

ADVERTISING SUPPLEMENT

SUE BENDAVID SHARES INSIGHTS ON TODAY’S EMPLOYMENT LANDSCAPE

This “Conversation with the Expert” section is produced by the LA Times Studios team in conjunction with Lewitt Hackman.

With the ongoing and often unprecedented operational changes and adjustments that businesses in every sector have had to make over the last few years, a whole new landscape has emerged in terms of labor and employment issues. This has left even the most seasoned human resources and C-suite executives struggling to find answers to crucial questions, not to mention the confusion among employees themselves.

Are current policy changes trend-driven or here to stay? What should management be focusing on in terms of new standards and laws pertaining to employee relations? What do employees need to know?

To address these issues and concerns, as well as many other topics on labor and employment hot buttons, the LA Times Studios team turned to uniquely knowledgeable expert Sue Bendavid of Lewitt Hackman for her thoughts and insights about the most important need-to-know trends and updates – and to get her assessments regarding the current state of labor legislation, the new rules of hiring and firing and the various trends that she has been observing in general from both sides of the table.



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Q: WHICH EMPLOYMENT LAW MISTAKES ARE YOU SEEING BUSINESSES MAKE MOST FREQUENTLY, AND HOW CAN EMPLOYERS AVOID THEM BEFORE THEY BECOME COSTLY LEGAL ISSUES?

A: BENDAVID

The most frequent mistakes involve wage and hour issues, e.g., employees working “off the clock” to lock up, respond to texts, answer calls or complete tasks in the evening or during breaks. Even small amounts of unrecorded time can aggregate into significant liability in a class or representative action. We are also seeing employers not include other forms of compensation (e.g., commissions and incentive bonuses) in the “regular rate of pay” when calculating overtime and premiums. Another common problem is failing to properly document discipline and termination decisions. Employers often “sugar-coat” terminations, but that can backfire. Employees should understand when their performance or conduct is a concern and what consequences may follow. When a termination comes as a surprise, employees may become resentful and scrutinize their employment experience for perceived violations.

Q: WAGE-AND-HOUR CLAIMS REMAIN ONE OF THE BIGGEST SOURCES OF LITIGATION IN CALIFORNIA. WHAT PROACTIVE STEPS CAN EMPLOYERS TAKE TO MINIMIZE THEIR EXPOSURE?

A: BENDAVID

Employers can reduce wage and hour exposure by regularly auditing their practices rather than waiting for a claim to surface. Auditing includes accurate timekeeping for non-exempt

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employees, providing compliant meal and rest periods, properly calculating overtime and premiums (including the regular rate of pay) and maintaining accurate payroll records. Employers should also regularly review employee classifications, particularly the exempt versus non-exempt distinction and employee versus independent contractor status under California’s ABC test. Because California’s requirements can be complex and fact-specific, employers should consult employment counsel when establishing or reviewing classification and wage-and-hour practices.

Q: HOW SHOULD EMPLOYERS UPDATE THEIR EMPLOYEE HANDBOOKS AND WORKPLACE

POLICIES TO REFLECT TODAY’S LEGAL LANDSCAPE AND EVOLVING WORKFORCE EXPECTATIONS?

A: BENDAVID

Employers should review their handbooks at least annually and whenever significant federal, state or local legal changes occur. Among other things, policies should address remote and hybrid work, evolving paid and unpaid leave rules, accommodation obligations, wage and hour compliance, harassment and discrimination, and pay transparency. Employers should also maintain reliable records of employee handbook acknowledgments. Importantly, a business’s practices and communications should be consistent with its written policies. When employees receive different messages from different parts of the organization – or when actual practices contradict the handbook – it can create confusion and negatively impact morale. Contradictions can also be used as evidence in litigation.

Q: WHAT ADVICE DO YOU HAVE FOR COMPANIES TRYING TO FOSTER A POSITIVE WORKPLACE CULTURE WHILE ALSO PROTECTING THEMSELVES FROM DISCRIMINATION, HARASSMENT AND RETALIATION CLAIMS?

A: BENDAVID

Companies should create a workplace where employees feel safe raising concerns and confident those concerns will be taken seriously. Leaders should set clear expectations for respectful behavior, provide regular training and maintain accessible reporting channels, including options for anonymous reporting where practical. When a complaint is made, employers should respond promptly, conduct a fair and appropriately thorough investigation, document the process and findings, and reach conclusions based on the evidence. Employers should take appropriate corrective action and follow up with both the complaining employee and the accused, while protecting confidentiality to the extent reasonably possible. Importantly, employers must reinforce that retaliation will not be tolerated and act swiftly when it occurs.

Q: DO I HAVE TO PAY EMPLOYEES FOR ANSWERING QUICK QUESTIONS VIA TEXT AFTER HOURS?

A: BENDAVID

It depends. Nonexempt employees must be paid for all hours worked, including after-hours emails, texts or calls, if the employer knows or has reason to know the work is being performed. Stated differently, if the employer neither knows nor has reason to know the work occurred, the time may be unpaid. However, exempt employees generally are not entitled to extra pay for after-hours work. Employees should keep accurate records, report after-hours work promptly and follow company timekeeping policies.

Q: CALIFORNIA EMPLOYERS OFTEN STRUGGLE WITH EMPLOYEE

CLASSIFICATION. WHAT ARE THE BIGGEST MISCONCEPTIONS SURROUNDING EXEMPT VERSUS NON-EXEMPT EMPLOYEES AND INDEPENDENT CONTRACTORS?

A: BENDAVID

The biggest misconceptions are that being paid a salary automatically makes an employee exempt from overtime, that a job title determines exemption status or that an independent contractor agreement alone prevents a worker from being classified as an employee. None of these, standing alone, determines classification.

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For exempt status, employers must evaluate whether the employee satisfies both the applicable salary threshold and the specific duties requirements under the applicable exemption. For independent contractors, California employers must apply the ABC test, any potential exemptions and consider the actual nature of the working relationship. Classification should be reviewed carefully at the outset and periodically thereafter, particularly when an employee’s duties change.

Q: HOW SHOULD EMPLOYERS PREPARE FOR GOVERNMENT AUDITS, INVESTIGATIONS OR ENFORCEMENT ACTIONS FROM STATE LABOR AGENCIES, AND WHAT DOCUMENTATION IS ESSENTIAL?

A: BENDAVID

Employers should prepare for government audits and investigations by maintaining accurate records, conducting periodic internal reviews and establishing a clear response protocol before a request is received. This includes identifying key personnel responsible for coordinating with the agency, implementing a litigation hold to preserve relevant documents and involving counsel when appropriate. Essential records include accurate timekeeping records, itemized wage statements compliant with Labor Code section 226, Form I-9 documentation, employee classification records and workplace safety records, including Cal/OSHA injury and illness logs. A proactive approach can help employers respond efficiently and identify compliance issues before they become enforcement matters.