



Webinar

January 18, 2023

# Critical 2023 Employment Laws

## New Mandates that California Employers Need to Know



**Don Dressler**

Founder & Attorney

CalWorkSafety & HR

**COMBINED**

# BEFORE WE BEGIN



You will receive a recording of the webinar.



Submit your questions anytime.  
We will do Q&A at the end.



Please complete the exit survey. It will only take a minute.

Everyone who completes the survey will receive a  
**complimentary 2023 Labor Law poster!**

*2023 Labor Law posters in both English and Spanish will  
be available for purchase after the webinar.*



# Don Dressler

Founder & Attorney

**CALWORKSAFETY & HR**



# Disclaimer

The information in this presentation is intended for informational purposes only and should not be considered legal advice.

You are strongly encouraged to consult your own legal counsel to ensure compliance with applicable law in your specific state, municipality or jurisdiction.



# New or Changed Laws for CA Employers

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In 2022, CA Governor Newsom signed 997 new laws – on various topics.

Some are important for CA employers:

- Extended COVID paid sick leave
- Limits tests and policies regarding marijuana\*
- New law regarding bereavement leave
- Expanded law on “pay transparency”
- Other important topics

## Topics Include:

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- COVID-19 Regulations
- Marijuana Use\*
- Bereavement Leave
- CFRA Leave
- Emergency Time Off
- Pay Transparency and Reporting
- CA Consumer Privacy
- Cal-Savers
- Fast Food Employers
- Workplace Violence
- Call Centers
- Farm Worker Unions
- Minimum Wage
- Suitable Seating
- EEOC New Poster
- New I-9 Form

# “Close Contact” Definition Update

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CDPH revised its definition of “close contact” so that it is now defined as follows:

- In indoor spaces **400,000 or fewer cubic feet per floor**, a close contact is defined as sharing the same indoor airspace for a cumulative total of 15 minutes or more over a 24-hour period during an infected person’s infectious period.
- In large indoor spaces **greater than 400,000 cubic feet per floor**, a close contact is defined as being within 6 feet of the infected person for a cumulative total of 15 minutes or more over a 24-hour period during the infected person’s infectious period.
- Spaces that are separated by floor-to-ceiling walls (e.g., offices, suites, rooms, waiting areas, bathrooms, or break or eating areas that are separated by floor-to-ceiling walls) are considered distinct indoor airspaces.

# Extended COVID Sick Pay

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- Extends benefit for employers with 26 or more employees to December 31, 2022. instead of expiring in September. **No additional time is available, only the time to take the leave has been extended.**
- 40 hours of paid sick leave if:
  - An employee is quarantined; has been advised by a healthcare provider to quarantine due to COVID-19; or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
  - An employee is caring for a family member who is either subject to a quarantine or isolation period related to COVID-19 or has been advised by a healthcare provider to quarantine due to COVID-19, or the employee is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- Up to 3 days for obtaining a COVID vaccination (or recovering from the shot).
- Additional 40 hours available if an employee, or a family member who they are caring for, tests positive for self or caring for family member.
  - A positive test can be required.



# Extended COVID Sick Pay

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Previous law allowed an employer to require the employee to take a diagnostic test on or after the fifth day after the initial test and provide documentation of those results.

- As amended, the law now states that, “[i]f the diagnostic test is positive, the employer *may also require the employee to submit to a second diagnostic test within no less than 24 hours.*”

Previous law stated employers did not need to provide 2022 SPSL if an employee refuses his/her employer’s request to provide documentation of the test results.

- As amended, employers can now also deny 2022 SPSL to an employee who refuses to take a diagnostic test.

## AB 152

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AB 152 also established a grant program for certain small businesses (26-49 employees). The grant will provide up to \$50,000 to cover some costs of COVID-19 2022 SPSL that was provided.

# COVID – State of Emergency

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- On October 17, 2022, Gov. Newsom announced California's COVID-19 state of emergency will end Feb. 28, 2023, nearly three years from its initiation.
  - The state of emergency had been extended five times over the duration of the pandemic.
- The state of emergency gave Newsom broad powers to issue masking mandates and temporary stay-at-home orders in an effort to slow the spread of the virus.

## COVID – Workers' Compensation AB 1751

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The “presumption” that a COVID illness is work related and thus covered under workers' compensation now has been extended to Jan 1, 2024.

# AB 2693 – Notice of COVID Exposure

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- When an employee in workplace tests positive for COVID – no longer requires a written notice to each employee if they were a close contact
  - Will be acceptable to place a notice in a common area that someone on premises tested positive for COVID. The poster should be kept up for 15 days.
- Notice to the local public health agency will no longer be required when there is an outbreak.
- Effective until Jan. 1, 2024

# Cal/OSHA and COVID-19

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- The current Cal/OSHA emergency temporary standards (ETS) regarding COVID expire Dec. 31, 2022.
- Cal/OSHA is expected to issue a new and permanent regulation in November or December. The proposed regulation:
  - Does not include any requirement for wearing masks.
  - Eliminates exclusion pay.

# Employee Protection for Marijuana Use

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Effective January 1, 2024, it will be unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based upon:

- (1) a person's use of cannabis off the job and away from the workplace, except for pre-employment drug screenings or reasonable suspicion or post accident tests; and
- (2) may not use an employer-required drug screening test that reveals non-psychoactive cannabis metabolites in samples of hair, blood, urine, or other bodily fluids.

# Marijuana-AB 2188

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- New law for January 2024:
  - Allows pre-employment, reasonable suspicion and post accident tests.
  - **BUT only for active THC**, not residue which can stay in samples after impairment no longer persists (non psychoactive results).
- Protects employees who use marijuana off work time – during personal time and away from job.



# Bereavement Leave-AB 1949

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- If an employer has 5 or more employees, must allow 5 days time off for bereavement leave for death of a family member.
  - Family member, under this law, is considered spouse, child, parent, sibling, grandparent or grandchild, parent-in-law or domestic partner.
  - This time is unpaid unless an employer already has a paid bereavement leave policy.
- To qualify person must have been employed by the employer for at least 30 days.
- Bereavement leave must be taken within 3 months of the death.
- Employer can allow use of vacation or paid time off.
- Effective Jan. 1, 2023.

## AB 1041–Extension of CFRA Leave

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- Currently under CFRA, employers with 5 or more employees currently must allow unpaid time off (up to 12 weeks) for own serious health condition or to care for family member with a serious health condition.
- New law extends benefit to cover time to care for a *designated person* who is the equivalent of a family member.
  - Defined as any individual related by blood or whose association with the employee is the equivalent of a family relationship.
- Employer can limit to one “designated person” per 12-month period.
- Effective Jan. 1, 2023.

# AB 1041–Expansion of Kin Care Leave

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- Currently, an employee may use his/her sick leave for diagnosis, care or treatment of certain family members' health conditions.
  - New law includes a *designated person* to this list.
    - A designated person is defined as a person identified by the employee at the time the employee requests use of paid sick days.
    - An employer can limit an employee to one “designated person” per 12-month period.
- Effective Jan. 1, 2023.

# Time Off During Emergency Working Conditions – SB 1044

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- If an employee has reason to believe a worksite is unsafe, during an emergency condition, they can be protected for refusing to report to the worksite or leaving the worksite.
  - An emergency condition means the existence of either:
    - Conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act.
    - An order to evacuate a workplace, a worksite, an employee's home, or the school of an employee's child due to natural disaster or a criminal act.
- An emergency condition does not include a health pandemic.
- There must be a reasonable belief that there is a real danger of death or serious injury, and, if feasible, must notify employer when the employee refuses to report to work or is leaving work.
- This law also allows employees to use their own cell phone to seek emergency help.

# Pay Transparency—SB 1162

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- An employer upon reasonable request must provide the pay scale for a position to an applicant applying for employment.
- Required to give any current employee a copy of the pay scale of the position they hold if they ask.
- Employers with 15 or more employees must include pay scale in any job posting. This extends to any third-party company the employer is engaging to publish a job posting.
- Required recordkeeping of every employee's job title and pay rate history while employed plus 3 years thereafter.
- Effective Jan. 1, 2023.

# Pay Data Reporting

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- If an employer has 100 or more employees, they must report pay annually. The pay data must include the number of employees by race, ethnicity and sex; report by job category; number of employees in each of 12 rate bands.
  - This does not affect the requirement of employers to file reports pursuant to existing law through December 31, 2022.
- Submit a separate pay data report for employees hired through staffing agencies, temporary help firms or labor contractors including ownership names of all such firms.
- Report median and mean hourly rate for each combination of race, ethnicity and sex for both direct employees and those hired through other firms.

# Pay Data Reporting

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- Pay data must be submitted to State by 2<sup>nd</sup> Wednesday of May each year – starting in 2023. First report deadline for 2022 is May 10, 2023.
- Separate report for each work location – can no longer submit a consolidated report.

# Tips for Next Steps Regarding Pay Transparency

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- Determine and document wage or pay ranges for all positions.
- Decide how you will answer pay range questions.
- Confirm with any staffing or temp agency that they will provide needed data and also ownership info of firm.
- If over 100 employees – assemble required data by sub-groups.



# Meal and Rest Periods – New Court Rulings

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- **Reminder:**
  - Paid rest breaks of at least 10 minutes per 4 hours or majority thereof must be given.
  - Uninterrupted, unpaid meal periods of at least 30 minutes per 5 hours worked must be provided.
- **1 hour premium applies for any meal or rest breaks not provided - per violation of rest and/or meals.**
  - Includes short, missed or late breaks.
  - According to the CA Supreme Court, these rest break and meal period premiums are considered “wages” must be included on pay stubs. *Naranjo v. Spectrum Security Services, Inc.*
- **Subject to 3-year statute of limitations.**
- **If an employee does not clock in and out for meal periods – can be considered a red flag as a potential violation.**
- **Can ask employee to attest that they were provided the opportunity to take required meal and rest breaks.**

# Privacy of information – California Consumer Privacy Act

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- Effective Jan. 1, 2023 – employers will have to comply with notice and disclosure requirements regarding personal information collected from employees and job applicants.
  - Applies to businesses which have gross revenue of \$25 million per year or buy/sell/share personal information of consumers.
- We recommend this be included as a provision in employee handbooks.

# CPRA

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- Employees must be given notice of types of personal information collected.
- Employees given right to request correction of info or deletion of info.
- Employees may request that personal information disclosure be limited.
- Employers may maintain information needed for payroll, benefits, etc.
- Employees may only change personal information if reasonably verifiable (such as proof of changed SSN).

# Cal-Savers SB 1126

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- The Cal/Savers Retirement Savings Program now applies to all employers with 5 or more employees.
- Employers must enroll and allow employee deductions for a state sponsored retirement plan unless they don't offer a 401K or other program.
- By December 31, 2025, this requirement will apply to employers with one employee (or more).

# Fast Food Industry

- AB 257 – Fast Food Council is created which applies to fast food restaurants which have 100 or more locations.
- Council can set minimum wages above regular rates (estimated to be \$23.00 per hour in 2023) as well as working hours and conditions.
- Expands joint liability for franchisors regarding actions of franchisees.



Fast-food workers protest outside of a Jack in the Box restaurant in Sacramento on April 28, 2022

# Cal/OSHA Workplace Violence Prevention

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- Effective date unclear, but likely early in 2023.
- All CA employers would need to have a written Violence Prevention Plan (or include in Illness & Injury Prevention Plan).
- Requires employee involvement in developing plan and assessing risks of violence.
- Requires employee training on violence prevention and keeping a Violent Incident Log.

## AB1601—Call Center

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Call center customer service employees must provide 60 days notice prior to relocating to a foreign country.

# Agricultural Workers–Unions

- AB 2183- creates a “card check” process as an alternative to a secret ballot election or a mail ballot for union status.
- Farm employers facing union organizing attempts should seek legal counsel to evaluate best response.



Members and supporters of the United Farm Workers march through Fresno during day 10 of their 24-day march on Aug. 12, 2022.



# AB 1632 – Requirements for Employee Only Restrooms

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A business that is open to the general public for the sale of goods and that has a restroom for its employees must allow any individual who is lawfully on the premises of that place of business to use that restroom during normal business hours, even if it is typically held out to be an employee-only restroom, if:

1. The individual requesting use of the employee restroom has an eligible medical condition.
2. 3 or more employees of the place of business are working onsite at the time that the individual requests use of the restroom.
3. The restroom is not located in an employee changing area or an area where providing access would create an obvious health or safety risk to the requesting individual or would create an obvious security risk to the business.
4. Use of the restroom would not create an obvious health or safety risk to the requesting individual.
5. A public restroom is not immediately accessible to the requesting individual.

# California Minimum Wage

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- As of Jan. 1, 2023, California state minimum wage increases to **\$15.50 per hour**.
- The minimum wage increase also affects the minimum salary requirement for exempt employees to **\$64,480 annually** (\$5,373.33 monthly) as of January 1, 2023.
  - Be sure to review the salaries for employees currently classified as exempt if they are close to the new annual required amount.

# Southern CA Minimum Wage Increases

As of July 1, 2022, the following jurisdictions have increased their minimum wage rates:

JURISDICTION	MINIMUM WAGE RATES
City of Los Angeles	\$16.04 per hour (hotels with 150+ guest rooms - \$18.17 per hour)
Unincorporated LA County	\$15.96 per hour
Santa Monica, Malibu	\$15.96 per hour
Pasadena	\$16.11 per hour
Long Beach	\$16.55 for airport concession workers and convention center Hotels with 100+ rooms now \$16.73
West Hollywood	\$16 per hour for employers with less than 50 employees; \$16.50 if 50 or more employees; and \$18.35 for hotel employees

# IRS Mileage Reimbursement Rate

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- On July 1, 2022, IRS increased standard mileage rate for business travel from 58.5 cents to 62.5 cents per mile.
- Can be used to meet CA legal requirement to reimburse personal expenses incurred in performing job.
- Rate may increase Jan. 1, 2023.

# Los Angeles – Local Ordinance for Minimum Wages for Healthcare Employees

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- In the Los Angeles area, including city and county and various local cities, there is an ordinance requiring a minimum wage of \$25 per hour for employees of privately owned health facilities such as:
  - General acute care hospitals
  - Skilled nursing facilities and clinics which are part of general hospitals
  - Dialysis clinics
- Check local jurisdictions regarding current status of local ordinances.

## SB 1064: Licensed Pest Control and Workers' Compensation

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California exterminators must provide proof of continuing workers' compensation coverage to the state license board in order to maintain their registration.

# Suitable Seating

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- CA law requires employers to provide “suitable seating” when the nature of an employee’s work reasonably permits use of seats or for jobs when standing is required when use does not interfere with their job duties.
- When employees must stand throughout the workday, evaluate if seating can be provided, and if a written policy is needed.
  - For cashiers or check out stations, consider including seating.

# New Protected Category Under FEHA

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- An employer is prohibited from discriminating or taking adverse action against an applicant or an employee based on reproductive health decision-making under FEHA.
  - Unlawful for employers to ask about an applicant or employee's reproductive health decision-making.
- Effective Jan. 1, 2023.



# EEOC Issues New Poster

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- Employers are required to post the EEOC's new poster (issued 10/20/2022) in their premises in conspicuous places.
  - Can be posted electronically.
- Failure to do so is punishable by a fine of \$569 for each separate offense.

# 2022 New EEOC Poster



## Know Your Rights: Workplace Discrimination is Illegal

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Federal laws that protect you from discrimination in employment. If you believe you've been discriminated against at work or in applying for a job, the EEOC may be able to help.

### Who is Protected?

- Employees (current and former), including managers and temporary employees
- Job applicants
- Union members and applicants for membership in a union

### What Organizations are Covered?

- Most private employers
- State and local governments (as employers)
- Educational institutions (as employers)
- Unions
- Staffing agencies

### What Types of Employment Discrimination are Illegal?

Under the EEOC's laws, an employer may not discriminate against you, regardless of your immigration status, on the bases of:

- Race
- Color
- Religion
- National origin
- Sex (including pregnancy and related conditions, sexual orientation, or gender identity)
- Age (40 and older)
- Disability
- Genetic information (including employer requests for, or purchase, use, or disclosure of genetic tests, genetic services, or family medical history)
- Retaliation for filing a charge, reasonably opposing discrimination, or participating in a discrimination lawsuit, investigation, or proceeding.

### What Employment Practices can be Challenged as Discriminatory?

All aspects of employment, including:

- Discharge, firing, or lay-off
- Harassment (including unwelcome verbal or physical conduct)
- Hiring or promotion
- Assignment
- Pay (unequal wages or compensation)
- Failure to provide reasonable accommodation for a disability or a sincerely-held religious belief, observance or practice
- Benefits
- Job training
- Classification
- Referral
- Obtaining or disclosing genetic information of employees
- Requesting or disclosing medical information of employees
- Conduct that might reasonably discourage someone from opposing discrimination, filing a charge, or participating in an investigation or proceeding.

### What can You Do if You Believe Discrimination has Occurred?

Contact the EEOC promptly if you suspect discrimination. Do not delay, because there are strict time limits for filing a charge of discrimination (180 or 300 days, depending on where you live/work). You can reach the EEOC in any of the following ways:

- Submit** an inquiry through the EEOC's public portal:  
<https://publicportal.eeoc.gov/Portal/Login.aspx>
- Call** 1-800-669-4000 (toll free)  
1-800-669-6820 (TTY)  
1-844-234-5122 (ASL video phone)
- Visit** an EEOC field office (information at [www.eeoc.gov/field-office](http://www.eeoc.gov/field-office))
- E-Mail** [info@eeoc.gov](mailto:info@eeoc.gov)

Additional information about the EEOC, including information about filing a charge of discrimination, is available at [www.eeoc.gov](http://www.eeoc.gov).



## EMPLOYERS HOLDING FEDERAL CONTRACTS OR SUBCONTRACTS

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces the nondiscrimination and affirmative action commitments of companies doing business with the Federal Government. If you are applying for a job with, or are an employee of, a company with a Federal contract or subcontract, you are protected under Federal law from discrimination on the following bases:

### Race, Color, Religion, Sex, Sexual Orientation, Gender Identity, National Origin

Executive Order 11246, as amended, prohibits employment discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### Asking About, Disclosing, or Discussing Pay

Executive Order 11246, as amended, protects applicants and employees of Federal contractors from discrimination based on inquiring about, disclosing, or discussing their compensation or the compensation of other applicants or employees.

### Disability

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals with disabilities from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment by Federal contractors. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship to the employer. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### Protected Veteran Status

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits employment discrimination against, and requires affirmative action to recruit, employ, and advance in employment, disabled veterans, recently separated veterans (i.e., within three years of discharge or release from active duty), active duty wartime or campaign badge veterans, or Armed Forces service medal veterans.

### Retaliation

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination by Federal contractors under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under OFCCP's authorities should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP)  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
1-800-397-6251 (toll-free)

If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services. OFCCP may also be contacted by submitting a question online to OFCCP's Help Desk at <https://ofccphelpdesk.dol.gov/s/>, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor and on OFCCP's "Contact Us" webpage at <https://www.dol.gov/agencies/ofccp/contact>.

## PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Race, Color, National Origin, Sex

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

### Individuals with Disabilities

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

(Revised 10/20/2022)

# I-9 Forms

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- Dept. of Homeland Security has announced employers must continue to use current I-9 Form even after expiration date.
  - The I-9 Form was supposed to expire at the end of October.
- New form likely in 2023.

Any Questions?



# THANK YOU!

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Save the date: Thursday, February 16<sup>th</sup>

**[Webinar] Updating Your Employee Handbook: What You Need to Know in 2023**

