

# CONTINUING LEGAL EDUCATION

## Employment Issues in the “New Normal” (Part I & II).

PREPARED BY

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# Employment Issues in the “New Normal” (Part I)

# Government Responses to COVID-19

- **Federal Government**
  - Families First Emergency Coronavirus Response Act (FFCRA)
  - CARES Law
- **State and Local**
  - Stay at home orders
  - Restrictions regarding non-essential business
  - Work from home mandates

# FFCRA: Overview of Paid Leave Provisions

- **Emergency Paid Sick Leave**
  - Up to 80 hours (approx. first 10 days)
  - 6 different qualifying reasons
  - Full pay or 2/3 pay (depending on qualifying reason), subject to caps
- **Emergency Paid FMLA**
  - Up to 12 weeks (approx. days 11-60)
  - 1 qualifying reason
  - Weeks 1 and 2: unpaid
  - Weeks 3-12: 2/3 paid, subject to caps
- **Employer Coverage**

# Emergency Paid Sick Leave Act (EPSL)

## Six Qualifying Reasons

An employee who is unable to work or telework because:

1. Employee is subject to quarantine or isolation order related to COVID-19.
2. Employee advised by a health care provider to self-quarantine because of COVID-19.
3. Employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual subject or advised to quarantine.
5. The employee is caring for a son or daughter whose school or place of care is closed, or childcare provider is unable, due to COVID-19 precaution (similar to EFMLEA).
6. The employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.



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# Emergency Paid Sick Leave Act (EPSL)

## Eligible Employee

- Employees on the payroll for 30 days
- Excludes health care workers

## Length of EPSL and Amount Paid

- Caps at 80 hours for full-time workers or the average number of hours across a two-week period for part-time employees.

# Emergency Paid Family Medical Leave Expansion Act (EPMLEA)

## Covered Employers

- Applicable to all private employers with less than 500 employees
- Excludes health care workers

## One Qualifying Reason

- Government quarantine or isolation orders,
- They are under medical care for COVID-19 symptoms or diagnosis,
- They are caring for someone in quarantine or isolation under governmental or medical provider orders, or
- They need to care for children whose schools or day cares closed due to COVID-19 precautions.

# Emergency Paid Family Medical Leave Expansion Act (EPFMLEA)

## Up to 12 weeks

- The first **80 hours** (2 weeks) are unpaid
- Can be concurrent with EPSLA (qualifying reason 5), for 2/3's wages during that time
- Remaining **10 weeks** paid at 2/3's the employee's regular rate
- Maximum pay-out of \$200/day and \$10,000 total

## Relief for Smaller Employers (with less than 50 employees)

- Exempts employers with less than 50 employees from civil damages in FMLA litigation

## Job Protection and Restoration



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# FFCRA

- An employee is rehired and wants to take EPSL immediately after accepting the job offer. Is the employee eligible to take it immediately upon rehire?
- Is employee entitled to FFCRA for each member of the family?
- What type of proof can we request for FFCRA leave requests?

# Tax Credits for Paid Sick and Paid Family and Medical Leave

- Employers can take a refundable tax credit equal to 100% of qualified EPSL and EFMLEA leave
- IRS March 20, 2020 Announcement
  - Employers will recoup these payments immediately by keeping a portion of the deposit they otherwise would pay as part of the their employees' federal, social security and medicare taxes.

# What do you need to know before your bring your workers back?

- Federal, State or Local Directives
- Reviewing the workplace
- Reviewing public access
- Procedures for assessing employee and public symptoms
- Devising a plan
- Objective analysis
- Communication strategy



# CDC Decision Trees for Reopening Your Business

- Guidelines provided for general workplace
- By specific industries
  - Restaurants
  - Daycare
  - Camps
  - Mass transit
  - Schools
- Guidance does not provide timetables for reopening a business
- Encourages social distancing, handwashing and intensified cleaning

## WORKPLACES DURING THE COVID-19 PANDEMIC



The purpose of this tool is to assist employers in making (re)opening decisions during the COVID-19 pandemic, especially to protect vulnerable workers. It is important to check with state and local health officials and other partners to determine the most appropriate actions while adjusting to meet the unique needs and circumstances of the local community.

### Should you consider opening?

- ✓ Will reopening be consistent with applicable state and local orders?
- ✓ Are you ready to protect employees at higher risk for severe illness?

ANY NO



ALL YES

### Are recommended health and safety actions in place?

- ✓ Promote healthy hygiene practices such as hand washing and employees wearing a cloth face covering, as feasible
- ✓ Intensely cleaning, disinfection, and ventilation
- ✓ Encourage social distancing and enhance spacing between employees, including through physical barriers, changing layout of workspaces, encouraging telework, closing or limiting access to communal spaces, staggering shifts and breaks, and limiting large events, when and where feasible
- ✓ Consider modifying travel and commuting practices. Promote telework for employees who do not live in the local area, if feasible.
- ✓ Train all employees on health and safety protocols

ANY NO



ALL YES

### Is ongoing monitoring in place?

- ✓ Develop and implement procedures to check for signs and symptoms of employees daily upon arrival, as feasible
- ✓ Encourage anyone who is sick to stay home
- ✓ Plan for if an employee gets sick
- ✓ Regularly communicate and monitor developments with local authorities and employees
- ✓ Monitor employee absences and have flexible leave policies and practices
- ✓ Be ready to consult with the local health authorities if there are cases in the facility or an increase in cases in the local area

ANY NO



ALL YES

OPEN AND MONITOR



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)

# Workplace Safety

- Developing an Infectious Disease Preparedness and Response Plan
  - Identify sources of exposure
  - Identify non-occupational risk factors at home and in the community setting
  - Identify workers' individual risk factors (i.e., age, prior medical conditions)
  - Identify controls necessary to address those risks

# Checking to make sure your workplace is ready



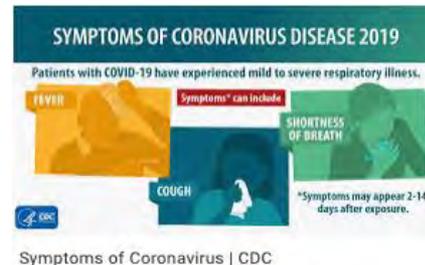
- Review engineering and/or administrative controls
  - Assess the risk of potential exposure in the workplace
    - OSHA, CDC, other guidelines or organizations
  - What changes need to be made to comply with social distancing standards?
  - Is there a maximum number of individuals who can congregate in your space?
  - Review your workplace set up and floor plans
  - Do you need to install barriers? Change seating assignments?
  - Continue to ban business travel?
  - Do you have enough PPE on hand?
  - Do you have cleaning staff available to clean and disinfect?
  - What notices must you post?

# Checking to make sure your workplace is ready for public access

- Review engineering and/or administrative controls
  - What changes need to be made to comply with social distancing standards?
  - What are industry best practices regarding OSHA compliance?
  - Is there a maximum number of individuals who can congregate in your space?
  - Review your workplace set up and floor plans
  - Do you need to install barriers?
  - Do you have enough PPE on hand?
  - Do you need to set up shifts to reduce the number of employees in the workplace to comply with social distancing guidelines?
  - Do you have cleaning staff available to clean and disinfect?
  - What notices must you post?

# Develop and Set Up the Screening Process

- Checking employees' and public's temperature and health symptoms
- Need to ensure confidentiality for personal health information and be sensitive to people's comfort and health
- Identify a screening location outside of the workplace
  - Have self-assessment surveys ready for distribution to those in line
  - Provide private areas (separated by curtains, for example) for temperature screening and other follow-up questions related to symptoms or exposure
  - Ensure sufficiency of products needed for consistent implementation of screening process
  - Ensure consistent implementation
  - Set objective cutoff criteria in advance (i.e., 100.4°F)



# Other Preparation



- Check local authorities about recall rights
- Set up complaint process for workplace safety issues
- Ensure delivery of adequate PPE supplies
- Post notices of good hygiene practices
- Check compliance with CDC guidance on workplace preventive
  - Use of masks
  - Cleaning protocols

# Workplace Safety

- What if the employee refuses to work without PPE but I cannot supply them with PPE despite best efforts?
- Should I encourage employees to bring their own PPE?
- Do I have to reimburse employees if they purchase PPE on their own?
- What equipment do I have to provide to encourage telework? Do I have to provide a laptop? Do I have to reimburse for internet access?

# Responding to Workplace Exposures



**What should I do if I have an employee that tests positive for COVID-19 who was working with other employees?**

- Reporting Obligations?
- Remediation Obligations?
- Communications to Employees?
- Quarantining and Testing Infected Workers?

**What should I do if an employee tells me they *might* have been exposed to someone who is COVID-19 positive outside work?**

# Develop a Return to Work Plan

- If you have a collective bargaining agreement, make sure you follow up to avoid an ULP
- Identify the functions to recall in order of priority
- Identify the positions to recall in order of priority
- Identify the persons in the positions and functions to be recalled and determine and apply objective basis to rank their priority in the recall (such as seniority in the job, prior performance evaluations, etc.)
- Create the recall list with priority and plan the gradual return to work with maximum capacity in mind
- Perform adverse impact analysis with your employment counsel

# EEO Laws Continue to Apply

- EEO laws, such as the ADA and Rehabilitation Act, continue to apply during the time of COVID-19.
- However, the EEOC has taken the position that it will not interfere with or prevent employers from following the guidelines and suggestions made by the CDC or state/local public health authorities about steps that an employer must or may take regarding COVID-19.
- Employers should remember that guidance from public health authorities continue to be updated and changed as the pandemic evolves.

# Hiring During the COVID-19 Pandemic

- Employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer as long as it does so for all entering employees in the same type of job.
- Medical exams, such as temperature checks, are permitted after an employer has made a conditional offer of employment.
- Employer can delay the start date or withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it.

# FAQs re Screening

- Does the ADA allow employers to require employees to stay home if they have symptoms of COVID-19?
- Can an employer terminate employees who refuse to go through the screening process?
- May an employer administer a COVID-19 test to detect the presence of the COVID-19 virus before permitting employees to enter the workplace?
  - Antibody vs. Viral tests
- What should an employer do if an employee entering the worksite requests an alternative method of screening due to a medical condition?

# COVID-19 in the Workplace

- What can an employer do if employees refuse to return to their work area because one employee tested positive for COVID-19?
- What can an employer do if an employee refuses to serve customers who refuse to wear a face mask?
- What information can the employer disclose if an employee tests positive for COVID-19?
- Can an employer exclude employees from the workplace involuntarily because of pregnancy or age?
- Is an employee entitled to an accommodation under the ADA to avoid exposing a family member who is at higher risk of severe illness from COVID-19 due to an underlying medical condition?

# PPE and Reducing the Risk of Exposure

- What PPE does an employer have to provide?
  - Mask, shield, gown, gloves?
  - See OSHA guidelines about assessing risk
- How do I mitigate risk of exposure as employees interact with residents?
  - Inform residents and employees about Pandemic Preparedness Plan
  - Ask residents screening questions before entering rental office or unit
  - Perform emergency repairs only
  - Provide resources for non-emergency repairs
  - Transition to virtual meetings and property tours
  - Provide electronic or digital options for payments, paperwork

# Guidance for Reducing Risk of Exposure for Residents

- Close amenity spaces, such as pools, gyms, common areas
- Disinfect common areas
- Monitor HVAC Systems
- Minimize walk-ins
- Keep residents informed

# Live Q&A



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# Employment Issues in the “New Normal” (Part II)

# Other Applicable Laws

- OSHA
- DOL
  - FFCRA
    - Emergency paid sick leave
    - Additional qualifying reasons for FMLA leave including child care
  - CARES Act
    - PPP

# When Your Employees Return

- Ensure that all employees go through the screening process
- Provide training to employees as to new infectious disease protocols
- If work spaces have been re-assigned, provide orientation
- Ensure sufficient PPE is available
- Ensure all notices are properly posted

# Compensation Issues

- As part of our return to work policy, as an employer, we are now required to take the temperatures of our employees. If an employee has a fever of 100.4 or above, we know we have to send them home. As a result, as an employer, do we need to pay them reporting time pay for having to send the employee home due to the fever?
- Do I have to pay employees if they have to self-isolate or quarantine due to travel abroad, whether for business or personal reasons?
- Do I have to pay employees if they have to self-isolate or quarantine because they show symptoms of COVID-19?

# Other Management Issues

- Can employers reduce wages?
  - State Wage Theft Issues if unilaterally reducing wages
  - What kind of notice must be provided?
- Unemployment Benefits
  - Partial benefits may be available for reduced hours or reduced pay – check your state
  - Waiting period likely waived
  - Employment efforts waived
- State Wage-Hour Issues
  - No reductions below minimum wage
  - State minimum wage may be higher than current federal minimum wage of \$7.25
  - Protecting exemption status

# Lawful Criteria for the Decision Making Process

- Additional considerations when evaluating workforce needs:
  - Can employees be transferred into existing vacancies?
  - Is special high-level management review warranted for certain highly-paid or long-term employees?
  - Are older, minority, or female employees disproportionately affected by the company's initial selection procedures? If so, can the selection of these individuals be justified by business necessity? If not, alternative selections of individuals outside such protected classifications should be considered.
  - Create a graduated plan for return to work.

# Insurance

- Can you discontinue payment of insurance premiums for one group of furloughed employees while allowing another group of furloughed employees to participate in open enrollment for a new policy?
- Can you cancel health insurance for some furloughed employees?
- Does this trigger COBRA notice?
- Can employees bring a claim for different treatment because one group had benefits while other group did not?

# FAQs

- Can I transfer employees from one location to another to avoid more restrictive stay-at-home or business closure orders?
- If an employee refuses to transfer to another location, can I terminate that employee for insubordination?
- What if the business does not come back up to sustain the employees I have recalled? Can I terminate or furlough them again?
- Can I still take disciplinary action against employees who are recalled to work?
- Can I tell employees who have other illnesses to stay home, such as a seasonal flu or cold or bronchitis or allergies?

# FAQs

- Do I have to pay employees for the time they spend in the screening line?
- Can I fire employee for job abandonment if he/she does not respond to recall notice?
- Do I have to put him/her at the back of the recall list?
- What if I don't want to recall the employee because of prior performance issues?
- What if the employee is afraid to return despite all of the precautions I have taken?
- What if the employee is afraid to return to work because of concerns about exposing other family members?
- What if I later learn that an employee has not been truthful about his or her exposure to the infectious disease?

# What to Look Out For...

- Increase in safety-related claims
  - OSHA's General Duty Clause requires employers to furnish employment and a place of employment ... free from recognized hazards ... likely to cause death or serious physical harm”
- Increase in discrimination/hostile work environment claims based upon national origin, age, disability
- Increase in wage-hour claims with respect to waiting time during screening, reduction of hours, classifications
- Increase in WARN Act claims

# Other Hot Topics

- New Supreme Court rulings: *Bostock v. Clayton County, Ga* and *Altitude Express Inc. v. Zarda* (issued June 15, 2020)
  - Expands Title VII to protect LGBT individuals from workplace discrimination

# Live Q&A



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# BIOGRAPHY



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**Services**

- Employee Benefits
- Employment & Labor
- Hospitality
- Insurance Agents & Brokers
- National Trial Team
- Canada

**Admissions**

**Bars**

California, Pennsylvania, District of Columbia

**Courts**

- Supreme Court of California
- Supreme Court of Pennsylvania
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Western District of Pennsylvania

**Memberships & Affiliations**

- Global Alliance of Travel, Tourism & Hospitality Attorneys (GATTHA)  
HospitalityLawyer.com
- California Hotel & Lodging Association
- California Restaurant Association
- California Lodging Industry Association
- Association of Corporate Counsel, San Diego Chapter
- American Inns of Court, Louis M. Welsh Chapter No. 9
- IBA West
- Association of Business Trial Lawyers
- San Diego County Bar Association
- San Diego Defense Lawyers
- Judge Advocates Association
- Association of the United States Navy

**Awards & Distinctions**

Bruno Katz maintains a diverse business litigation practice that includes labor and employment, professional liability, corporate litigation and complex, multi-party litigation. Bruno represents a wide variety of clients, including hospitality companies, insurance brokers and agents, real estate agents, utility companies, attorneys, transportation companies and pharmaceutical/home health care companies.

Bruno, a captain in the Navy Reserves with the Judge Advocate General's Corps (JAG), is currently serving as the Staff Judge Advocate for Commander, Navy Region Southwest Reserve Component Command (NRSW RCC). NRSW RCC is the headquarters command for approximately 12,000 selected reservists administered by 19 Navy Operational Support Centers throughout Arizona, California, Colorado, Hawaii, New Mexico, Nevada, Utah and the Territory of Guam. Bruno serves as the senior Judge Advocate and legal adviser to NRSW RCC as well as a Deputy Assistant Judge Advocate General for Reserve Affairs and Operations. Bruno has been a member of the JAG Corps for 25 years in an active duty and a reserve capacity. He has been the commanding officer of two reserve legal units, both of which were awarded the Rear Admiral Gilbert Cup as the best reserve unit in the nation. He is also the 2010 recipient of the Judge Advocate General's Association's Outstanding Senior Officer Award.

Bruno believes in resolving cases quickly. He partners with his clients to understand the facts and identify the strengths and weaknesses of each case, advancing to trial only when it is mutually agreed that this represents the best approach. He moves proactively to put the plaintiff on the defensive, always respecting his client's bottom line.

**Areas of Focus**

**Employment & Labor**

Bruno has successfully defended trials in State Superior Court and the various U.S. District Courts of California. He has also conducted arbitration and administrative hearings for clients. In defense of clients, he has tried or arbitrated cases involving violations of Title VII; race, age, sexual or gender discrimination; retaliation; breach of contract; non-solicitation enforcement; negligence; federal preemption; and wage and hour class actions.

Bruno also regularly represents his clients in administrative matters before the Department of Fair Employment and Housing, the California Labor Commissioner, the Equal Employment Opportunity Commission and the National Labor Relations Board. Additionally, he provides training to both his clients and industry professionals on employment practices, liability issues and other risk management matters.

Bruno is sought after for his experience in employee relations, offering sound advice on hiring practices, training and "employee audits," ensuring that his clients are prepared. He strongly advocates a clear understanding between employer and employee that is well-

Rated by American Lawyer and Martindale-Hubbell as a Top Rated Lawyer in Labor & Employment, 2013

AV® Preeminent™ Rated by Martindale-Hubbell Outstanding Career Armed Services Attorney, Judge Advocates Association, May 2010  
Top 20 under 40, *Los Angeles Daily Journal*, May 2003

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## Education

University of Pittsburgh School of Law, J.D., 1990

Colgate University, B.A., 1987

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## Certifications/Licenses



documented and mutually agreed in order to establish relationships free of claims and unwanted lawsuits.

### **Hospitality**

Bruno anticipates and helps to prevent situations that could result in lawsuits or administrative actions. With extensive trial experience and knowledge of business and industry, Bruno is prepared to defend against a wide array of claims.

### **Insurance Agents & Brokers Liability**

Bruno handles cases regarding professional liability, negligence, breach of fiduciary duty, errors and omissions, non-solicitation agreements and written or oral contracts. He provides risk management advice and defense to one of the largest surplus lines carriers in the nation.

## Representative Matters

Obtained a favorable ruling from the Department of Fair Employment & Housing (DFEH) in a case in which the plaintiff alleged sexual harassment and racial discrimination. Wilson Elser then obtained dismissal of the case after bringing summary judgment in Riverside County Superior Court.

Represented a regional hotel company against class action allegations from suite attendants claiming failure to pay premium wages based on a municipal "living wage" ordinance only applicable to large hotels. The result was the application of an ordinance found to have violated hotel's due process rights.

Represented a large insurance broker/agent company in prosecuting a non-solicitation agreement against former employee who used client lists developed by company to start a new job. The result was a favorable resolution for the client.

Represented a major waste management company in a National Labor Relations Board (NLRB) representative election involving use of a putative class action as leverage. This resulted in a published NLRB decision in favor of client overturning the election results due to improper benefits given by labor union.

Represented a large quick-service restaurant chain in a punitive wage and hour class action claim alleging improper classification of managers. The result was a published decision dismissing class claims and upholding individual settlements.

Represented a large regional insurance agency against allegations of fraud and negligence. The case dismissed on summary judgment.

Represented a dental corporation against allegations of pregnancy discrimination. The case dismissed and resolved for significantly less than the cost of defense.

Represented the interest of a large multinational insurance company as to labor/employment claims involving French law. The cases were resolved at less than cost of defense in a pro-employee favorable forum.

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**Services**

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**Admissions**

- Bars**  
New York, District of Columbia

- Courts**  
U.S. Court of Appeals, Second Circuit

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**Memberships & Affiliations**

- Hispanic National Bar Association
- New York City Hispanic Chamber of Commerce
- Society for Human Resource Management
- Cafecitos Network

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**Education**

- New York Law School, J.D., 2000, *Journal of Human Rights*, editor-in-chief
- University of Missouri, M.F.A., 1992
- California State University, Long Beach, B.A., 1989

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**Certifications/Licenses**



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**Languages Spoken**

Celena Mayo has focused exclusively in the employment and labor area throughout her legal career. Prior to joining the firm in 2004, she served as an Assistant Corporation Counsel in the New York City Law Department, Labor & Employment Division. Celena, a Cuban-American bilingual in Spanish and English, also is a member of the firm's Latin America practice and e-Discovery practice.

In her legal practice, Celena represents employers in wage and hour matters as well as discrimination and other employment-related causes of action before state and federal trial courts, appellate courts, administrative agencies and arbitration panels. She also has experience with labor relations matters, including the representation of employers before the National Labor Relations Board. In addition, Celena advises employers on all types of employment contracts and provides representation in related litigation.

A large portion of Celena's practice is dedicated to providing day-to-day counseling to her clients as well as giving formal presentations to employers and their employees on best practices designed to resolve issues before a lawsuit is filed. She makes herself accessible to clients at all times and is open to any and all questions with the goal of avoiding costly litigation.

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## Areas of Focus

### Employment & Labor

Celena has devoted her career to representing management in employment cases. She has represented clients in matters brought under all federal and New York State antidiscrimination statutes, including Title VII, FMLA, ADA, ADEA, and 42 U.S.C. 1981 and 1983, as well as contract and employment-related tort matters. In addition to her experience before federal and state trial and appellate courts, Celena has represented client interests in ADR proceedings, including arbitrations and mediations, and before administrative agencies such as the New York State Division of Human Rights, the U.S. Equal Employment Opportunity Commission, and the U.S. Department of Justice, Civil Rights Division.

In the wage and hour context, Celena has represented a diverse group of clients, including health care organizations, restaurants, security companies and theaters in collective and putative class action litigation. She has also assisted clients in resolving wage and hour complaints and audits before the New York State Department of Labor. In addition, Celena provides counseling on wage and hour best practices and compliance.

In the labor relations area, Celena has represented employers in unionizing drives, election disputes and unfair labor practice charges before the National Labor Relations Board.



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**Services**

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Claims

Life, Health, Disability & ERISA

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**Admissions**

**Bars**

California

**Courts**

U.S. Court of Appeals, Ninth Circuit

U.S. District Court, Central District of  
California

U.S. District Court, Eastern District of  
California

U.S. District Court, Southern District of  
California

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**Memberships & Affiliations**

Claims & Litigation Management Alliance  
(CLM), EPL Committee Chair  
National Human Resources Association, LA  
Board Member, 2011–present  
Professionals in Human Resources  
Association, District 1, 2009; District 3,  
2010–present  
Pepperdine University School of Law  
Alumni Association, 2000–present  
University of Michigan Alumni Association,  
1997–present  
Visionary Executives Network, 2012–  
present

Dean Rocco is a pragmatic, results-oriented attorney who leverages the firm's geographic reach and strength across multiple disciplines to the benefit of clients. He takes great pride in building longstanding partnerships with clients through responsive communication and consistent, positive results in keeping with clients' business philosophies and litigation objectives.

Dean is the Western Region Chair of the firm's national Employment & Labor practice. In that capacity, he maintains a significant practice representing employers and management in a wide range of employment litigation. He lends his knowledge and perspective to building effective personnel programs and policies, counseling employers and managing risk during difficult employee issues, and training employers on legal compliance and best practices.

Dean also serves as co-chair of the firm's national Cannabis Law practice. Dean works with clients inside and outside the cannabis industry to navigate the complex and quickly evolving framework of recreational and medical marijuana laws impacting their businesses.

As a distinguished attorney and recognized authority in his field, Dean is routinely asked by media outlets, business organizations and professional associations to share his perspectives on evolving legal issues.

## Areas of Focus

### **Employment Counseling, Training & Litigation**

Clients routinely seek Dean's help navigating difficult personnel issues, managing employees with disabilities and medical leave rights, complying with wage-and-hour regulations and developing sound personnel policies. Clients also call on Dean to train management and employees on a variety of subjects, such as discrimination and harassment prevention, managing employees within the law, and complying with wage-and-hour laws.

Dean also maintains a significant employment litigation practice covering a broad range of cases, including breach of employment contract, discrimination and harassment, violations of disability and medical leave laws, and workplace torts such as defamation and wrongful termination in violation of public policy. In addition, Dean frequently litigates individual, representative and class action wage-and-hour lawsuits alleging claims such as denial of meal periods and rest breaks, misclassification of employees, non-payment of wages, off-the-clock work, unlawful commission and bonus plans, and violations of statutory pay provisions.

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## Awards & Distinctions

Selected for inclusion in *California Rising Stars*, 2010

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## Education

Pepperdine University School of Law,  
J.D., 2000, Judicial Externship, Los Angeles  
County Superior Court, Honorable  
Lawrence J. Mira

University of Michigan, B.A., 1997

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## Certifications/Licenses



Dean has successfully enforced employer-promulgated arbitration programs, secured restraining orders against employees involved in workplace violence, and prosecuted actions against employees engaged in unfair competition and misappropriation of trade secrets.

### **Cannabis Law**

Dean regularly works with cannabis organizations and ancillary businesses, assisting start-ups with business formation and governance, processing licensing applications, supporting commercial transactions, guiding mergers and acquisitions, structuring fundraising, building sound employment policies and practices, reviewing insurance coverage, and guiding regulatory compliance in the growth, transportation, processing, production or distribution of cannabis-related products. When disputes arise, Dean leverages the firm's strength across multiple disciplines to effectively litigate commercial, products liability, professional liability, intellectual property and employment law claims.

For employers of all types, Dean provides guidance on legalization's impact on employment law issues such as job applications, drug testing, accommodating employees' use of cannabis for medical purposes and cannabis as a cause or treatment for workplace injuries.

### **Fair Housing & Discrimination**

Dean has significant experience counseling clients and defending against litigation asserting discrimination under state and federal fair employment and housing laws. He has defended hotels and business establishments against claims of discrimination under the Unruh Civil Rights Act.

## Representative Matters

### **Employment Litigation, Single Plaintiff**

Obtained summary judgment in a lawsuit by a former employee alleging her employer defamed her post-separation upon showing the alleged conduct was either privileged, not actionable or not attributable to the employer

Obtained summary judgment of a lawsuit by a former outside salesperson alleging his employer and managers failed to accommodate his disability, discriminated against and harassed him due to his disability, violated the California Family Rights Act and terminated his employment for complaining about perceived workplace abuses upon showing the employee was not qualified to perform the essential functions of his job and was terminated for poor performance

Obtained summary judgment of a lawsuit by a former hospital employee alleging breach of implied contract not to terminate without good cause and intentional infliction of emotional distress upon establishing the employee was employed at-will and the employer never engaged in actionable conduct

Secured dismissal of a former employee's claims of defamation and interference with prospective economic advantage against a co-worker as a sanction for the employee's abuses of discovery during the litigation

First-chaired the trial of a disability discrimination lawsuit by a former hospital employee and obtained a complete defense verdict; before trial, obtained summary judgment of the employee's race and age discrimination and harassment claims against the hospital and an individual supervisor

Obtained summary judgment in a lawsuit by a hospital employee alleging age and national origin discrimination upon demonstrating the employee could not show pretext in the termination decision and certain claims were barred by applicable statute of limitations

Second-chaired the trial of a disability discrimination case that settled favorably during trial  
Second-chaired the trial of an age and disability discrimination case that settled favorably on eve of trial

Secured an order dismissing a lawsuit by a former student alleging defamation against the executive of a professional training and testing company upon showing the student could not invoke theories of *respondeat superior* against the executive

Secured an order dismissing a lawsuit alleging sexual harassment, discrimination and retaliation through summary judgment

First-chaired the trial of a race discrimination case that settled favorably on eve of trial

Secured the dismissal of a former employee's discrimination lawsuit upon filing a motion to deem her a "vexatious litigant"

First-chaired the defense in administrative hearing before Division of Labor Standards Enforcement and secured an order in favor of a surgical center accused of failing to pay a doctor's wages at the time it terminated his employment contract

Secured a court order finding a former employee engaged in spoliation of evidence by destroying surreptitious tape recordings of termination meetings with managers

Recovered stolen property and secured both monetary damages and restraints on trade for a company in an action against former employees who used company property and trade secrets to form a competing business

Obtained summary judgment of lawsuit by a former employee alleging her employer and supervisor engaged in sexual harassment and discrimination upon establishing the alleged conduct did not evidence discriminatory animus

Secured a "walk-away settlement" in a race discrimination case upon discovering the former employee engaged in theft and other misconduct

Obtained a favorable resolution in a lawsuit by former employee alleging the company violated the California Family Rights Act upon demonstrating the individual's medical leave did not actually concern a "serious health condition" under the statute

Achieved a favorable resolution in a lawsuit by 10 former employees alleging the company and their supervisor engaged in race discrimination, retaliation and harassment

### **Employment Litigation, Representative and Class Action**

Secured the dismissal of a claim against a national shipping company under California's newly established Labor Code Private Attorney General Act (Bounty Hunter Law) after establishing an absence of "aggrieved employees"

Secured the dismissal of a class action brought by an outside salesman for a national office support company on the grounds the individual class representative could not adequately represent the class

Secured a non-monetary settlement in a representative action under the Labor Code Private Attorney General Act

Secured a favorable settlement for a regional franchisee facing claims it unlawfully deducted wages from employees, misclassified sales managers as exempt, and failed to provide employees meal periods and rest breaks

Secured a favorable, structured settlement for group of regional food distribution companies facing claims they misclassified and failed to pay overtime and expenses to outside salesmen, delivery drivers, merchandisers and demonstrators

Secured a favorable, structured settlement for a regional sporting goods retailer facing claims it misclassified and failed to pay overtime to managers

Secured a favorable settlement for a national mortgage company facing claims of improper payroll record keeping, unpaid overtime and denied meal periods

Secured a favorable settlement for a national copying and printing company facing a class action alleging the existence of an unlawful commissions and bonus plan and related Labor Code violations

Secured a favorable settlement for an international corporate compliance auditing firm facing claims of misclassified field officers and resulting unpaid overtime

**Steven J. Joffe**  
Partner

Contact

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## Services

Asbestos  
Complex Tort & General  
Casualty  
Employment & Labor  
National Trial Team  
Securities  
Securities Industry  
Professionals  
Toxic Tort

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## Admissions

**Bars**  
California

**Courts**  
U.S. Court of Appeals, Ninth Circuit

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## Memberships & Affiliations

American Board of Trial Advocates (ABOTA)  
Association of Southern California Defense  
Counsel  
American Bar Association

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## Awards & Distinctions

AV® Preeminent™ Rated by  
Martindale-Hubbell  
Rated by American Lawyer and  
Martindale-Hubbell as a Top Rated  
Lawyer in Labor & Employment  
and Mass Torts, 2013  
Named a Top Labor & Employment  
Lawyer in CA by the *Daily Journal*

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## Education

Steve Joffe is an experienced trial lawyer known for his skillful cross-examination techniques. He addresses high-exposure commercial tort litigation and defends companies in workplace-related matters, including, but not limited to, sexual harassment claims, wrongful termination claims and workplace discrimination claims. In addition, he directs the defense of asbestos litigation for a major automaker. Steve has brought more than 60 cases to jury trial, involving most areas of civil litigation.

Steve was a senior shareholder with his previous firm, where he built the business along with a stellar commercial litigation department that he brought with him to Wilson Elser. Known for his insightful ability to critically evaluate a client's case, Steve can precisely determine a client's liability and damage exposure. He also considers communication the most critical aspect of the client relationship. He believes that no matter how well you are defending a client's interests, it can become lost in the process unless the client is involved every step of the way during litigation.

View Steve's **exemplar trial experience**.

## Areas of Focus

### Complex Tort & General Casualty

Steve has extensive experience trying cases encompassing all aspects of general liability. He has tried numerous premises liability cases as well as auto liability claims for companies encompassing the telecommunications, solid waste and bottled water industries and other large companies throughout California. Steve has also provided litigation training seminars to major third-party administrators on what to recognize in a claims investigation and, once litigated, how to create the best opportunity for prevailing on a litigated claim.

### Wild Land Fire Litigation

Steve has acquired extensive experience in defending wild land fire litigation and has represented a top cable provider in the Malibu Canyon Fire litigation since 2008. In 2012 he defended a major American cable telecommunications company in the Nightsky Fire litigation in Ventura County. Throughout the course of this experience, Steve has gained experience on compliance issues relative to General Order 95.

### Employment

Steve has defended and tried cases on behalf of employers and companies across the state of California. He understands the nuances arising out of employer-employee relationships and how best to defend the employer and the employee when an individual employee is the main target of an employment claim and his or her interests are not necessarily aligned with that of the employer.

Thomas Jefferson School of Law, J.D.,  
1982

University of Minnesota, B.A., 1979,  
*magna cum laude*

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## Certifications/Licenses



Steve also provides proactive counseling on labor and employment matters for his clients and provides training and assistance on investigating workplace claims relative to sexual harassment, wrongful termination and interactive dialogue relating to work place accommodation. He also provides training and counseling on how best to prevent workplace lawsuits. Steve's clients include, but are not limited to, one of the world's largest automakers, a national clothing chain and a national restaurant chain.

### **Errors & Omissions / Securities Industry**

Steve has extensive experience in all aspects of errors and omissions defense matters including, but not limited to, the defense of financial institutions, security broker-dealers, retail insurance agents and life insurance agents.

### **Toxic Tort, Environmental & Energy**

Steve is the partner administrating and overseeing the defense of asbestos and product-related cases nationwide for the North American subsidiary of one of the world's largest automakers. He has tried and litigated products-related matters and has the experience to assess the relative exposure to a client early on and provide insightful evaluations during the tenure of the case.

### **Products Liability**

Steve has defended and tried products liability cases over the years and understands the specialized approach to working up and litigating products liability matters. He understands that each claim can have nationwide implications, and he uses his considerable trial experience and knowledge of business and industry to protect his client's brand and reputation.

## Representative Matters

Obtained summary judgment dismissing an age and gender discrimination and wrongful termination lawsuit filed in San Diego Superior Court.

Lead counsel in a \$100 million securities fraud matter for a company director.

Oversees all employment- and labor-related matters nationwide for a major automaker and national restaurant chain.

**Yoora Pak**  
Partner

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**Services**

- Diversity & Inclusion
- e-Discovery
- Employee Benefits
- Employment & Labor
- Fair Housing & Discrimination Claims
- Germany
- Information Governance
- Municipal/Local Government

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**Admissions**

- Bars**  
Virginia, Maryland, District of Columbia
- Courts**  
U.S. District Court, District of Columbia  
U.S. District Court, District of Maryland  
U.S. District Court, Eastern District of Virginia  
U.S. District Court, Western District of Virginia

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**Memberships & Affiliations**

- National Association of College and University Attorneys
- National Asian Pacific American Bar Association
- Asian Pacific American Bar Association of the Greater Washington, D.C. Area

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**Education**

Georgetown University Law Center,  
LL.M. International and Comparative  
Law, 2001

Yoora Pak has extensive experience handling complex employment-related litigation matters. In addition to her litigation practice, Yoora provides counseling to human resources staff and in-house counsel of diverse companies on various employment matters. Prior to her private practice, Yoora worked at the U.S. Department of Labor as a trial and appellate attorney, where she handled matters arising under the various statutes enforced by the DOL.

Yoora also has extensive experience with fair housing litigation and counseling matters. She has property owners, managers, and boards of association in agency investigations and lawsuits asserting claims of discrimination under local, state and federal fair housing laws. Yoora also counsels clients on fair housing issues, such as FHEO training, disability assessments and compliance reviews.

Yoora has a very genuine and effective way of establishing rapport with her clients and colleagues. Her openness and ability to grasp nuances help her move quickly from discovery to strategy in even the largest and most complex matters.

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**Areas of Focus**

**Employment**

Yoora has experience with employment discrimination claims, class actions, Fair Labor Standards Act (FLSA) collective and individual actions, agency investigations and other employment-related claims. She has also handled matters pertaining to railroad employee benefits and other labor issues.

Yoora has prepared and tried arbitration cases under collective bargaining agreements, counseled employers during labor disputes, prepared for and assisted employers during negotiations for the renewal of a nationwide umbrella collective bargaining agreement that also encompassed regional collective bargaining agreements, represented employers in proceedings before NLRB administrative law judges (including unfair labor practice and representation cases), assisted and counseled employers during organizational campaigns and elections, counseled employers during decertification elections, and counseled employers on issues or concerns arising from collective bargaining agreements (including elimination of bargaining unit positions).

Yoora represents colleges and universities on employment and student-related litigation matters, including Office of Civil Rights (OCR) investigations and faculty matters. In addition, Yoora represents property management companies and property owners with respect to discrimination claims brought by tenants under the Fair Housing Act and state statutes, including claims alleging race, sex, color, religious, source of income and disability discrimination.

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## Certifications/Licenses



In addition to her litigation practice, Yoora counsels employers on employment-related issues and policies, including equal employment opportunity (EEO), the Office of Federal Contract Compliance programs (OFCCP) and Americans with Disabilities Act (ADA) compliance; employee handbooks and policies; EEO training; workplace investigations; and terminations/separations.

### **International Civil Litigation**

Yoora has defended global corporations in foreign civil matters as well as U.S. corporations in domestic litigation based on events occurring abroad, with an extensive motions practice based on subject-matter jurisdiction issues, insufficiency of service based on failure to comply with Hague Convention requirements for service abroad, the exclusivity of the Defense Base Act, the political question doctrine, the government contractor defense, *forum non conveniens* and other jurisdictional issues.

### **Municipal**

Yoora has represented municipal entities in various litigation matters involving Comprehensive Plan changes; zoning, water and sewer issues; and personnel issues.

## Representative Matters

Obtained summary judgment in EEOC class action litigation alleging national origin discrimination.

Obtained transfer of venue under Title VII from Maryland to Virginia for a large construction company.

Obtained dismissals of charges of discrimination pending before federal, state and local agencies alleging race, age, disability, religion, national origin, sex, personal appearance and/or source of income discrimination claims.

Prevailed in constitutional and state law challenges to promotional and pay policies in public employment.

Prevailed in actions arising out of the deaths and/or disabilities of employees working in Iraq and Afghanistan.

Successfully opposed temporary restraining orders under the ADA's "direct threat" exception.

Successfully opposed temporary restraining order and request for other injunctive relief in public employment termination case.

Successfully handled injunctive actions (temporary restraining order, preliminary and permanent injunctions) seeking to enforce non-competition/trade secret/no-raid clauses in employment agreements.

Represent educational institutions against claims involving tenured faculty, staff and students under various statutes and common law.

Represent government entity in developers' challenges to zoning and planning decisions.

Prevailed in discrimination complaints arising under the Fair Housing Act and state fair housing statutes.

Successfully represented government contractors in OFCCP compliance audit.

General defense litigation of cases involving claims of breach of contract (including separation agreement and non-disparagement provisions), defamation, eminent domain and constitutional law claims.

