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### Monterey County Works Business Services

We help businesses stabilize, strengthen and grow!

#### RECRUITMENT

- > Job & Career Fairs
- > Customized Recruitment
- > Job Boards &
- > Other Promotional Activities

#### TRAINING

- > Incumbent Worker Training
- > On-the-Job Training
- > Layoff Aversion

#### RESOURCES & OTHER SERVICES

- > Human Resources Hotline
- > Resources & Referrals for Business Solutions
- > Rapid Response: Employee and Employer Support during Downsizing
- > Employer Hiring Videos




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## Contact us today!

Laura Kershner  
Phone: (831)796-3341

Email: [KershnerL@co.monterey.ca.us](mailto:KershnerL@co.monterey.ca.us)  
Website:  
<https://www.montereycountyworks.com>

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## Real Talk. Real Resources.

CEA provides **Peace of Mind** with exceptional human resource compliance solutions, training and recruiting services.

Members receive unlimited phone support with HR experts, onsite assistance, and a multitude of online resources.

### What We Provide:

- Quick and responsive answers to HR questions
- Employment forms, policies, handbooks, guidelines, and fact sheets
- Training for supervisors, managers, and employees
- Consultation on workplace issues and negotiations



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## Legal Disclaimer

This presentation should not be relied upon as legal advice. Consult an attorney about any issues of legal significance to you & your company.

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**We will cover:**

- Handbook benefits & risks
- Essential provisions
- Best practices
- Reviewing/Editing
- Annual checkups (at least!) and other reminders



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## Handbook Benefits



**Benefits of Well-Crafted Employee Handbooks**

- #1 Rule - set a positive tone for your business
- Confirmation of At-Will employment
- Explanation of Policies
- Set expectations for employees
- Uniformity/Consistency
- Defense to harassment claims
- Union Avoidance



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## What to Avoid?

- Not **following**
- Not **reviewing**
- Not **updating**
- Downloading a **random** version from the internet
- **"Borrowing one"**




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# Creating Your Handbook

- **Assess current policies**/new policies required
- Begin the **drafting process**
- The ideal handbook has **policies** that are:
  - **Carefully & clearly** worded
  - **Accurate reflections** of your policy
  - Consistent with applicable **legal requirements**
  - **Understood** by the audience
  - Not a **snooze-fest**



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## Handbook vs. Policy Manual

### Handbooks:

- Generally applicable policies
- Abbreviated coverage
- For everyone

### Policy Manuals:

- Procedures
- Detailed coverage / forms
- Managers & Supervisors



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## The Essentials

- Let's Cover the Basics:
- Avoiding confusion
  - What's required
  - Best practices
  - Other options to consider



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# Sound Familiar?

- You can't **change** my job description!
- Do we have to give **2-weeks' notice**?
- If my coworker makes me **uncomfortable**, what do I do?
- My friend who is a **lawyer says** you have to give me that time off ... and pay me!
- Do I get paid for **holidays**?
- How much **vacation** do I get each year?
- What if I don't want to take my **breaks**?



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## Important Statements




Employee or Employer can change the terms and conditions of employment (termination, demotion, transfer, reassignment) without advance notice or cause.

**1**



Not subject to change except in writing signed by the employee and an expressly designated company representative.

**2**



Include an integration clause - supersedes prior agreements.

**3**



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## Discrimination and Harassment Prevention



Make employment decisions based on **work-related** factors such as:

- Work **performance**
- **Attendance** issues
- **Safety** violations
- Violation of **company policy**, etc. (*\*importance of handbook!*)

Know all of the **protected classes**



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## Harassment Prevention Policy – Essential Elements

- Harassment is illegal and will not be tolerated
- List all protected categories
- Law's prohibition of co-workers and third parties, as well as supervisors, from engaging in prohibited conduct
- Anti-retaliation statement
- CRD and EEOC contact information and training links

### Detailed complaint process:

- Confidentiality to the extent possible
- **Timely** response
- Impartial and **timely** investigation
- Documentation and tracking for reasonable progress
- Options for remedial actions and/or resolutions
- **Timely** closure

**PRO TIP:** If 10% or more of employees speak a language other than English, you must have policy translated.



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## California Protected Classes

- Age (40+)
- Ancestry
- Disability (Physical/Mental)
- Gender
- Gender Expression
- Gender Identity
- Genetics
- Marital Status
- Perceived Status
- Medical Condition
- National Origin
- Pregnancy
- Race
- Color
- Religion
- Sexual Orientation
- Military/Veteran Status
- Association based on Status
- Reproductive Health Choices
- Off Duty & Off-Site Cannabis Use



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## Required Leaves of Absence Policies



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# Paid Sick Leave Policy

- Healthy Workplaces/Healthy Families Act
- Provides for **5 days** or 40 hours of paid time off and **job protection** for all employees to address their own health needs and/or health needs of their **families**.



**\*Be aware of job abandonment provisions\***



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# Paid Sick Leave

- **Accrual Method:** Accrue one hour for **every 30 worked**, can cap at 80 hours, 40 to use per year; **or**
- **Lump Sum Method:** Can grant lump sum of 5 days/40 hours each year; expires at end of year and starts over.
  - Can require employee to **wait 90 days** to use PSL
  - **Not paid out** at termination (unless part of PTO plan)
  - Employer may not retaliate
- **PTO (combined) Plan:** Must make the paid leave available for the **same purposes** and under the **same conditions** as in the law. PTO must be paid out at term.



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# Be Aware of Local Sick Leave Ordinances



- Some could require **different caps or rollovers**
- Many **local** ordinances
- Be aware of ordinances where your employees are **working remotely!**

**employers.org/pages/hr-forms/Scheduling and Pay: "Minimum Wage – Local and PSL"**



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# Pregnancy Disability Leave (PDL)

### Covered Employer:

If you have 5 or more employees in the current year **OR** had 5 or more employees in the past year for 20 or more consecutive weeks, then you must provide PDL.

1

### Eligible Employee:

Anytime a **health care provider** states that an employee cannot perform one or more of the essential functions of their job without undue risk to themselves, or their pregnancy's successful completion.

2

Pregnancy Disability Leave can occur before, during or after the actual birth of a child.

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# How Much Time Off?

01



Up to 4 months = 17 1/3 weeks or 88 days (704 hours)

02



Amount of Leave is per pregnancy, not per year. No limit.

03



Leave can be used all at once or intermittently (increments of 1 hour or more).

04



Can require or EE may choose to use sick leave. Cannot require to use vacation or PTO, but EE may choose to.

05



Time needed = must be certified by a healthcare provider.



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# CFRA California Family Rights Act

### Provides up to 12 weeks of unpaid leave with benefits

- An employee is eligible for CFRA if:
  - Work for an employer with **5 or more employees**
  - worked **12 months & 1250 hours** in prior 12 months
- Covered Reasons Under CFRA:
  - **Birth of child**, adoption or foster care (baby bonding);
  - Employee's **own** serious **health condition** (except pregnancy)
  - Care for **family member** with serious health condition (spouse/RDP, parents (in-law), siblings, and more)
  - Care for a **designated person** with serious health condition
  - Exigency re: spouse/DP, child, or parent on **active duty** status with Armed Forces.



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# FMLA Family Medical Leave Act

- If you employ **50 or more employees**, you are covered by the federal Family and Medical Leave Act (FMLA)
- FMLA provides **12 weeks** of leave in a 12-month period
- Employees eligible only if they:
  - Work at a location with **50 or more employees** in a 75 mile radius; **and**
  - Have worked for **12 months** for the employer; **and**
  - Have worked at least **1,250 hours** in prior 12 month period



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# Employer Must Define 12-Month Leave Period for FMLA/CFRA

- Most employers use one of the following methods:
- The **calendar year**
  - Any **fixed 12-month** leave year, (i.e., fiscal year, July-June), or the employee's anniversary date
  - The 12-month period measured forward from the date an **employee's first family leave begins**

Must select one method and stick with it for all employees



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# More Protected Leaves

- **Bone Marrow/Organ Donation**
- **Crime Victims**
- **Emergency Duty**
- **Civil Air Patrol**
- **Drug/Alcohol Rehab**
- **Jury Duty**
- **Bereavement Leave**
- **Reproductive Loss Event**
- **Medical Leaves** under W/C, ADA, FEHA
- **Voting Time**
- **School Suspension**
- **School Activities**
- **Military Service**
- **Military Spousal Leave**



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## Minimum Wage Definitions



- **Workday**
  - Any consecutive **24-hour** period beginning at the same time each calendar day
- **Workweek**
  - Any **7 consecutive days**, starting with the same calendar day each week

Be aware of local minimum wage ordinances!  
[bit.ly/Local\\_Min\\_Wage](http://bit.ly/Local_Min_Wage)



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## Daily Overtime Requirement

**Must be paid 1-1/2 times regular rate of pay**

- For work over 8 hours in a day
- For any work over 40 hours in a workweek
- For the first 8 hours worked on the 7<sup>th</sup> day worked in a workweek

**Must be paid 2 times regular rate of pay**

- For work in excess of 12 hours in a day
- After 8 hours on the seventh workday in a workweek

**Minors**

- It is a misdemeanor to require a minor to work more than 8 hours in any 1 workday, regardless of whether overtime is paid



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## Breaks and Meal Periods

- Continue to be **costly** wage/hour claims
- Include a **section** in **handbook** setting forth meal and break period policy
- **Non-exempt** employees
- Train managers to **strictly follow** your policy!

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## Rest Breaks

- An employer is to **“authorize and permit”** an employee to take ten minutes **“net”** rest time for every four hours worked
- A rest period is to be in the **middle** of a work period
- Rest periods need **not** be **recorded** on time cards
- **Cannot require** employees to remain on the premises
- Failure to provide = 1 hour **penalty pay** (total for any workday)

Hours Worked	Rest Periods
0 – 3.5	0
3.5 – less than 6	1
6 – less than 10	2
10 – less than 14	3

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## Meal Breaks / Lunches

- Permit a minimum **30 minute** meal break if employee works more than **five hours** per day
- Must start meal break **before** the end of the 5th hour (**4:59**)
- **Relieve** of all job duties
- Failure to provide = 1 hour **penalty pay** (total for any workday)

Hours Worked	Meal Break(s)
Less than 5	0
Over 5 up to 10	1
Over 10	2

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### Meal and Rest Policy Tips

Meal and rest break policies should be **comparable**:

- Employee **may leave** the premises
- Employee must be at **work station promptly** at end of break
- Employee must **notify** supervisor/document any **missed breaks** and **reason why**
- **Rounding** reminder

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## Workplace Benefits & Expectations

- Vacation
- Conduct
- Do's and Don'ts
- Profit Sharing
- And more...



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## About Vacation Policies



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# A Word About Drug Free Workplace Policies

- Recommended for **all** employers
- Required to **inform** your employers before you can test them. (Reasonable suspicion)
- **No law** precludes **disciplinary action** against employees under the influence of drugs or alcohol at work
- There are substance abuse – but **not on-the-job-use** – protections under the ADA/FEHA and Labor Code



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# Cannabis Use Rights

- New **FEHA** protected class
- Employers cannot **discriminate** or take **adverse action** against employees for using cannabis while off the job and away from the workplace
- Does **not permit** an employee to possess or be impaired by cannabis while on the job
- **Exceptions:** Building and construction trades; when testing required by state/federal law



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# Suggested Discipline Policy Guidelines



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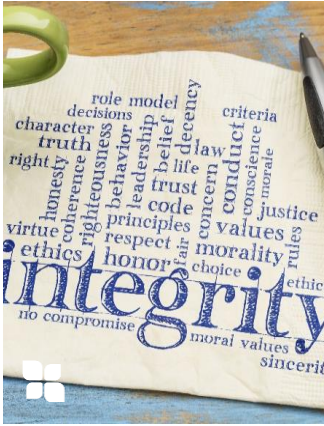
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## Integrity Policies

- Open Door
- Conduct
- Attendance
- Drugs and Alcohol (Testing)
- Workplace Violence
- Workplace Weapons
- Electronic Communications
- No Solicitation
- Dating in the Workplace
- Outside Employment

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## A Few More Policy Suggestions

- Company **social media** accounts
- **Mobile phone/device** use
- **Breaks**/meal periods/ after hours
- Company vehicles/**gas cards**
- **Injury** reporting
- Company **property**
- **Personal vehicle** use



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## NLRB *Stericycle* Decision

A challenged workplace rule will be presumed **unlawful** if it has a “reasonable tendency to chill employees exercise of their rights to discuss wages and other terms and conditions of employment” (“Section 7” rights)

- Places more scrutiny on workplace rules
- Applies to all private sector employees
- Employer can rebut the presumption – steep hill

**Pro Tip:** Review your employee handbook and any other workplace rules keeping the *Stericycle* ruling in mind.



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## Do Not Include In Employee Handbook

- “**Probationary**” periods
- **Lock-step** disciplinary procedures
- Policies that are subject to **frequent change**
- Policies or language that **imply job security** or contractual obligations
- **In-depth** supervisory or manager information
- Details of **benefit plans**
- **Pre-employment** practices

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## Consider an Employee Action Hotline

- **Proactive tool** to reduce liability
- Employers learn about **potential** wrongful acts before they **escalate**
- Sexual **harassment deterrent**
- Allows employees to assist the employer in maintaining workplace standards and report their **concerns & observations** (anonymously or not)

Sign up today:  
[employers.org/action-hotline](https://employers.org/action-hotline)

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## Check Your Handbook for...

- Required Leaves of Absence Policies
- Post Accident/Reasonable Suspicion Drug Testing Policies
- Rest Period / Meal Breaks
- Harassment Policy Requirements
- Gender Specific References – FEHA is gender neutral
- Language which may violate the National Labor Relations Act

If you haven't updated your handbook in a year, it's out of date!

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**Reminder 1**

- **Review it** – make sure it's right
- **Distribute it** – get those acknowledgements back!
- **Follow it** - monitor your handbook's effectiveness
- **Train managers** for consistency

**Reminder 2**

And don't forget your...

- State and Federal Labor Law Posters
- Injury Illness Prevention Program
- COVID-19 Plan

**Handbook Reminders**

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**Training Codes**



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The use of this seal confirms that this activity has met HRCI Certification Institute's (HRCI) criteria for recertification.



**SHRM:**  
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For more information: [CEAinfo@employers.org](mailto:CEAinfo@employers.org)  
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**Contact us today!**

Laura Kershner  
Phone: (831)796-3341

Email: [KershnerL@co.monterey.ca.us](mailto:KershnerL@co.monterey.ca.us)  
Website:  
<https://www.montereycountyworks.com>

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# CEA Membership

Associate memberships available for \$109/month

**ULTIMATE**

- Unlimited HR phone support
- Online access to tool kits and forms
- Free harassment prevention online trainings
- Customized employee handbook (\$2,000 value)
- Labor law poster
- Consulting hours for compliance projects (8)
- 50 point HR assessment
- One virtual or onsite compliance training
- Dedicated HR partner with quarterly check-ins (\$1,000 value)

\$5,995

**MEMBER CHOICE**

**PREMIER**

- Unlimited HR phone support
- Online access to tool kits and forms
- CEA University
- Labor law poster\*
- Consulting hours for compliance projects (8)
- Online harassment prevention training

\$2,595

**ASSOCIATE**

- Unlimited HR phone support
- Online access to tool kits and forms
- CEA University
- Labor law poster\*
- Available as a \$109/month subscription
- Online harassment prevention training

\$1,245



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## Your feedback matters!

Help us improve trainings & build resources for you!

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# Thank You

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