: I tell them to be very careful and to be sure any contemplated restriction is lawful. California law is extremely protective of employee mobility, so most "non-compete" agreements are unenforceable. However, the law also permits

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employers to vigorously protect proprietary and trade secret information by having employees sign agreements which prohibit them from taking, using or making unauthorized disclosure of the employer's confidential or trade secret information should they go to work for a competitor. The key is taking a proactive approach to identify what information is legally protectable, having employees sign an agreement that properly protects that information and the employer consistently enforcing those secrecy rules.

GABLER: There is no question that the arbitration process is substantially less expensive and far less burdensome than the civil litigation process. Arbitration can be half the cost and may take half the time of a civil litigation matter. Arbitration is beneficial to employees, who typically are the most personally impacted by an employment dispute and need rapid resolution of their complaints to avoid ongoing disruption to their lives and careers. Arbitration is also beneficial to employers, as an arbitration agreement can include a class action waiver and serves to avoid a jury trial where the outcome may be skewed by personal bias and subjective opinions instead of an in-depth analysis of the applicable facts and law. Ultimately, there is no question that efficient, expedient and meaningful resolution of disputes serves all parties, allowing everyone involved to put the conflict behind them and move forward in a more productive and peaceful manner. When parties are unable to resolve their conflicts informally or through mediation, arbitration is far more effective than civil litigation in reaching that productive and peaceful outcome as quickly and efficiently as possible.

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> -RICHARD ROSENBERG

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

BENDAVID: In deciding whether to use arbitration, employers should consider both the benefits as well as costs of arbitration. Arbitration can be a far faster process without public access, like in a court system. But arbitration also has its drawbacks, such as costs and challenges to appeal. Employers should also consider the benefits associated with class action waivers, while understanding that plaintiffs may still sue in court for wage and hour penalty claims under the PAGA. Before employers elect arbitration, a serious discussion on the issues should take place so the employer can make an informed decision that best fits its needs and circumstances.

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

BENDAVID: One of the most frequent mistakes employers continue to make is failing to document disciplinary action and circumstances leading up to such discipline. The uncomfortable result is that in the event of legal action, many facts surrounding the issue become "he said she said." Also, sometimes employers mistakenly use protected absences as grounds for discipline, including termination. For example, if an employee is disciplined due to unsatisfactory attendance, an employer should rely only on unprotected time off. This also means that when employers do document disciplinary action, they must do so after careful examination of which particular attendance issues are listed as reasons for the disciplinary action.

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 itself 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, improve, and 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 the relationship doesn'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.

What effect does the increasing number of millennials have on a company's approach to employee relations?

ROSENBERG: With multi-generational workforces being a fact of life, it is imperative for employers to understand how the needs and objectives of the various generations differ. With employee turnover being so expensive, it is critical for businesses to find the currency that will best motivate each group of employees. Employers saw that big time with how quickly many in the younger generation embraced (and caused employers to react to) the "Me Too" movement, issues of gender equity, LBGTQ rights, parental and family leave and racial justice issues. Smart companies are responsive to these needs and devise policies and workplace practices that address the unique needs of each generation of workers they employ.

BENDAVID: Every generation has its own expectations of the workplace. While it is safe to say that every generation appreciates fair treatment in the workplace, studies suggest that many employees today value flexible schedules. Current technology advancements (and COVID-19) demonstrate that this is readily achievable in many workplaces, even those that did not practice remote work situations pre-COVID-19.

What are the key differences to consider when a potential team-member is either an employee or an independent contractor?

GABLER: Properly classifying a worker as an employee or independent contractor has always been important, but has become even more critical in light of the California Supreme Court's 2018 Dynamex decision creating the three-part "ABC Test" to determine whether a worker is an independent contractor, and AB 5 (effective January 1, 2020), in which the legislature codified the Dynamex ABC Test and added a complex analytical process not only to the determination of whether a worker is a valid contractor, but which legal test should be applied to make that decision. Employers should consult with employment law counsel to properly analyze a worker's status given the complexity of the current legislation. A worker's "independence" or lack of supervision

does not guarantee contractor status, nor is the worker's preference relevant to the legal requirements. In general, a contractor typically has the right to set its own work schedule and hire its own staff. The contractor pays its own expenses, and invoices the company for services rendered, without using company payroll. The contractor pays its own taxes and maintains its own insurance. The contractor offers its services to the public, and has the right to work with other clients of its choosing (provided there is no conflict of interest or competition) The contractor does not typically work at the client's office, nor does it have a telephone number or email address at the company. The contractor does not have business cards from the company, and is not on the company's website. The contract is not supervised and does not supervise others at the company. The contractor's performance is not evaluated (other than to determine the client's level of satisfaction with the work provided), and is not subject to disciplinary action. These are only a few of the more common elements of contractor status, but each working relationship must be carefully evaluated to ensure proper classification.

> Given the overwhelming changes that came about as a result of COVID-19, employers should consider retaining a legal team that actively tracks legal trends and updates on the local, state, and federal level.
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> -SUE M. BENDAVID

BENDAVID: Considering Assembly Bill 5, which codified the Dynamex "ABC" test, coupled with the recent holding in Vazquez v. Jan-Pro Franchising International, Inc., making the application of Dynamex retroactive, companies should think twice before classifying workers as independent contractors. First, take a look at the ABC test and the various exemptions as now set forth in Assembly Bill 2257. Can you satisfy the burdens placed on you, as the hiring entity, that the worker truly qualifies as an independent contractor? If not, then consider classifying the worker as an employee, or stand ready to face misclassification lawsuits or tax /state audits and citations. Employers should seriously consider retaining a legal team to advise them on future classification of workers in an effort to avoid litigation.

How can employers remain current on the ever-evolving employment law trends?

HREN: Read our client bulletins, join industry associations and invest in a good Human Resources executive charged with the responsibility for legal compliance. Gone are the days when you can go it alone. Labor law compliance is way too complicated and nuanced to get your answers from the Internet. We are defending several lawsuits right now that arose from an employer following advice gleaned from the Internet instead of consulting a labor law expert.

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.

How does a law firm specializing in labor and employment differentiate itself from the competition in 2021?

ROSENBERG: The key ingredients are having lawyers who are attuned to: (i) taking the time to really know the client, their business, their needs and their goals and the client's industry; (ii) having a mindset of being a deal maker, not a deal breaker; and (ii) charging a fair fee for your services. Also, if you are going to trial, hire someone who's been there often and has a track record of success. There are lots of lawyers who are well versed in the basics, but with so few cases actually getting to trial, very few employment lawyers have substantial trial experience.

GABLER: To be truly effective, it is not enough to be an employment law expect or to provide quality legal advice (although both are critical). Business owners should want and expect their employment law counsel to be an external team member of the organization, working closely with management to develop the most productive and efficient workforce as well as protecting against legal violations and resolving employee disputes. A law firm should invest in its clients' business needs and goals, rather than merely serving its own interests. As an example, in 2009, LightGabler began providing monthly complimentary seminars, designed to provide ongoing guidance along with tips and strategies to ensure legal compliance. When the pandemic prevented in-person events in 2020, LightGabler transitioned to monthly webinars, speaking to over 1,000 attendees each month on a variety of topics, including tips for navigating the rapidly-evolving landscape of COVID-19 issues and laws. By actively investing our time and resources into our clients' businesses, we gain a deeper understanding of how we can best serve their needs when thornier issues arise, and we can share in the joy of their successes as much as we do our own.

BENDAVID: Considering the fact that Los Angeles is home to a significant number of law firms, it can be difficult to find trusted legal advisors. Business owners should look for attorneys with a good reputation for providing valuable counseling and cost-effective courses of legal action. Given the overwhelming changes that came about as a result of COVID-19, employers should consider retaining a legal team that actively tracks legal trends and updates on the local, state, and federal level. Aside from the fact that we have a large employment law practice equipped to deliver quality services to employers, our firm is also a one-stop law firm for business, with team members who practice in corporate, franchise, real estate, intellectual property, tax, and other business areas.