



2026 ANNUAL CONFERENCE & EXPO
 Celebrating 60 Years
 Then. Now. Next.


Carefully Compliant
Essential Legal Updates for California's Home Care Employers in 2026

June 23, 2026

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1


Presenters



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2

Polsinelli by the Numbers

1,200 ATTORNEYS NATIONWIDE	One of the FASTEST RISING Am Law 100 Firms <small>Am Law 100 Firm: The American Lawyer</small>	170+ SERVICES/ INDUSTRIES
59th AM LAW'S ANNUAL FIRM RANKINGS <small>Am Law 100 Firm: The American Lawyer</small>	13 NATIONAL TIER ONE RANKINGS <small>"Best Law Firms" by Best Lawyers</small>	93 REGIONAL TIER ONE RANKINGS <small>"Best Law Firms" by Best Lawyers</small>
RECOGNIZED for strongest client relationships overall. <small>BTI Industry Power Rankings</small>	EXCELLENCE in client service <small>BTI Client Service & Team Score</small>	NATIONALLY RECOGNIZED for Real Estate, Mid-Market Transactions, Disputes, Financial Services, IP & Health Care

Recognized by legal research firm BTI Consulting as one of the top firms for **excellent client service and client relationships**, the firm's attorneys provide value through practical legal counsel infused with business insight.


7 CORE PRACTICE AREAS THAT ALIGN TO YOUR NEEDS

- Health Care
- Financial Services
- Real Estate
- Intellectual Property
- Middle-Market Corporate
- Labor and Employment
- Business Litigation

25+ OFFICES WITH FULL-SERVICE CAPABILITIES

Geographic footprint supports practice strengths

Strategically located in **major financial centers**
 Located in gateway cities, as well as offices with close proximity to or direct transportation and logistical hubs



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3

Agenda



- Federal Exemptions Overview with California Focus
- 2026 CA Employment Law Updates
- Status of Direct Hire Provisions in California
- Arbitration Agreement Check-In
- California's Private Attorneys General Act
- Polsinelli Online Solutions for Homecare (POSH)
- Questions

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4

Federal Exemptions Overview with California Focus

5

Fair Labor Standards Act in 1974

Two exemptions added

Companionship Services Exemption Live-In Domestic Services Exemption

↓

All employers could utilize these exemptions for employees who fell under the "companionship" and "live-in" definitions of the regulations

↓

Third party agencies who employed Companions and Live-In Domestic Service caregivers could rely on these exemptions to overtime under the FLSA

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6

2025 Proposed Rescission

- July 2, 2025, DOL notice:
 - Proposal to rescind 2013 final rule, explaining "Department is concerned that the 2013 regulations might not reflect the best interpretation of the FLSA and might discourage essential companionship services by making these services more expensive"
 - Return to the 1975 regulations
 - Would restore the ability of agencies to utilize the companionship and domestic service live-in exemptions
 - Would eliminate the 20% care limitation under the current definition of "companionship services"



7

Update on Exemptions

Comment period closed on September 2

Over 5,000 comments received by DOL

Final rule is pending

8

State Laws Apply

California

- State law requires all individuals employed by an employer be paid a higher minimum wage (\$16.50/hour)
 - "Employer" means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person.
- Additionally, Wage Order 15 requires all employers to pay at least \$16.50/hour
- Overtime:
 - State law generally requires 1.5 for hours over 8/day or 40/week and the first 8 hours on the 7th day of work in a workweek (Wage Order 15 has these requirements for non-live-in domestic workers that are not personal attendants as well)
 - State law requires 2 times the regular rate of pay for hours over 12/day and hours over 8 on the 7th day of work in a workweek (Wage Order 15 has these requirements for non-live-in domestic workers that are not personal attendants as well)
 - Personal attendants are entitled to 1.5 for hours over 9/day or over 45/week
- "Personal attendant" means any person employed by a private householder or by any third-party employer recognized in the health care industry to work in a private household, to supervise, feed, or dress a child, or a person who by reason of advanced age, physical disability, or mental deficiency needs supervision.
- 80% or more of duties must be supervising, feeding, and dressing a child or person who needs assistance because of advanced age, physical disability, or mental deficiency
- Wage Order 15 requires the following for live-in domestic workers that are not personal attendants:
 - 1.5 for hours worked over 9/day or for the first 9 hours worked on the 6th or 7th days of the workweek
 - 2 times the regular rate of pay for hours worked over 9 hours on the 6th and 7th days of the workweek

9

Fair Wages for Homecare Workers Act

Introduced on March 12, 2026

Seeks to

- Guarantee federal minimum wage and overtime protections for home care workers
- Curb high turnover rates
- Strengthen the industry to meet the rising demand for care for aging populations

Direct response to FLSA proposal to reinstate the companionship exemption

Supported by the National Domestic Workers Alliance and AFSCME



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10

Third Circuit Appellate Case

- DOL v. WiCare Home Care Agency
- Appealed from a Pennsylvania district court
 - Granted SJ for DOL
 - Affirming agency failed to pay employees minimum wage and overtime premiums required under the FLSA
- On appeal, agency argued that a regulation denying third-party employers the benefit of the "companionship services" exemption is inconsistent with the FLSA
 - Appellate court ruled:
 - DOL passed regulation that "third party employers of employees engaged in companionship services...may not avail themselves of the minimum wage and overtime exemption provided under section 13(a)(1) of the Act."
 - Well established that some statutes delegate an agency the authority to give meaning to a particular statutory term
 - FLSA's companionship exemption contains this language: "terms" may be "defined and delimited by regulations of the Secretary."
 - DOL chose to limit the scope of the exemption with the regulation and was allowed to do so by its delegated authority under the FLSA



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11

2026 CA Employment Law Updates

12

Changes Affecting Handbooks



- Time Off for Victims of Violence
- Expansion of Paid Family Leave Benefits

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Time Off for Victims of Violence (AB 406)

- Effective Jan. 1, 2026
- Mostly a cleanup bill for AB 2499
- Clarifies that employees may use Paid Sick Leave for jury duty, court appearances as a witness, and to attend additional victim-related judicial proceedings
- Employee must provide reasonable "advance" notice to the employer, unless the "advance notice is not feasible."
- Requires some tweaks to leave policies in handbook.
- Make sure to also use new DLSE Paid Sick Leave poster.

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14

Workplace Violence Prevention Program

- Applies to *most* employers, employees and places of employment, but not
 - Teleworking employees
 - Places of employment where there are <10 employees working at any given time and that are not accessible to the public.
- Plan can either be part of injury and illness prevention programs or a separate document
- Plan will expand the ability of employers to seek restraining orders on behalf of employees

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Paid Family Leave Expansion for Designated Persons (SB 590)

• **Overview**

- Expands employees' eligibility to receive state PFL benefits to those who are taking time off work to care for a seriously ill designated person
- Designated person: "any care recipient related by blood or whose association with the individual is the equivalent of a family relationship"
- Effective July 1, 2028



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Wage and Hour Issues



- "Stay or Pay" Agreements
- Wage Judgments



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20

Contracts in Restraints of Trade: "Stay or Pay" Agreements (AB 692)

- Applies to contracts entered into as of Jan. 1, 2026
- Makes it unlawful to include in an employment contract or to require employees to agree to terms as a condition of employment that:
 - Require repayment of a "debt" if the worker's employment terminates.
 - Trigger or restart collections/end forbearance on a debt upon termination.
 - Impose any "penalty, fee or cost" on separation (e.g., retraining fees, visa-related reimbursement, liquidated damages, profit)



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21

“Stay or Pay” Agreements (AB 692) (Cont’d)

• **Exceptions**

- Gov’t loan repayment/forgiveness programs.
- Apprenticeship programs approved by DAS
- Tuition repayment for a “transferable credential” if strict enumerated requirements are met
- Certain sign-on bonus payments or other discretionary bonus payments (not tied to specific job performance) if strict enumerated requirements are met
- Residential property lease/financing/purchase contracts



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“Stay or Pay” Agreements (AB 692) (Cont’d)

- May require revising offer letters, employment agreements, incentive programs and handbooks and/or drafting separate agreements
- **Employer Consequences for Violation**
 - The law provides contracts entered into on or after January 1, 2026, that violate new law are void and contrary to public policy.
 - Employer may not be able to recover bonus from employee.



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DLSE Enforcement of Wage Judgments (SB 261)

• **Overview**

- Applies to agency judgments which pertain to alleged unpaid wages
- Increases civil penalty to 300% outstanding judgment plus interest if employer doesn’t pay judgment within 180 days
- Reiterates importance of promptly paying any DLSE judgments

• **Reducing the Penalty**

- Counsel may advocate for reduced penalty under good cause standard with clear and convincing evidence



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Anti-Discrimination and Anti-Harassment Laws



- Equal Pay Law Amendments
- Employer Pay Data
- Bias Mitigation Training

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28

Equal Pay Amendments (SB 642)


- **Overview**
 - SB 642 allows employers to use a reasonable estimate of pay for the position upon hire for job advertisement pay scale disclosures
 - Increases the statute of limitations for EPA claims to three (3) years from alleged violation
 - EPA prohibits paying an employee a “wage rate” that is less than the rates paid to employees of “another sex” (instead of the opposite sex”) and expands “wage rates” to include bonuses, stock, travel reimbursement, etc.

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Equal Pay Amendments (SB 642)

- Applies to private employers with 100+ employees
- Pay data reporting portal scheduled to open Feb. 2026 with deadline of **May 12, 2026**
- Starting in 2026, penalties will become mandatory upon CRD request for failure to submit a report.
- SB 464 requires employers to collect and store demographic information separate from employees’ personnel files
- Effective Jan. 1, **2027**, employers will need to identify number of employees by race, ethnicity and sex in 23 job categories (rather than 10)



Pay Data REPORTING PORTAL
CIVIL RIGHTS DEPARTMENT

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30

Extending Statute of Limitations for Sexual Assault Claims (AB 250)

- Extends an employee’s ability to recover damages suffered as a result of an alleged sexual assault when there is evidence of a cover up
- The statute defines cover up as a “concerted effort to hide evidence of a sexual assault that incentivizes individuals to remain silent” or “prevents information relating to a sexual assault from becoming public” such as the use of nondisclosure or confidentiality agreements
- Causes of action are permitted if pending in court by Jan. 1, 2026 or commenced by Dec. 31, 2027

31

Notice Practices



- Know Your Rights Notice
- WARN Act Notice Update

32

Know Your Rights Notice (SB 294)

SB 294 requires California employers to provide a new stand-alone written notice to employees regarding specified workers’ rights. The categories include:

1. Workers’ compensation benefits;
2. Right to notice of inspection by immigration agencies;
3. Right to organize a union or to engage in concerted activity in the workplace;
4. The constitutional rights of employees when interacting with law enforcement in the workplace; and
5. List of enforcement agencies that may enforce underlying rights.

California Workplace - Know Your Rights

As a worker in California, you are entitled to know and exercise your workplace and constitutional rights, labor laws, including but not limited to standards for wages, hours and health and safety, apply to all workers in the state regardless of immigration status.

It is against the law for your employer to retaliate against you for exercising your rights, including:

- Filing a complaint with the Labor Commissioner, Cal/OSHA, the Civil Rights Department, or another government agency.
- Asking about your employer’s compliance with federal, state, or local law.
- Talking with others about their rights or helping them exercise their rights under federal, state, or local law.

Examples of illegal retaliation include firing you, reducing your work hours, or threatening to report you or a relative to immigration authorities because you exercised your rights.

Workplace Protections Related to Immigration Status

33

Know Your Workplace Rights Notice

- **Standalone Notice**
 - Must be provided to current employees by **February 1, 2026**, and annually thereafter, to new employees upon hire, and to employees' collective bargaining representative, if applicable.
 - Model Notice available on Labor Commissioner website in English and Spanish
- **Emergency Contact:**
 - Employees have right to designate an emergency contact to be notified if employee is arrested or detained at work. If emergency contact has been designated, there are additional employer obligations.
 - Deadline to provide opportunity to name emergency contact: **March 30, 2026**

34

CalWARN Act Amendments (SB 617)

SB 617 adds the following new information employers must provide for covered plant closings and mass layoffs under the CalWARN Act:

1. Whether the employer will coordinate services through the local workforce development board, a different entity, or not at all;
2. CalFresh information;
3. Local workforce development board contact information and a description of the rapid response activities offered by the board; and
4. Employer contact.

35

Status of Direct Hire Provisions in California

36

California DOJ Prespective

- Direct hire provisions violate Business and Professions Code Sections 16600 and 17200
 - DOJ’s legal analysis relies on the Supreme Court’s interpretation of Section 16600 in *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937 (2008)
 - Finding that certain noncompete agreements were unenforceable under Section 16600 in the employment context
 - Court rejected certain common law exceptions to Section 16600 but recognized statutory exceptions



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37

Industry Perspective

- Direct Hire Provisions are a business restraint and subject to the reasonableness test
 - A reasonableness standard, rather than a per se rule, applies to contractual restraints between businesses, and such contractual restraints are not per se invalid
 - *Inchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1159 (2020)
 - A recent unpublished California Appeals Court applied the rule of reason identified in *Inchel* to analyze the validity of a no-hire provision between a staffing agency and its client who later caused the staffing agency’s employees to be hired by a different staffing agency
 - *Howroyd-Wright Emp. Agency, Inc. v. Springboard Sol. LLC*, 2021 WL 4145092, at *4 (Cal. Ct. App. Sept. 13, 2021) (citing *VI Systems, Inc. v. Unisen, Inc.*, 152 Cal. App. 4th 708, 713-15 (2007) for the proposition that no-hire clauses are subject to a reasonableness test and are not per se invalid)
 - “we conclude the trial court was correct to apply a reasonableness test, as it cannot seriously be disputed that the placement fee provision is a contractual restraint on business operations and not a noncompete agreement restricting the right of [the plaintiff’s] employees to engage in occupations of their choosing.”
 - “[a]nd in cases like this, where the company imposing the restraint is a staffing agency whose entire business is supplying labor to clients, placement fees protect the company against the unfair exploitation of [its] [training and recruitment] services.”



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38

Industry Perspective (Cont’d)

- Direct hire provisions do not violate Section 17200
 - Section 17200 prohibits “any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.”
 - If the provisions are valid and enforceable:
 - They are not unlawful,
 - Do not risk client deception, and
 - Do not otherwise violate Section 17200 as an unfair business practice.
 - California Coalition decided not to move forward on challenging the issue



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Arbitration Agreement Check-in

40

Best Candidates for Arbitration Agreements



- Who needs have arbitration agreements?
 - Employers with hourly or non-exempt workforce, particularly those with high employee turnover, are most susceptible to wage-and-hour claims, and class, collective, or representative actions are a real risk.
 - Employers who value confidentiality and/or speedy resolutions of a claim over costs.
 - Employers with high employee turnover; increasing claim volume.
- Class Action Waivers
 - A well-drafted arbitration agreement with a class action waiver is a powerful risk reduction tool.
 - This waiver prohibits an employee from maintaining a large-scale class action and requires the employee to resolve claims through arbitration on an individual basis.
 - PAGA claims can also be compelled to arbitration, requiring employees to arbitrate individual PAGA claims and, if successful, maintaining standing to pursue representative PAGA claims in court.

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41

Pros and Cons to Arbitration

- **Speedy** - Disputes are typically resolved faster than in court, with fewer procedural delays and earlier access to a decision on the merits.
- **Knowledgeable** - Parties can select an arbitrator with subject-matter expertise, rather than relying on a jury unfamiliar with the industry or governing rules.
- **Confidential** - Proceedings are private, reducing public exposure of sensitive business practices, compensation structures, and internal policies.
- **Costly (Especially in California)** - In California employment arbitrations, employers are generally required to bear the arbitrator's fees and the costs unique to arbitration, which can create significant upfront expense and may exceed the cost of litigating an individual claim in court.
- **Other Drawbacks** - Dispositive motions are generally disfavored. Very limited appeal rights. Cannot appeal the award simply because the arbitrator "got it wrong"

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42

Best Practice to Review Arbitration Agreements Annually

- California courts continue to scrutinize arbitration agreements, and recent developments raise the stakes for employers. Challenges to electronic signatures and the Ending Forced Arbitration Act (EFAA) complicate enforceability.
- **Wary of Problematic Provisions**
 - In California, employer must pay costs unique to arbitration, including cost of arbitrator.
 - Cannot limit remedies or substantive rights, such as limiting attorneys' fees for FEHA claims Proceedings are private, reducing public exposure of sensitive business practices, compensation structures, and internal policies.
- **Best Practices**
 - Stand-alone, clearly labeled agreement, not buried in an employee handbook
 - explicit incorporation of the Federal Arbitration Act
 - Class Action Waiver
 - Severability Provision
 - Handwritten signatures instead of electronic.

43

Electronic Signatures: Authenticity Disputes

- **Case Study: Garcia v. Stoneledge Furniture, LLC(2024)**
- **Holding:** Arbitration agreement unenforceable due to failure to authenticate electronic signature
- **Background**
 - Former employee alleged sexual harassment and related claims. Employer moved to compel arbitration based on an agreement allegedly signed during onboarding. Employer relied on an HRIS declaration describing the electronic onboarding process
- **What Went Wrong**
 - Employee denied signing the arbitration agreement
 - Employer failed to show that **only the employee could have executed the electronic signature**
 - No explanation of security safeguards for the username and password
 - No Date and time stamp, IP address or device information
 - No indication the agreement was generated or executed within the onboarding system

44

Electronic Signatures: Best Practices

- Sending a link to the employee's personal email for document access.
- Requiring employees to create a unique username and password to access, review, and sign arbitration agreements.
- Ensuring no one else but the employee signing the arbitration agreement can access the employee's account.
- Developing or utilizing a secure platform that provides an electronic signature certification or audit page that records the date, time, IP address, and user details for the employee signing the arbitration agreement.
- Recording the date and time of each electronic signature.
- Sending a confirmation email to the employee after signing which includes a copy of all electronically signed documents, including the arbitration agreement.
- Ensuring consistent practices among all onboarding documents.
- **Save the confirmation e-mail – this is your key to authenticating the electronic signature!**

45

California's Private Attorneys General Act

46

PAGA Reform

- **Key PAGA Reform Changes:**
 - Stricter standing requirements.
 - Reasonable steps to achieve compliance can help reduce penalties
 - Expanded cure opportunities can help reduce or eliminate penalties.
 - Increased settlement opportunities.
- The new PAGA law applies to lawsuits following a PAGA notice submitted on or after **June 19, 2024**.
- One of the purposes of PAGA reform was to reduce the number of PAGA lawsuits. Has that happened?

YEAR	2022	2023	2024	2025
NUMBER OF PAGA NOTICES FILED	5,818	8,769	10,031	10,126

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47

Reasonable Steps to Comply with Labor Code

Employers May Utilize "Reasonable Steps" at Compliance to Minimize Penalties:

- If the employer takes all reasonable steps to comply with the California Labor Code before receiving a violation notice or a plaintiff-employee's request for personnel records, but does not cure the alleged violations, the available penalties will be capped at 15% of the penalties sought.
(Labor Code § 2699(g)(1).)
- When an employer can demonstrate that it took reasonable steps to be in compliance within 60 days after it received the PAGA notice, but did not cure the alleged violations, the available penalties will be capped at 30% of the penalties sought.
(Labor Code § 2699(h)(1).)
- An employer who can demonstrate full cure, as defined by statute, will not be required to pay a civil penalty for that violation.
(Labor Code § 2699(j).)

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48

What is Considered a Cure?

- **For Unpaid Wages:** The new amendments provide that a "cure" must make the employee "whole." This includes paying for the following: (1) any unpaid wages going back three years; (2) 7 percent interest on any unpaid wages; (3) liquidated damages as required by statute; and (4) "reasonable lodestar attorney's fees and costs."
- **For Wage Statements:** The new amendments provide that an employer may cure a wage statement violation concerning the employer's legal name and address by providing the aggrieved employees the correct information in "summary form." For any other potential violations, the employer must provide three years of correct wage statements or access to a digital or computer-generated record of the same.



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49

What are Considered Reasonable Steps?



- Conducting regular payroll audits.*
- Disseminating written policies regarding wage and hour practices.
- Training supervisors on applicable requirements.
- Taking corrective action when violations are identified.

All while considering the size and resources of the Company. Must demonstrate a good faith effort to prevent PAGA claims by actively managing compliance.

***Reach out if interested in home care industry self-audit checklist**



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50

Polsinelli Online Solutions for Home Care (POSH)

51

Frequent State/City Law Differences


Minimum Wages	Live-In Pay Practices/Meal and Lodging Credits	Wage Theft Notices	Meal and Rest Breaks	Paid Sick/ Family Leave	Domestic Worker Bill of Rights	Business Expense Reimbursements
Show up Pay Requirements	Split Shift Premiums	Sleep Time Deductions	Meal and Lodging Credits	Employee Training Requirements	Notice and Pay upon Termination Provisions	Anti-Arbitration Laws
Independent Contractor Tests	Background Check Process	Salary Inquiry Bans	Requirements for Employment Agreements	Predictive Scheduling	Fair Chance Hiring	Equal Pay
Caregiver Information Disclosure Acts	Mandatory Training Requirements	Notice Provisions for Termination	Unique Equal Employment Protections	Pay Stub Requirements	Terms of Client Service Contracts	Terms Permitted in Separation and Release Agreements

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52

State Specific Resources

State Specific Materials and Information



Options within Each State (Base)



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53

Time of Hire Checklists

- State specific
- City specific
- Direct links to POSH resources
- Direct links to state/city resources
- Comments to further explain specific legal requirements
- Interactive document that can be used electronically or in print form to check off all requirements

CALIFORNIA TIME OF HIRE CHECKLIST

Employee Name: _____
 Date of Hire: _____
 Job Title: _____
 Job Description: _____
 Department: _____

Applicant received these completed [Employee Acknowledgment](#) (____)

Offer Letter Accepted Received ([Offer Letter](#)) and [State Specific Offer Letter](#) (____)

Pre-employment File Created (State Checklist) [CAHR 220120](#) (____)

Medical File Created (____)

Emergency Contact Information Received (____)

HR Description Received (____)

California [EMV Acknowledgment](#) for Release of Data Received (____)

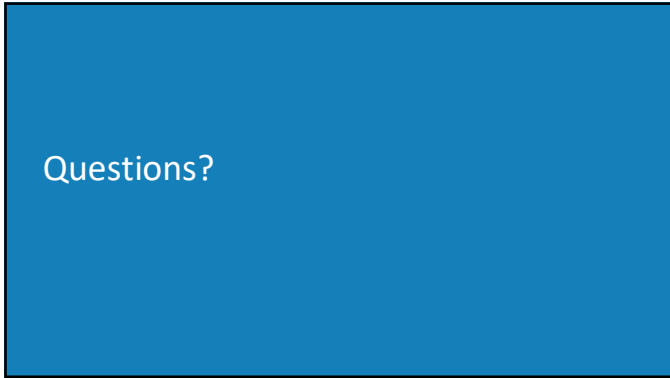
Issuance of Coverage Rights under the [Fair Credit Reporting Act \(FCRA\)](#) Received (____)

FCRA Disclosure and Acknowledgment Received (____)

California Disclosure and Acknowledgment Regarding Background Checks and Consumer Credit Report Received (upon post-conditional offer of employment) (____)

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54



64

How Did We Do?

- Please take our survey to let us know your feedback from today's session:


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65

Thank You!

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66
