



A NEWSLETTER FROM COLEMAN & HOROWITT, LLP, ATTORNEYS AT LAW
REPRESENTING BUSINESSES AND THEIR OWNERS

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COLEMAN & HOROWITT, LLP ADDS NEW ATTORNEYS

Those who follow this newsletter know that Coleman & Horowitz, LLP adds new lawyers when the addition adds value to our clients. With the need for experienced estate planning lawyers growing, we are pleased to announce the addition of **Linda K. Durost** and **Brandon A. Hamparzoomian**.

Linda K. Durost joins the firm as Senior Counsel and will work out of the firm's Fresno office. She is a graduate of San Joaquin College of Law. Prior to joining the firm, she was the owner of Linda K. Durost, Inc., and prior to that time, was an attorney at the Fresno firm Perkins, Mann & Everett. Linda will continue to represent clients in business and estate planning, wills trusts and probate, as well as business

and real estate transactions. She can be reached at ldurost@ch-law.com.



Brandon A. Hamparzoomian joins the firm as an associate attorney in the firm's Fresno office. Brandon is a graduate of California State University, Fresno

and received his law degree from San Joaquin College of Law. He will work in the firm's transactions group and represent clients in business and real estate transactions, estate planning, wills, trusts and probate. He can be reached at bhamparzoomian@ch-law.com.

REVIEW OF NEW EMPLOYMENT LAWS

By Gregory J. Norys

The California Legislature and Governor Brown were once again busy in 2017 passing a number of new laws that further burden employers' ability to conduct business in California. This article breaks down new laws that went into effect January 1, 2018 and provides suggestions on how employers can comply with the new laws. The new laws fit into three categories:

1. Changes to Employment Application
2. Changes to Employee Benefits
3. Changes to Management Training

1. Changes to Employment Application

Equal Pay - Elimination of Salary History (AB 168):

AB 168 prohibits all employers from seeking salary history information about an applicant for employment including any benefits and other compensation information from previous employment and requires an employer to provide the pay scale for a position to an applicant upon reasonable request. However, nothing in Labor Code 432.3 prohibits an

applicant from voluntarily disclosing salary history to a prospective employer. If an applicant voluntarily provides salary history, then an employer can use that information for salary consideration.

Employers should consider implementing the following in their interviewing process to comply with the new law:

- a. Revise applications removing questions that could seek salary history information (i.e., compensation and benefits).
- b. Revise hiring policies and procedures and interview/screening guidelines to ensure compliance with the new law.
- c. Train all personnel involved at any stage of the hiring process to ensure they understand the new law and that they are not to seek salary information or benefits from applicants.
- d. Prepare a set of “pay scales” for the position the employer is hiring to fill.

Ban the Box - Employment Discrimination Conviction History (AB 1008):

AB 1008, popularly known as a “ban the box” law, prohibits an employer, with certain exceptions, from inquiring about or considering a job applicant’s criminal conviction history prior to a conditional offer of employment, and sets requirements regarding the consideration of conviction histories in employment decisions. The intent of the new “ban-the-box” law is to prohibit employers from making hiring decisions based on the criminal conviction records of an applicant. The new law is very onerous on employers who decide not to hire an employee based on prior felony convictions.

How can employers comply with this law?

- a. Revise paper and online employment applications to remove “boxes” or questions which seek criminal conviction information from applicants.
- b. Review interview guidelines and hiring processes to ensure compliance with the law; and train managers, hiring, and recruiting personnel to not seek or rely on conviction history before a conditional offer of employment is made.
- c. Adopt procedures to comply with the individualized assessment and “fair chance” process requirements.

2. Changes to Employee Benefits

Increases in Minimum Wage

Effective January 1, 2018, the California minimum

wage is increasing. For employers with 25 employees or less, the minimum wage will increase to \$10.50 per hour. For employers with 26 or more employees, the minimum wage will increase to \$11.00 per hour.

New Parent Leave Act (SB 63)

SB 63, the “New Parent Leave Act,” extends CFRA rights to employees working at locations with at least 20 employees (expanded from employers with 50 or more employees). The same eligibility requirements apply when considering whether an employee is entitled to job protected unpaid family leave. The purpose of the leave is to allow an employee time to bond with a new child within one year of the child’s birth, adoption or foster care placement.

How can employers comply with this law?

- a. Promptly update employee handbooks and personnel policies.
- b. Create or update leave request forms and notices with respect to the new leave rights, reinstatement guarantee, and other requirements.
- c. Provide training to human resource employees and managers about the new leave rights and obligations.

Immigration Worker Protection Act (AB 450) - No ICE Raids without a Warrant:

AB 450, “the Immigration Worker Protection Act”, prohibits employers from allowing federal immigration enforcement officials to access non-public areas of a work place without a judicial warrant. The Act also prohibits an employer from voluntarily allowing an immigration enforcement agent to access, review or obtain employee records without a court order or subpoena. The Act provides very narrow exceptions to this prohibition. If employees are to be subject to an agency’s inspection, the Act requires employers to provide sufficient notice that must also meet specific content requirements in order to be compliant.

3. Changes to Management Training

Anti-Harassment Training (SB 396)

SB 396 requires harassment training on gender identity, expression & sexual orientation, and adds to the categories within the California Fair Employment and Housing Act (FEHA) which prohibits the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer’s knowledge.

How can employers comply with this law?

- a. Employers should be certain to update their sexual harassment training to include information regarding gender identity, gender expression, and sexual orientation.
- b. Also, the new poster needs to be posted in your workplace by January 1, 2018.

The enactment of any new laws that affect your business are always a good time to review your employment manuals to confirm whether or not they are up to date. It is important for you to also make these changes known to your management so they implement the new standards in a timely manner. Doing so now may help you avoid a lawsuit in the future.

Gregory J. Norys is a partner with Coleman & Horowitz, LLP and manages the firm's Visalia office. He represents clients in labor and employment matters, including training, counseling and litigation and also represents clients in commercial, business, real estate, banking, construction, landlord-tenant and professional liability defense litigation. If you have any questions, Greg can be reached at



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HOW TO EFFECTIVELY USE OUTSIDE COUNSEL WHEN YOU NEED A PART-TIME GENERAL COUNSEL

As small businesses grow, the need for legal advice to protect the business and help continue the growth increases. Unlike larger businesses, a small business may not have the resources to hire a staff attorney - aka, in-house counsel.

Large corporations have long understood the benefit of having in-house counsel. It has, in fact, been a trend over the last 10 to 15 years that in order to reduce the cost of outside lawyers, corporations are creating larger legal departments to handle most, if not all, of their legal needs. Outside counsel are used sparingly, generally for certain litigation and specialty areas where it is more cost-efficient. When you are a large corporation, resources exist to fund a legal department. Although a small business may not have the resources available to maintain their own legal department, the need for good legal advice and guidance remains.

Fortunately, growing businesses have options. Here are some ways to minimize your legal expenses while getting the legal advice you need:

1. Establish a relationship with an attorney who understands you and your business: Not all lawyers understand the needs of businesses and their owners. Take time to find one that has experience representing businesses and understands you and your business.
2. Investigate the attorney. Most state bar websites allow you to check whether an attorney is licensed in the state and to determine if the attorney has been disciplined (and, if so, the nature of the offense and the discipline imposed). Even though discipline may not be a disqualifying factor, remember that for every lawyer that has been disciplined, there are significantly more that have not and have the same or better qualifications. Check also to see if the lawyers have been recognized by their peers as being outstanding lawyers from rating services such as Martindale Hubbell®, (www.martindale.com), Super Lawyers® (www.superlawyers.com), Best Lawyers®, and Avo® (www.avvo.com).
3. Talk candidly with your attorneys about what you can afford. Each business has different needs and different budgets. Most experienced lawyers and law firms understand this and have varying rates depending on the sophistication of the legal needs, the ability of clients to pay as well as different billing rates depending on the experience level of lawyers within the firm. If cost is a factor, a lawyer with a lower billing rate can be assigned for day to day matters, supervised by more experienced lawyers, who remain available on an as-needed basis. The client can then benefit from lower billing rates while being assured of having oversight by the more experienced lawyers.
4. Where there is a more consistent need for legal advice, negotiate a monthly rate: Ask your law firm if they have a program that will provide a dedicated attorney to serve as a part time general counsel for your business. The designated attorney can then be available for an agreed-upon number of hours per month that can include in person meetings, as well as telephone and e mail communications.
5. Look for alternative fee structures: Many law firms will offer alternatives to the hourly fee including: (a) a reduced hourly fee for volume work; (b) contingent fees (the attorney receives a percentage of the amounts recovered often used for collection cases); (c) part hourly/part contingent fee; (d) fixed fees for specific transactions and routine litigation; and, (e) hourly fee with a success component. Selecting a part-time general counsel who is part of a firm also provides for other services your business may need will often provide the greatest flexibility and maximize communication as the part time general counsel is able to more closely supervise any special projects.

RECENT DEVELOPMENTS

WE ARE PLEASED TO REPORT THE FOLLOWING DEVELOPMENTS:

- **C. Fredrick Meine III** assisted a client in removing a difficult tenant from a commercial property. In the action, the tenant failed to make payment under the lease and an unlawful detainer action was filed. Fred was able to negotiate a settlement by which the tenant paid double damages and move without the need for a trial.
- **David J. Weiland** and **Gregory J. Norys** completed a six-week jury trial involving claims of professional negligence against an engineer. The matter settled post trial.
- **Keith M. White** obtained a favorable settlement of a class action seeking damages for violation of the Electronic Funds Transfer Act. In the action, our client was alleged to have improperly withdrawn funds from the plaintiff's account. While Keith's motion to dismiss was pending, the plaintiff accepted a nuisance settlement.
- **Keith M. White** obtained a favorable resolution in two separate actions seeking damages for violation of the Fair Debt Collections Practices Act. In both cases our client, a collection agency, was alleged to have violated the FDCPA. Keith was able to secure a settlement before significant litigation occurred.
- **Keith M. White** obtained the dismissal of an action in Kern County seeking damages for violation of civil rights and abuse of process. Keith's special motion to strike (anti-SLAPP) was granted, requiring dismissal of the action plus the ability to recover attorney's fees and costs.
- **Russell W. Reynolds, Darryl J. Horowitz** and **Craig A. Tristao** successfully negotiated a settlement in a complicated bankruptcy preferential transfer recovery action. In the action, the trustee sought to recover funds paid to our clients from a bankrupt food processor who failed to pay numerous other suppliers. We were able to negotiate a settlement that limited the amount our clients were required to repay to the trustee.
- **Darryl J. Horowitz** obtained a favorable award following a five-day binding arbitration before the AAA. In the action, our client served as the general engineering contractor on a road project in Madera County who was not paid retention or for additional work requested during construction. The arbitrator found payment was due for retention and several change orders that were disputed by the owner.
- **Darryl J. Horowitz, Jennifer T. Poochigian** and **Lawrence E. Westerlund** obtained a final disposition in two litigation matters filed against our client, one in San Francisco and another in Fresno. Both actions claimed our client was a partner in a real estate partnership. Both actions were dismissed after pre-trial motions.
- **Darryl J. Horowitz** and **Judith M. Sasaki** obtained a favorable settlement in a federal court action. In the action, our client, a debt buyer, purchased several loans that were supposed to be secured by a first deed of trust. When our client learned the loans were not properly secured, the purchase agreement was rescinded. The seller entered into a settlement agreement in which they agreed to reimburse our client for the loans in exchange for a return of the loan documents. When the seller refused to honor the settlement agreement, we sued. The seller ultimately agreed to pay the amounts due under the settlement agreement, plus fees and costs, without the need of trial.
- **Darryl J. Horowitz** recently served as a mediator and assisted the parties in settling a neighborhood dispute involving claims of nuisance and interference with easement in a local foothill community.

If you have any questions regarding any of the developments referenced above or have a similar matter you may wish to discuss with us, please contact Maria O'Neill at (559) 248-4820/(800) 891-8362 or by e-mail at moneill@ch-law.com.

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REJECTED! NOW WHAT?

By Jennifer T. Poochigian

You complete all the necessary paperwork to register your trademark with the United States Patent and Trademark Office (“USPTO”), but the application is rejected. Should you hire a lawyer and fight the refusal or simply abandon it? Here are the most common grounds on which a trademark may be rejected by the USPTO and some practical tips on what to do when submitting your application to avoid potential rejection.

Likelihood of Confusion: The most common ground for rejection of a trademark is the likelihood of confusion with an existing registered trademark. When an application is submitted, the examiner will consider the intended field of use for the mark and determine whether there are other existing registered trademarks which are similar and related in that field of use. Similarities in sound, appearance or meaning are considered and may be sufficient to show a likelihood of confusion with an existing mark.

TIP: Prior to submitting your trademark application, run a search on the USPTO website to see if any similar marks exist that may cause some problems later. If a similar mark is found, consider making minor changes to the name or goods description to set your mark apart from the similar mark.

Descriptive Terms: A trademark can also be rejected if it is merely descriptive. This occurs if the mark describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services. For example, the mark “CREAMY” would be merely descriptive for peanut butter or “WORLD’S FRESHEST COOKIES” is merely descriptive for cookies.

TIP: Make sure the mark does not contain words which serve the function of simply describing the goods or services.

Deceptively Misdescriptive Terms: A trademark can be rejected if it is deceptively misdescriptive. This occurs when: (1) a mark misdescribes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods or services; and (2) the misdescription conveyed by the mark is plausible. For example, the mark “LOVEE LAMB” would be deceptively misdescriptive of seat covers not made from lambskin or the mark

“SOFTHIDE” would be deceptively misdescriptive of imitation leather clothing and related material.

TIP: Make sure the words selected for the mark are not used to trick or deceive consumers into thinking that a good or service is or will provide something that it is not.

Surnames: Lastly, a trademark will likely be rejected if it is merely a surname. In other words, if the primary significance attributed to the mark is the surname rather than the product, the application will be refused. If, however, the surname is already built into an established brand, i.e., McDonald’s, it will likely be accepted.

TIP: If you’re unable to provide a secondary meaning for the mark, consider choosing a new name or grow brand recognition around the surname before submitting your application.

Our firm recommends that clients spend the time and effort figuring out the intricacies of making sure their proposed trademark will be considered a “valid trademark” by searching the USPTO database and, once they are convinced they have a valid mark, then hire trademark counsel to help register that mark. In the end, this will save you the hassle with having to either prove up the mark or start from scratch after the mark application is rejected.



Jennifer T. Poochigian represents clients in a wide variety of litigation matters including complex commercial, real estate, banking and construction litigation, landlord tenant matters, and commercial collections, and also serves as appellate counsel. If you have any questions, please contact Jennifer

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THANK YOU

We recognize that no business can grow without referrals. We value the confidence you have placed in us with your business and referrals. We hope you will continue to show us your confidence with future referrals.

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