



# COMPLIANCE IS KEY

## 2019 Employment Update

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# *CONNOR V. FIRST STUDENT, INC.*

SIGNIFICANCE: EMPLOYERS ARE NOW MORE LIKELY TO NEED WRITTEN AUTHORIZATION FOR BACKGROUND CHECKS.

Employers must comply with both the CCRAA (Consumer Credit Reporting Agencies Act) and ICRAA (Investigative Consumer Reporting Agencies Act) for background checks looking into employee credit worthiness and character.

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People Netw



# AB 2282- INQUIRING ABOUT SALARY HISTORY

## SALARY HISTORY?

Background: AB 168 prohibits employers from asking applicants about their salary history.



- ✓ The AB 168 salary history ban only applies to external applicants.
- ✓ Applicants can voluntarily disclose salary history and, if they do, employers can rely on that information.

# SB 1412 CRIMINAL HISTORY INQUIRIES



- ▶ Amendment to Cal. Labor Code section 432.7.
- ▶ Narrows the circumstances under which employers may ask about, look into or consider criminal convictions of an applicant or employee.
- ▶ There are now greater restrictions on when an employer may conduct a criminal history inquiry.

# Independent Contractor



# Or Employee

*DYNAMEX  
OPERATIONS  
WEST  
V.  
SUPERIOR  
COURT*

This case establishes the test to qualify a worker as an independent contractor versus an employee, making it more difficult to classify a worker as an independent contractor.

## *Alvarado v. Dart Container Corp. of CA*

In calculating an employee's "regular rate of pay" for purposes of calculating his/her overtime pay, the correct calculation requires the employer divide the employee's flat-sum bonus by the total number of non-overtime hours worked during the pay period.





*TROESTER V. STARBUCKS  
CORPORATION*

The FLSA “*de minimis* exception” is not recognized under California law.

*SIGNIFICANCE:*

CALIFORNIA EMPLOYERS MUST COMPENSATE EMPLOYEES FOR ROUTINELY WORKING OFF THE CLOCK, EVEN FOR SMALL AMOUNTS OF TIME.



# *HUFF V. SECURITAS SECURITY SERVICES USA, INC.*



Employees may bring suits under PAGA for Labor Code violations not personally affecting them.

**SIGNIFICANCE:** EMPLOYERS MAY SEE LARGER CLAIMS IN PAGA SUITS.



# ENCINO MOTORCARS, LLC V. NAVARRO



Rejecting the narrow interpretation principle for FLSA exemptions, the Court found service advisors at car dealerships are exempt employees.

SIGNIFICANCE: IT COULD BE MORE DIFFICULT FOR EMPLOYEES TO SUCCESSFULLY ARGUE THEY ARE NON-EXEMPT.

# TIP POOLING



A change in federal law permits tip pooling with back-of-the-house employees who are not directly engaging with customers.



# AB 2605

## On-call rest breaks in the petroleum industry

- ▶ Unionized workers in safety-sensitive positions may be required to remain on call during their rest breaks.
- ▶ This bill provides industry-specific exception to a recent California Supreme Court ruling that held employees cannot be required to remain on call during rest breaks.





# *EPIC SYSTEMS CORP V. LEWIS*

SEE YOU IN

~~Court~~

Arbitration

An employer can require, in its arbitration agreement, that an employee waive his/her right to class or collective class action and arbitrate claims on an individual basis.

*This case did not address representative actions under PAGA!*

# SB 1123: Paid Family Leave Uses

- ▶ Expands the program to provide paid family leave benefits to employees who take time off for reasons associated with being called to active duty, beginning January 1, 2021 .







# Changes Ahead

## SB 1300: FEHA AMENDMENTS

- ▶ Policy declarations that greatly soften the standard plaintiffs must meet in proving unlawful harassment.
- ▶ Employers are liable for ANY harassment by non-employees that violates FEHA when the employer knew of the harassment and failed to take action.
- ▶ Greatly limits employer defendant's ability to recover attorney fees even when they prevail in a harassment case.
- ▶ Makes it unlawful for employer to require an employee to release FEHA claims or agree not to disclose unlawful workplace activity in exchange for a bonus, raise, or continued employment.
- ▶ Authorizes employers to provide "bystander intervention training."

**SIGNIFICANCE:** Expands the circumstances under which an employer may be liable for harassment, makes it more difficult for the employer to defend against a harassment claim or resolve it at summary judgment, and makes it unlikely the employer can recover attorney fees even if it prevails in a harassment case.





## SB 224: Types of Relationships Subject to Sexual Harassment Claim

- ▶ Expands the types of relationships that can be subject to a claim for sexual harassment to include lobbyists, elected officials, directors, producers, and investors.

SB 820

## SETTLEMENT OF SEXUAL HARASSMENT CLAIMS



sexual harassment

- ▶ Prevents employer from including provision(s) in a settlement agreement prohibiting employee from disclosing information pertaining to claims.
- ▶ A settlement agreement may, however, include a provision preventing parties from disclosing the amount of the settlement.
- ▶ A settlement agreement may also include a provision limiting disclosure of the claimant's identity, at the claimant's request.



## AB 3109

### Disclosure of Sexual Harassment

- Voids any settlement preventing party from testifying about criminal conduct or sexual harassment in an administrative, legislative, or judicial proceeding.

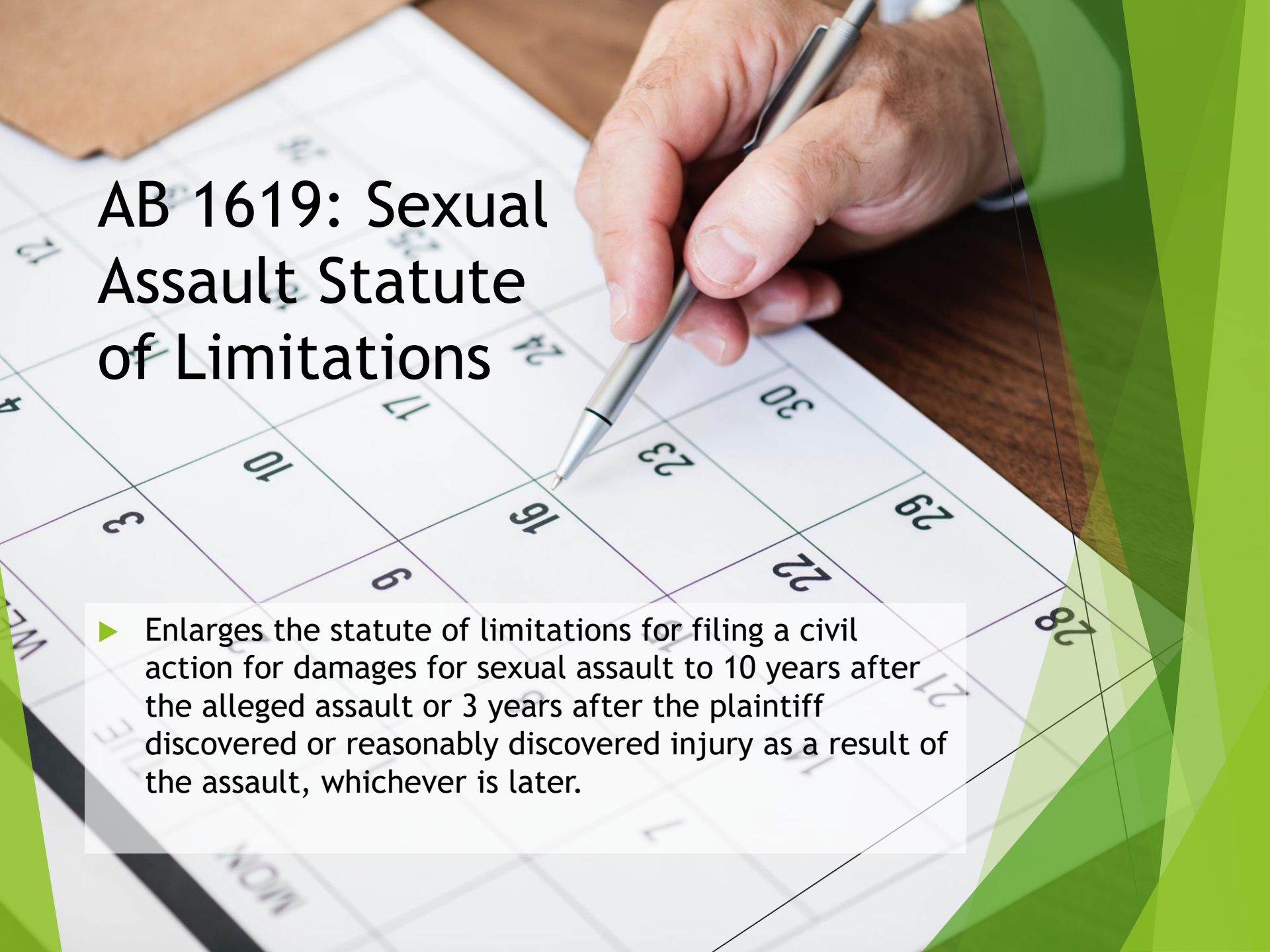






## SB 1343 Sexual Harassment Training

- Employers with 5 or more employees required to provide training to both supervisory and non-supervisory employees.
- Requires the DFEH to develop and post training materials for employers to use for these purposes.

A close-up photograph of a hand holding a silver pen, pointing at a date on a calendar. The calendar is a standard grid with numbers 1 through 31. The hand is positioned over the number 16. The background is a wooden desk. The image is overlaid with a green geometric design on the right side.

# AB 1619: Sexual Assault Statute of Limitations

- ▶ Enlarges the statute of limitations for filing a civil action for damages for sexual assault to 10 years after the alleged assault or 3 years after the plaintiff discovered or reasonably discovered injury as a result of the assault, whichever is later.



**THEN**



SB 826

# GENDER COMPOSITION OF BOARD OF DIRECTORS

Inclusion of women  
on a corporation's  
Board of Directors  
is mandatory.

**NOW**





# AB 1976: Lactation Accommodation

- ▶ Amends Labor Code section 1031.
- ▶ Must provide reasonable amount of break time and the use of a room or other location (other than a bathroom) in close proximity to the work area for an employee desiring to express breast milk for their infant child.



# REGULATIONS ON NATIONAL ORIGIN - EFFECTIVE JULY 2018



“National Origin,” for the purposes of discrimination law, now includes the following:

- ✓ Physical, cultural or linguistic characteristics associated with a national origin group.
- ✓ Tribal affiliation.
- ✓ Attendance or participation in schools, churches, temples, mosques or other religious institutions.


# REGULATIONS ON ENGLISH-ONLY POLICIES

New regulations prohibit employers from adopting an English-language-only policy unless the following criteria are met:

- (A) The language restriction is justified by business necessity;
- (B) The language restriction is narrowly tailored; and
- (C) The employer has notified employees of the circumstances in which the language restriction is observed and the consequence for violations.



# United States v. California (E.D. Cal. 2018)

- 
- ▶ Private sector employers may no longer be prosecuted for:
    - ▶ Consenting to federal immigration enforcement agents' request to enter nonpublic areas in the workplace
    - ▶ Granting federal immigration enforcement agents access to employee records
    - ▶ Re-verifying an employee's eligibility to work in the United States

We the People of the  
United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence,  
promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do hereby establish this Constitution for the United States of America.

*JANUS*

*v.*

*AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31*

HOLDING: Requiring public employees to pay agency fees or other union dues **VIOLATES** the First Amendment.



# NLRB GENERAL COUNSEL EMPLOYEE HANDBOOK GUIDANCE

## SIGNIFICANCE:

WORKPLACE RULES ARE NOW  
LESS LIKELY TO BE FOUND  
TO VIOLATE THE NLRA.



## EXAMPLE:

WORKPLACE RULES ARE NO LONGER UNLAWFUL BECAUSE THEY *COULD*, RATHER THAN *WOULD*, COVER PROTECTED ACTIVITIES.



# CATEGORY ONE RULES

1. Do not prohibit or interfere with NLRA rights; or
2. If there is any burden on NLRA rights, it is outweighed by business justifications.



THESE RULES ARE  
GENERALLY  
CONSIDERED LAWFUL.

## CATEGORY TWO RULES

These rules require a case-by-case determination:

- ▶ This determination requires an analysis of whether the rule would interfere with NLRA rights.
- ▶ If so, is that interference outweighed by legitimate justifications?

**SIGNIFICANCE:** EMPLOYERS MAY NOT ADOPT RULES LIMITING NLRA RIGHTS.



# CATGEGORY THREE RULES



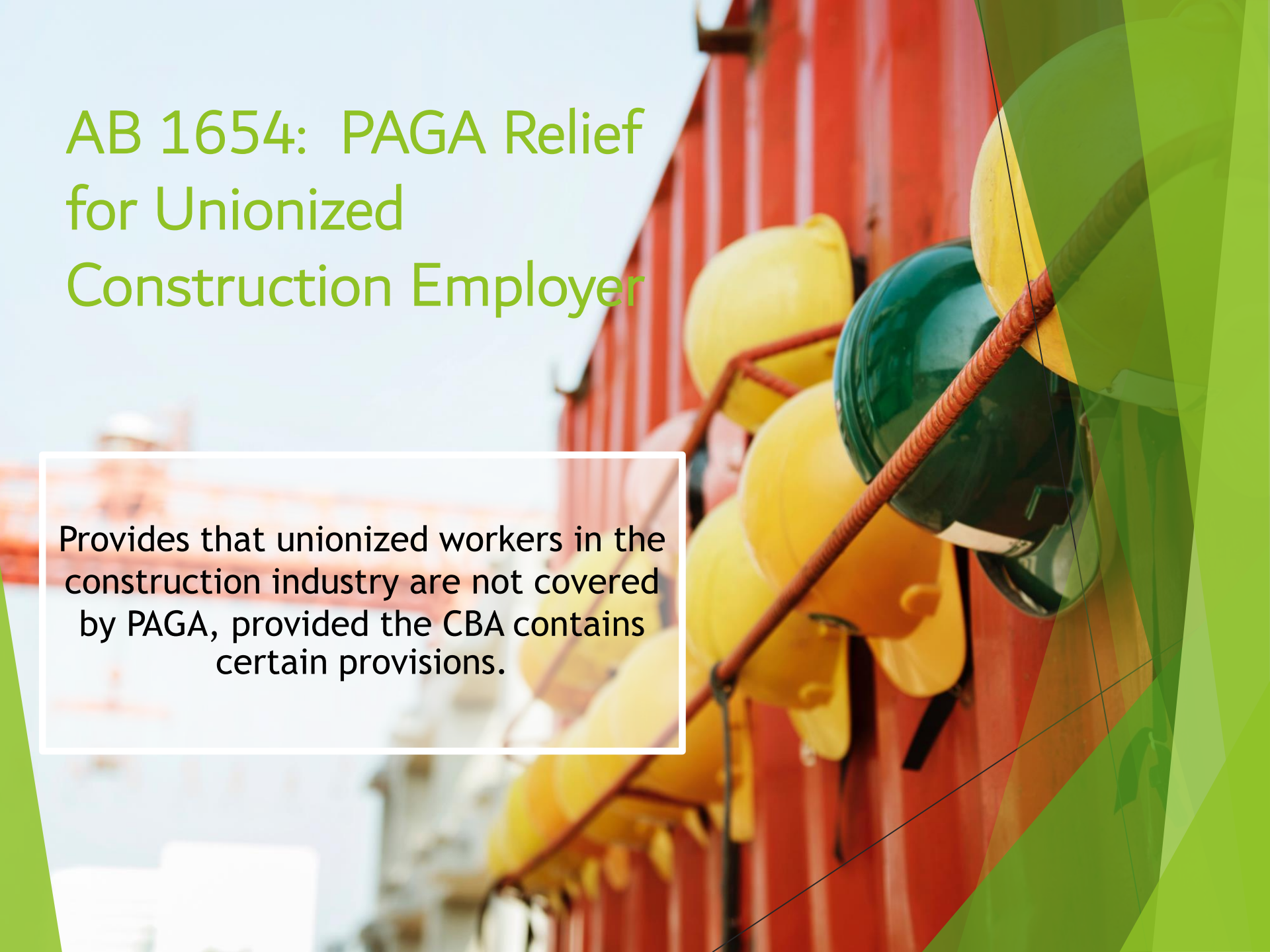
## RULES CONSIDERED TO VIOLATE THE NLRA:

- Confidentiality rules specifically regarding wages, benefits or working conditions.
- Rules against joining outside organizations or voting on matters concerning the employer.



# AB 1654: PAGA Relief for Unionized Construction Employer

Provides that unionized workers in the construction industry are not covered by PAGA, provided the CBA contains certain provisions.



# NEW HUMAN TRAFFICKING BILLS

AB 2034

Applies only to passenger rail, light rail, or bus station employees.



Stop  
Human  
Trafficking



AB 970

Applies only to hotel and motel employees.



✓ NEW LAW REQUIRES TWENTY MINUTES OF SPECIALIZED TRAINING.





# SB 1252

## Copy of Payroll Records

|           |           |           |           |           |
|-----------|-----------|-----------|-----------|-----------|
|           |           |           | <b>1</b>  | <b>2</b>  |
| <b>5</b>  | <b>6</b>  | <b>7</b>  | <b>8</b>  | <b>9</b>  |
| <b>12</b> | <b>13</b> | <b>14</b> | <b>15</b> | <b>16</b> |
| <b>19</b> | <b>20</b> | <b>21</b> | <b>22</b> | <b>23</b> |
| <b>26</b> | <b>27</b> | <b>28</b> | <b>29</b> | <b>30</b> |

- ✓ When payroll records are requested by an employee, the employer must provide copies within 21 days.

| PAYROLL (MANUFACTURING) |     |           |
|-------------------------|-----|-----------|
| Emp No.164              | 23  | \$20,289  |
| Emp No.165              | 21  | \$18,555  |
| Emp No.166              | 65  | \$56,703  |
| Emp No.171              | 51  | \$44,565  |
| Emp No.172              | 654 | \$567,366 |
| Emp No.173              | 65  | \$56,703  |
| Emp No.174              |     | \$36,366  |

PAYROLL

