

# RECRUITING & MAINTAINING A MORE DIVERSE WORKFORCE



Palmer Kazanjian Wohl Hodson, LLP 2023  
(916) 442-3552 | [www.pkwhlaw.com](http://www.pkwhlaw.com) | Facebook/LinkedIn: @palmerkazanjian



**Larry Kazanjian, Esq.**

# Palmer Kazanjian

Palmer Kazanjian Wohl Hodson LLP Attorneys

- FOUNDED PARTNER OF PALMER KAZANJIAN WOHL HODSON LLP
- 25+ YEARS' EXPERIENCE ADVISING EXECUTIVE MANAGEMENT, IN-HOUSE CORPORATE LEGAL COUNSEL, LABOR RELATIONS ADMINISTRATORS, AND HUMAN RESOURCE PROFESSIONALS
- MEMBER OF THE LABOR AND EMPLOYMENT LAW SECTIONS OF THE STATE AND COUNTY BAR ASSOCIATIONS
- UNIVERSITY OF THE PACIFIC, MCGEORGE SCHOOL OF LAW

# MERRIAM-WEBSTER DEFINITION OF DIVERSITY

## Dictionary

### Definition

Synonyms

Example Sentences

Word History

Related Articles

Entries Near

Show More ▾

## diversity **noun**

di-ver-si-ty (dē-ˈvər-sə-tē) dī-

**plural diversities**

[Synonyms of diversity >](#)

- 1 : the condition of having or being composed of differing elements : **VARIETY**  
*especially* : the inclusion of people of different races (see [RACE](#) entry 1 sense 1a), cultures, etc. in a group or organization  
| programs intended to promote *diversity* in schools

# BUSINESS CASE FOR DIVERSITY



- McKinsey Report shows financial **outperformance** of diverse vs. non-diverse companies has been increasing over the past decade
- Diversity benefits **performance, innovation, and productivity**
- According to Glassdoor, 76% of job seekers report a diverse workforce being an important factor in evaluating companies and job offers

# EMPLOYER EEOC OBLIGATIONS

## Employers are covered by both federal and state EEO laws

- These laws protect individuals from discrimination and harassment on the basis of:
  - Race or Color - Title VII and the Fair Employment and Housing Act (“FEHA”)
  - National Origin - Title VII and FEHA
  - Sex - Title VII and FEHA
  - Physical or Mental Disability - Americans With Disabilities Act and FEHA
  - Medical Condition - FEHA
  - Age - Age Discrimination in Employment Act and FEHA
  - Religion - Title VII and FEHA
  - Genetic Information - Genetic Information Nondiscrimination Act and FEHA, and
  - Many other protected bases



# CALIFORNIA EQUAL PAY ACT

## LABOR CODE SECTION 1197.5 AND 432.3

- California's Equal Pay Act requires equal pay for employees who perform "substantially similar work," when viewed as a composite of skill, effort, and responsibility
- Prohibits race or ethnicity based wage differences
- It does not require employees being compared to work at the same establishment
- Labor Code Section 432.3 Prohibits employers from seeking salary history
- Employers must justify differences in pay for substantially similar work by showing: seniority; merit; a system that measures production; or a "bona fide factor other than sex, race or ethnicity"

# AFFIRMATIVE ACTION - CALIFORNIA

- California banned affirmative action in government employment and public universities by passing Proposition 209 in 1996.
  - Last voted on in 2020 with Proposition 16, which was defeated with 57% of voters against Affirmative Action.
  - Nine other states have banned Affirmative Action: Arizona, Florida, Idaho, Michigan, Nebraska, New Hampshire, Oklahoma, and Washington.
- Private Employers may use affirmative action measures in the workplace, so long as they comply with Title VII and FEHA.
  - The plan must be temporary
  - There must be a historic factual basis of discrimination
  - The plan cannot be at the expense of employees who do not benefit directly
    - Can't fire a current employee to replace them with a minority
- Federal Case to Look Out For: *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina* expected to be decided by the US Supreme Court in June 2023

# AVOIDING REVERSE DISCRIMINATION IN HIRING

## Reverse Discrimination:

- Unfair treatment or bias exercised against a person or class for the purpose of correcting a pattern of discrimination against another person or class.
- Example: Majority groups are discriminated against in an effort to equalize minority groups.
- Actionable and legitimate claim.
- Diversity efforts are not meant to exclude qualified candidates, rather to increase the size of the candidate pool to include more diverse applicants





## PRACTICES TO AVOID

- Do not interview, hire, promote, etc. to fill a specified quota
- Do not disparage members of a certain group
- Do not state that a position is only for members of a certain group
- Do not discharge employees for the purpose of diversity



# EFFECTIVE DIVERSITY EFFORTS



“Diversity Has Become a Booming Business. So Where Are the Results?”

Pamela Newkirk, Time. October 2019.

- Diversity Efforts have been slow
- Has to be more than a “feel-good exercise”
- More than just trainings, need strategic action

<https://time.com/5696943/diversity-business/>

# RECRUITING STRATEGIES TO ATTRACT DIVERSE CANDIDATES

## JOIN OUR TEAM



### Strategies:

- Set a Goal and Track Progress
- Communicate your commitment to diversity
- Get involved with your community
- Prepare Recruiters for DEI Questions
- Use Standardized Interview Questions
- Update Job Descriptions to remove biased wording
- Encourage diverse employees to help with recruiting

# RECENT TECH LAYOFFS



## Takeaways:

- Tenure-based layoffs are “facially neutral” but may have disparate impact
  - Instead, focus on performance and overall value to the organization
- Before committing to layoffs, analyze whether a particular group is being more affected than others
  - Could indicate an issue in decision process

[Layoffs Hitting Diversity Roles Show 'Some CEOs Weren't Committed'](https://www.businessinsider.com) (businessinsider.com)

# SB 1162: THE PAY TRANSPARENCY FOR PAY EQUITY ACT

- Employers with 100+ employees must submit pay data report to Civil Rights Department
- EEO-1 is not a valid substitute
- Employees hired through labor contractors also subject to separate pay data report
- Report must include median and mean hourly rate for each combination of race, ethnicity, and sex within each job category
- Employees may request pay scale for their currently position
- Employers with 15+ employees must include pay scale in job postings and keep record of job title and wage rate history



[This Photo](#) by Unknown Author is licensed under [CC BY](#)

# WHAT ABOUT THE CPRA?

- The California Privacy Rights Act (CPRA) went into effect January 1 of 2023 and regulates compliance of employee data
- This removed the California Consumer Privacy Act (CCPA) Employee Exemption
  - Now employers have to handle employee data with the same protections it does of consumer data
  - This includes changes to how employers collect, disclose, use, share, and sell employee data
- Sensitive Personal Information under the CPRA includes many diversity characteristics such as racial or ethnic origin, religious beliefs, health, and sexual orientation
- So the question is: How do employers handle these new requirements while trying to promote diversity in their workforce?



# SUMMARY

- Diversity has many business benefits
- Implementing an effective Diversity program requires action
- Employers need to be careful when implementing Diversity actions
- Employers need to ensure they are in compliance with SB 1162 (EEO-1 is not enough)
- Remember, the purpose is to increase access, not discriminate!





QUESTION & ANSWER?





**Palmer Kazanjian  
Wohl Hodson LLP,**  
2277 Fair Oaks Blvd.,  
Ste. 455,  
Sacramento, CA 95825

916.442.3552

[www.pkwhlaw.com](http://www.pkwhlaw.com)

Facebook/LinkedIn:  
[@palmerkazanjian](#)



# CONTACT INFORMATION