

### **3 Summary of California Law (10th), Agency and Employment**

#### **I. NATURE OF AGENCY AND EMPLOYMENT**

##### **A. In General.**

- 1. [§1] Restatement of Agency.**
- 2. [§2] Agent.**
- 3. [§3] Employee.**
- 4. [§4] Agent Distinguished From Employee.**
- 5. [§5] Labor and Laborer.**

##### **B. Franchises.**

- 1. [§6] In General.**
- 2. Franchise Relations Act.**
  - (a) [§7] In General.**
  - (b) [§8] Transfer.**
  - (c) [§9] Nonrenewal.**
  - (d) [§10] Termination.**
  - (e) [§11] Offer To Repurchase Inventory.**
- 3. [§12] New Motor Vehicle Dealership Franchises.**
- 4. [§13] Petroleum Franchises.**

##### **C. Officers and Employees.**

- 1. [§14] Public Officer Distinguished From Employee.**
- 2. [§15] State and Local Officers.**
- 3. [§16] Incompatible Offices.**
- 4. Civil Service System.**
  - (a) [§17] In General.**
  - (b) [§18] Officers and Employees Included.**
  - (c) [§19] Independent Contractors.**
  - (d) [§20] Employment as Vested Right.**

##### **D. Independent Contractors.**

- 1. [§21] Nature of Relationship.**
- 2. [§22] Necessity for Distinction.**
- 3. Extent of Control.**
  - (a) Nature of Test.**
    - (1) [§23] Control Over Details.**
    - (2) [§24] Right of Control Is Determinative.**
    - (3) [§25] Freedom Inherent in Nature of Work.**
    - (4) [§26] Custom and Belief.**
  - (b) Illustrations.**
    - (1) [§27] Route Drivers.**
    - (2) [§28] Outside Salespersons.**
    - (3) [§29] Newspaper and Magazine Vendors.**
    - (4) [§30] Miscellaneous Examples: Employees.**
    - (5) [§31] Miscellaneous Examples: Independent Contractors.**
  - (c) Unlicensed Contractor Is Presumed To Be Employee.**
    - (1) [§32] Statutory Rule.**
    - (2) [§33] Scope of Rule.**

**(d) Determination Where Evidence Is Conflicting.**

**(1) [§34] Trial Court or Board Upheld.**

**(2) [§35] Trial Court or Board Reversed.**

**4. Distinct Occupation or Calling.**

**(a) [§36] Contractors and Subcontractors.**

**(b) [§37] Actors, Athletes, and Entertainers.**

**(c) [§38] Craftsmen and Mechanics.**

**(d) [§39] Doctors.**

**(e) [§40] Nurses.**

**5. [§41] Right To Discharge.**

**6. [§42] Form of Contract Is Not Controlling.**

**II. PARTICULAR AGENTS**

**A. [§43] Auctioneers.**

**B. [§44] Factors.**

**B-1. [§44A] (New) Independent Wholesale Sales Representatives.**

**C. [§45] Nature and Types of Brokers.**

**D. [§46] Stockbrokers.**

**E. Real Estate Brokers.**

**1. [§47] In General.**

**2. [§48] Obligations and Liabilities.**

**3. Qualifications of Applicant.**

**(a) [§49] In General.**

**(b) [§50] Denial for Conviction of Crime.**

**4. License Requirement.**

**(a) Real Estate Brokers.**

**(1) [§51] In General.**

**(2) [§52] Other Persons and Entities Included.**

**(b) [§53] Real Estate Salespersons.**

**(c) [§54] Persons Involved in Mineral, Oil, or Gas Transactions.**

**(d) Exempt Persons.**

**(1) [§55] In General.**

**(2) [§56] Finder's Agreement.**

**5. Grounds for Discipline.**

**(a) [§57] In General.**

**(b) Fraud and Breach of Fiduciary Duty.**

**(1) [§58] In General.**

**(2) [§59] Illustrations.**

**(c) [§60] Fraud Judgment in Civil Action.**

**(d) [§61] Conviction of Crime.**

**(e) [§62] Miscellaneous Acts.**

**6. Required Disclosures.**

**(a) [§63] In General.**

**(b) [§64] Broker's Liability to Vendor.**

**(c) Broker's Liability to Purchaser.**

**(1) [§65] Judicial Rule.**

**(2) [§66] Legislative Response.**

**7. Fund for Defrauded Persons.**

**(a) [§67] In General.**

**(b) Procedure.**

**(1) [§68] Application and Service.**

**(2) [§69] Administrative Decision.**

**(3) [§70] Judicial Decision.**

**(c) Amount of Recovery.**

**(1) [§71] Transaction Limits.**

**(2) [§72] Licensee Limits.**

**(d) [§73] Acts Outside Scope of License.**

**(e) [§74] Effect of Judgment.**

**8. Contract and Commission.**

**(a) Requisites of Authorization.**

**(1) [§75] In General.**

**(2) [§76] Termination Date of Exclusive Agency.**

**(b) [§77] Proof of License.**

**(c) When Commission Is Earned.**

**(1) [§78] In General.**

**(2) [§79] Good Faith Requirement.**

**(3) Purchaser Produced.**

**(aa) [§80] Ready, Able, and Willing.**

**(bb) [§81] Arbitrary Refusal or Inability To Sell.**

**(cc) [§82] Purchaser's Failure To Meet Conditions.**

**(dd) [§83] Purchaser's Fraud.**

**(4) Requirement of Additional Performance.**

**(aa) [§84] Nature of Special Contracts.**

**(bb) [§85] Exceptions.**

**(5) [§86] Procuring Cause of Sale.**

**(6) [§87] Exclusive Agency or Right To Sell.**

**(7) [§88] Termination of Listing Agreement.**

**III. CREATION OF AGENCY RELATIONSHIP**

**A. Capacity To Be or To Appoint Agent.**

**1. [§89] In General.**

**2. [§90] Agent of Adverse Party.**

**3. [§91] Employer as Agent of Group Insurer.**

**B. Agency Contracts.**

**1. [§92] Nature and Requisites.**

**2. [§93] Question of Fact.**

**3. [§94] Proof of Agency.**

**C. [§95] Agency by Ratification.**

**D. [§96] Ostensible Agency and Agency by Estoppel.**

**IV. PRINCIPAL AND AGENT RELATIONSHIP**

**A. Agent's Fiduciary Obligations.**

**1. [§97] Statement of Rule.**

**2. [§98] Illustrations.**

**B. [§99] Agent's Duty of Care.**

**C. Agent's Duty of Loyalty.**

**1. Competition.**

(a) [§100] In General.

(b) Inventions and Patents.

(1) [§101] In General.

(2) [§102] Shop Right Rule.

(3) [§103] Statutory Right Nullifying Contract.

**2. Adverse Interest.**

(a) [§104] In General.

(b) [§105] Secret Profits.

(c) [§106] Personal Purchase by Purchasing Agent.

(d) Personal Purchase by Selling Agent.

(1) [§107] General Rule.

(2) [§108] Purchase Through Another.

(3) [§109] Agent With Option To Buy.

(4) [§110] Cure by Subsequent Disclosure.

(e) [§111] Dual Agency.

**D. Liability of Agent to Principal.**

**1. Acts or Omissions of Agent.**

(a) [§112] In General.

(b) [§113] Failure To Account.

(c) [§114] Breach of Contract.

(d) [§115] Torts Against Principal.

(e) [§116] Indemnity for Tort Against Third Party.

(f) [§117] Gratuitous Agent.

**2. [§118] Acts or Omissions of Subagent.**

**3. Remedies and Defenses.**

(a) [§119] Remedies of Principal.

(b) [§120] Defenses of Agent.

**E. Liability of Principal to Agent.**

**1. [§121] Compensation.**

**2. Indemnity.**

(a) [§122] In General.

(b) [§123] Illustrations: Indemnification Allowed.

(c) [§124] Illustrations: Indemnification Denied.

**3. [§125] Prevention of Performance.**

**4. Negligence of Employer.**

(a) [§126] Unsafe Working Conditions.

(b) [§127] Breach of Duty Voluntarily Assumed.

**5. [§128] Remedies and Defenses.**

**F. [§129] Rights of Subagent Against Agent or Principal.**

**V. PRINCIPAL AND THIRD-PARTY RELATIONSHIP**

**A. In General.**

**1. [§130] California Statutes.**

**2. [§131] Restatement Analysis.**

**3. [§132] Delegation of Authority.**

4. [§133] Third Party's Duty To Ascertain Authority.
- B. Actual Authority.**
1. [§134] Authority Given by Principal.
  2. Authority Conferred by Law.
    - (a) [§135] In General.
    - (b) [§136] Authority To Sell.
    - (c) [§137] Authority To Receive or Collect Money.
    - (d) [§138] Authority To Draw Checks.
- C. Ratification.**
1. [§139] Nature and Effect.
  2. Form and Manner.
    - (a) [§140] Formal Ratification: Equal Dignities Rule.
    - (b) [§141] Voluntary Acceptance of Benefits.
    - (c) [§142] Bringing Suit.
  3. [§143] Limitations on Power To Ratify.
- D. Ostensible Authority.**
1. [§144] Nature of Ostensible Authority.
  2. Illustrations.
    - (a) [§145] Ostensible Authority Found.
    - (b) [§146] Ostensible Authority Not Found.
  3. Apparent Ownership or Authority To Sell.
    - (a) [§147] Entrustment of Possession of Property.
    - (b) [§148] Entrustment of Instrument in Blank.
  4. [§149] Holding Out Agent as Principal.
- E. Imputed Knowledge and Notice.**
1. [§150] Theory of Doctrine.
  2. [§151] Relation to Subject of Agency.
  3. [§152] Necessity of Prior Dealings.
  4. [§153] Knowledge of Agent Prior to Employment.
  5. [§154] Transaction Between Principal and One Agent.
  6. [§155] Distinction: Good Faith of Principal.
  7. Exception: Agent Acting Adversely.
    - (a) [§156] Theory and Scope of Exception.
    - (b) [§157] Where Knowledge Is Imputed Despite Adverse Interest.
- F. Liability on Contracts Where Principal Is Undisclosed.**
1. [§158 ] In General.
  2. [§159] Where Identity of Principal Is Known.
  3. [§160] Election in Action Against Principal and Agent.
- G. Rights of Principal Against Third Parties.**
1. [§161] Contracts.
  2. [§162] Torts.
- H. Principal's Liability for Agent's Torts: Where Principal Is at Fault.**
1. [§163] Wrongful Act Directed or Authorized.
  2. [§164] Wrongful Act Ratified.
- I. Principal's Liability for Agent's Torts: Where Agent Alone Is at Fault (Respondeat Superior).**

1. [§165] Statement of Doctrine.
2. [§166] Theory of Doctrine: Business Risk on Innocent Employer.
3. Where Employee Is Exonerated.
  - (a) [§167] General Rule.
  - (b) [§168] Distinctions.
4. Dual Employment.
  - (a) [§169] Liability of Special Employer.
  - (b) Liability of General Employer.
    - (1) [§170] In General.
    - (2) [§171] Hospital Employer of Surgical Nurse.
    - (3) [§172] Municipal Employer of Harbor Pilot.
5. Special Employment Relationships.
  - (a) [§173] Employee of Representative.
  - (b) [§174] Subagents and Substitutes.
  - (c) [§175] Ostensible Agency.
6. Acts Within Scope of Employment.
  - (a) Acts Required, Incidental, or Foreseeable.
    - (1) [§176] Statement of Rule.
    - (2) [§177] Illustrations.
  - (b) [§178] Acts for Personal Convenience or Pleasure at Workplace.
  - (c) Deviation or Departure.
    - (1) [§179] Statement of Rule.
    - (2) [§180] Illustrations.
  - (d) "Going and Coming" Rule.
    - (1) [§181] Rule and Theory.
    - (2) Exceptions.
      - (aa) [§182] Dual Purpose (Special Errand).
      - (bb) [§183] Travel Time Paid by Employer.
      - (cc) [§184] Other Exceptions.
  - (e) Intentional Torts.
    - (1) [§185] In General.
    - (2) Assaults To Maintain Order or Protect Property.
      - (aa) [§186] General Rule of Liability.
      - (bb) [§187] Qualifications and Distinctions.
    - (3) Altercations Arising Over Work.
      - (aa) [§188] General Rule of Liability.
      - (bb) [§189] Employee's Independent Act.
    - (4) [§190] Sexual Assaults.
  - (f) [§191] Athletic Contests.

**J. Principal's Liability for Agent's Torts: Agent's Fraud.**

1. [§192] In General.
2. [§193] Agent Placed in Position To Deceive.
3. [§194] Benefits Retained by Principal.

**VI. AGENT AND THIRD PARTY RELATIONSHIP**

- A. [§195] Agent's Warranty of Authority.
- B. Liability of Agent on Contract.

1. [§196] Contract in Name of Principal.
2. [§197] Contract in Name of Agent.
3. [§198] Contract in Name of Principal and Agent.

**C. Liability of Agent for Torts.**

1. Torts of Agent.
  - (a) [§199] In General.
  - (b) [§200] Liability of Supervisor to Coemployee.
2. [§201] Torts of Principal.

**D. Liability of Agent To Make Restitution.**

1. [§202] Agent Acting Innocently.
2. [§203] Agent Acting Wrongfully.

**VII. LAWFUL TERMINATION OF AGENCY OR EMPLOYMENT**

**A. In General.**

1. [§204] Acts of Parties.
2. [§205] Operation of Law.
3. [§206] Employment for Unspecified Term.
4. [§207] Durable Power of Attorney.

**B. Discharge for Cause.**

1. [§208] In General.
2. [§209] Employer's Honest But Mistaken Belief That Misconduct Has Occurred.
3. [§210] Disloyalty and Subversive Activities.
4. [§211] Effect of After-Acquired Evidence of Employee's Misconduct.
5. [§212] Employee's Justifiable Refusal To Perform.

**C. Notice of Termination.**

1. [§213] In General.
2. [§214] Plant Closings and Mass Layoffs.
3. [§215] Revocation, Death, or Incapacity of Principal.
4. [§216] Methods of Giving Notice.

**D. Power Coupled With an Interest.**

1. [§217] Theory of Irrevocable Power.
2. [§218] Legal or Equitable Title in Agent.
3. [§219] Duty or Debt Owed to Agent.
4. Interest in Proceeds Distinguished.
  - (a) [§220] In General.
  - (b) [§221] Hotel Management Contracts.

**VIII. WRONGFUL TERMINATION OF PRIVATE EMPLOYMENT**

**A. In General.**

1. [§222] Overview.
2. Constructive Discharge.
  - (a) [§223] In General.
  - (b) [§224] Limit for Tolerating Working Conditions.
  - (c) [§225] Turner Case.
  - (d) [§226] Recovery Upheld.
  - (e) [§227] Recovery Denied.
3. [§228] Jury Instructions.

- B. Express Employment: Breach of Contract.**
  - 1. [§229] In General.
  - 2. [§230] Enforceability of Express Contract.
- C. [§231] At-Will Employment: In General.**
- D. At-Will Employment: Breach of Implied Contract.**
  - 1. [§232] Totality of Circumstances Test.
  - 2. Evidentiary Considerations.
    - (a) [§233] In General.
    - (b) [§234] Parol Evidence Rule and Express Terms Doctrine.
  - 3. [§235] Wrongful Demotion or Other Lesser Adverse Action.
  - 4. [§236] Unilateral Reduction in Wages.
  - 5. [§237] Illustrations: Implied Contract Established.
  - 6. [§238] Illustrations: Implied Contract Not Established.
- E. At-Will Employment: Breach of Implied Covenant.**
  - 1. [§239] In General.
  - 2. [§240] Covenant Is Not Applicable To At-Will Termination Cases.
  - 3. [§241] Distinction: Other Employer Conduct.
- F. At-Will Employment: Violation of Public Policy.**
  - 1. In General.
    - (a) [§242] Development of Law.
    - (b) [§243] Nature and Scope of Action.
    - (c) [§244] Employer-Employee Relationship.
  - 2. Sufficient Violation of Public Policy.
    - (a) [§245] In General.
    - (b) [§246] Policy Delineated in Constitution, Statute, Regulation, or Rule.
    - (c) [§247] Public Benefit.
    - (d) [§248] Fundamental and Substantial Policy.
    - (e) [§249] Well-Established Policy.
    - (f) [§250] Nexus Between Adverse Action and Violation.
  - 3. Retaliatory Terminations.
    - (a) [§251] In General.
    - (b) [§252] Refusing To Engage in Unlawful Conduct.
    - (c) Performing Statutory Obligation.
      - (1) [§253] In General.
      - (2) [§254] Physician Advocating Appropriate Health Care.
    - (d) Exercising Statutory Right or Privilege.
      - (1) [§255] In General.
      - (2) [§256] Right To Refuse Drug Test or Rehabilitation Program.
      - (3) [§257] Distinction: Erroneous Claim of Right or Privilege.
    - (e) Reporting Unlawful Conduct.
      - (1) [§258] In General.
      - (2) [§259] Illustrations: Recovery Upheld.
      - (3) [§260] Illustrations: Recovery Denied.
  - 4. Discriminatory Terminations.
    - (a) [§261] In General.



(b) [§262] Discharge Because of Garnishment.

5. [§263] Other Terminations.

G. Fraud and Deceit.

1. [§264] Inducing Resignation.

2. [§265] Other Fraud Claims.

H. Remedies and Recovery.

1. [§266] Alternative Remedies: Rescission or Damages.

2. Damages for Breach of Contract.

(a) [§267] In General.

(b) [§268] Contracts Without Fixed Compensation.

(c) [§269] Contracts Terminable on Conditions.

(d) [§270] Contracts With Option To Extend.

3. Damages for Breach of Implied Covenant.

(a) [§271] No Tort Damages.

(c) [§272] Breach of Contract as Breach of Implied Covenant.

4. [§273] Tort Action for Violation of Public Policy.

5. Effect of Statutory Remedy.

(a) [§274] In General.

(b) [§275] Occupational Safety and Health Act.

(c) [§276] Workers' Compensation Act.

(d) [§277] Fair Employment and Housing Act.

## IX. WRONGFUL TERMINATION OF PUBLIC EMPLOYMENT

A. Discharge Violating Constitutional or Statutory Rights.

1. [§278] In General.

2. [§279] Political Activities.

3. [§280] Claim of Self-Incrimination Privilege.

4. [§281] Personal Appearance.

5. [§282] Unbecoming Conduct.

6. [§283] Criticism of Official Policies.

7. Whistle-Blower Statutes.

(a) [§284] Disclosure To Agency.

(b) [§285] Disclosure to State Auditor.

(c) [§286] Right To Make Disclosure to Legislative Committee.

(d) [§287] Complaint About Misconduct of Local Agency.

(e) [§288] False Claims Act.

B. Discharge Violating Due Process.

1. Existence of Constitutionally Protected Right.

(a) [§289] In General.

(b) [§290] Property Interest.

(c) [§291] Liberty Interest.

2. Adequacy of Hearing.

(a) [§292] In General.

(b) [§293] Property Interest.

(c) [§294] Liberty Interest.

C. Discharge for Cause.

1. [§295] In General.

2. **Incompetency, Inefficiency, and Unfitness.**
  - (a) **[\$296] In General.**
  - (b) **[\$297] Unfitness to Teach.**
3. **Insubordination or Disobedience.**
  - (a) **[\$298] In General.**
  - (b) **[\$299] Refusal To Take Lie-Detector Test.**
4. **Dishonesty, Immorality, or Criminal Conviction.**
  - (a) **[\$300] Grounds for Discharge.**
  - (b) **[\$301] Test: Conduct Showing Unfitness for Position.**
  - (c) **Sex Offenses.**
    - (1) **[\$302] In General.**
    - (2) **[\$303] Sexual Misconduct Without Criminal Charge.**
    - (3) **[\$304] Conviction of Misdemeanor.**
  - (d) **[\$305] Drug Offenses.**
  - (e) **[\$306] Other Misconduct.**

**D. Discharge of Nontenured Employees.**

1. **[\$307] In General.**
2. **[\$308] Dismissal After Extension of Probation.**
3. **[\$309] Dismissal of Probationary Teacher.**
4. **Refusal To Reemploy Probationary Teacher.**
  - (a) **[\$310] For Cause.**
  - (b) **[\$311] For Economic Reasons.**
  - (c) **[\$312] Without Cause.**

**E. [\$313] Summary Revocation of Security Clearance.**

**X. REGULATION OF EMPLOYMENT: IN GENERAL**

**A. Department of Industrial Relations.**

1. **[\$314] Organization and Functions.**
2. **Division of Labor Standards Enforcement.**
  - (a) **[\$315] In General.**
  - (b) **[\$316] Assignment and Collection of Claims.**
  - (c) **[\$317] Prosecution of Actions.**
  - (d) **Handling of Employee Complaints.**
    - (1) **[\$318] Investigation, Hearing, and Decision.**
    - (2) **[\$319] Notice of Appeal.**
    - (3) **[\$320] Appeal by Defendant Who Defaults.**
    - (4) **[\$321] Judgment.**
    - (5) **[\$322] Costs and Attorneys' Fees.**
3. **[\$323] Mediation, Reference, and Arbitration.**
4. **[\$324] Labor Code Private Attorneys General Act.**

**B. Legislation To Promote Employment.**

1. **[\$325] Labor and Workforce Development Agency.**
2. **[\$326] Implementation of Federal Programs.**
2. **[\$327] Student and Youth Programs.**
3. **[\$328] Programs for Specific Employments.**
4. **[\$329] Miscellaneous Programs.**

**C. Employee Housing.**

1. [§330] Employee Housing Act.
2. [§331] Farm Labor Center Law.

## **XI. REGULATION OF RIGHT TO EMPLOYMENT**

### **A. Antidiscrimination Laws.**

1. [§332] In General.
2. Racial Discrimination.
  - (a) [§333] Federal Law.
  - (b) [§334] California Law.
3. [§335] Religious Discrimination.
4. National Origin Discrimination.
  - (a) [§336] Federal Law.
  - (b) [§337] California Law.
5. Sex Discrimination.
  - (a) [§338] Federal Law.
  - (b) California Law.
    - (1) [§339] Constitutional Rights.
    - (2) [§340] Statutory Protections.
6. Age Discrimination.
  - (a) [§341] Federal Law.
  - (b) California Law.
    - (1) [§342] In General.
    - (2) [§343] Mandatory Retirement.
7. Disability Discrimination.
  - (a) [§344] Federal Law.
  - (b) [§345] California Law.
8. [§346] Harassment of Employee Because of Classification.

### **B. Other Restrictions.**

1. [§347] Union Participation.
2. [§348] Political Activities.
3. [§349] Unlawful Activities.
4. [§350] Workers' Compensation Claims.
5. [§351] Compulsory Lie Detector Tests.
6. [§352] Compulsory Drug Tests.
7. [§353] Employee Surveillance.
8. [§354] False Statements To Prevent Reemployment.
9. [§355] Rights of Military Personnel.
10. [§356] Inquiries About Arrest and Diversion Programs.
- 10A. [§356A] (New) Inquiries by Public Employers About Convictions of Job Applicants.
11. [§357] Inspection of Personnel Files.
12. [§358] Special Background Checks.
- 12A. [§358A] (New) Consumer Credit Reports.
- 12B. [§358B] (New) Social Media.
13. [§359] Other Regulations.

## **XII. REGULATION OF TIME AND CONDITIONS OF WORK**

### **A. Hour and Day Limits.**

1. [§360] In General.
    - 1A. [§360A] (New) Employers Need Not Ensure That Meal or Rest Periods Are Taken.
    2. [§361] Exemptions.
    3. [§362] Regulation and Enforcement.
  - B. Health, Sanitation, and Safety Regulations.
    1. [§363] In General.
    2. Occupational Safety and Health Act.
      - (a) [§364] Federal Authorization.
      - (b) [§365] Standards.
      - (c) [§366] Enforcement.
      - (d) [§367] Jurisdiction of Division.
      - (e) [§368] Appeals.
      - (f) [§369] Judicial Review.
      - (g) [§370] Retaliation Prohibited.
    3. [§371] Regulation of Specific Industries.
    4. Regulation of Specific Hazards.
      - (a) [§372] Carcinogens Control Act.
      - (b) [§373] Asbestos.
      - (c) [§374] Drug-Free Workplace Act.
      - (d) [§375] Work Violence Safety Act.
      - (e) Tobacco Smoking Prohibitions.
        - (1) [§376] Public Buildings and Vehicles.
        - (2) [§377] Enclosed Workplaces.
      - (f) [§378] Miscellaneous Hazards.
  - C. Regulation of Particular Groups.
    1. [§379] Women.
    2. [§380] Minors.
  - D. [§381] Employee's Right To Disclose Working Conditions.
- XIII. REGULATION OF COMPENSATION**
- A. Minimum Wage.
    1. [§382] General Rules.
    2. [§383] Administrative Enforcement.
    3. [§384] Judicial Enforcement.
    4. [§384A] (New) Enforceability of Employment Arbitration Agreement Prohibiting Class Actions To Recover Overtime Compensation.
  - B. Prevailing Wage on Public Works.
    1. [§385] In General.
    2. [§386] Exempt Projects.
    3. Administrative Enforcement.
      - (a) [§387] In General.
      - (b) [§388] Estoppel To Enforce Penalties.
    4. [§389] Private Action by Worker Against Employer.
    5. [§390] No Action Against Agency Under Tort Claims Act.
    6. [§391] Federal Preemption of Prevailing Wage Laws.
  - C. [§392] Discrimination on Basis of Sex.

**D. [§393] Equal Pay for Comparable Work.**

**E. Time, Place, and Manner.**

1. [§394] Regular Paydays.
2. [§395] Payment on Termination or Strike.
3. [§396] Effect of Arbitration Agreement on Action To Collect Wages.
4. [§397] Miscellaneous Rules.

**F. Penalties for Failure To Pay.**

1. [§398] In General.
2. [§399] Wilful Failure.

**G. "Kickbacks" and Deductions.**

1. [§400] In General.
2. [§401] No Deduction for Employee Negligence.
3. [§402] Authorized Deductions.

**H. Pension, Health, or Welfare Funds.**

1. [§403] Nature of Funds.
2. [§404] Duties of Employers.
3. [§405] COBRA Insurance Continuation Programs.
4. ERISA.
  - (a) [§406] In General.
  - (b) [§407] Commentary and Practice Works.
  - (c) [§408] Scope of Act.
  - (d) Preemption of State Laws and Actions.
    - (1) [§409] In General.
    - (2) [§410] State Law Preempted.
    - (3) [§411] State Law Not Preempted.
5. [§412] State-Mandated Employee Health Insurance.
6. [§412A] (New) Patient Protection and Affordable Health Care Act.

**I. Miscellaneous Regulations.**

1. [§413] Compelling Patronage.
2. [§414] Employer's Receipt of Tips.
3. [§415] Employee's Bond.
4. [§416] Commission Salesperson's Draw.
5. [§417] Employee's Right To Disclose Amount of Wages.
6. [§417A] (New) Wilful Misclassification of Independent Contractor Status.

**XIV. REGULATION OF VACATION, FAMILY CARE AND MEDICAL LEAVE, AND OTHER TIME OFF**

**A. Vacation.**

1. [§418] In General.
2. [§419] ERISA Preemption of State Law.

**B. Family Care and Medical Leave.**

1. [§420] Federal Law.
2. [§421] California Law.

**C. [§422] Maternity Leave.**

**D. Leave To Perform Public Service.**

1. [§423] Voters and Election Officers.
2. [§424] Jurors, Witnesses, and Victims.

3. [§425] Volunteer Emergency Personnel.

4. [§426] Military Personnel.

**E. Other Time Off.**

1. [§427] Employee Appearing at Child's School.

2. [§428] Employee With Alcohol or Drug Problem.

3. [§429] Employee Disclosing Illiteracy Problem.

**XV. REGULATION OF EMPLOYMENT AGENCIES AND LABOR CONTRACTORS**

**A. Employment Agency, Employment Counseling, and Job Listing Services Act.**

1. [§430] Nature and Scope of Act.

2. [§431] Remedies and Enforcement.

3. [§432] Access to Records.

4. [§433] Bond or Deposit.

5. Employment Agencies.

(a) [§434] In General.

(b) [§435] Contracts and Fees.

(c) [§436] Job Orders and Advertisements.

6. Employment Counseling Services.

(a) [§437] In General.

(b) [§438] Contracts and Fees.

(c) [§439] Advertisements.

7. Job Listing Services.

(a) [§440] In General.

(b) [§441] Contracts and Fees.

(c) [§442] Job Orders and Advertisements.

8. Nurses' Registries.

(a) [§443] In General.

(b) [§444] Contracts and Fees.

9. Referral of Temporary Long-Term Health Care Employees.

(a) [§445] In General.

(b) [§446] Requirements.

**B. Other Requirements.**

1. [§447] Farm Labor Contractors.

2. [§448] Foreign Labor Contractors.

2A. [§448A] (New) Client Employers and Labor Contractors.

3. [§449] Talent Agencies and Athlete Agents.

4. [§450] Soliciting Employees by Misrepresentation.

5. [§451] Contracts Insufficiently Funded To Ensure Legal Compliance.

**XVI. REGULATION OF UNEMPLOYMENT COMPENSATION**

**A. General Principles.**

1. [§452] Object and Nature of Legislation.

2. [§453] Effect of Federal Statute.

**B. Procedure Under Unemployment Insurance Act.**

1. [§454] In General.

2. [§455] Filing and Notice of Claim.

3. [§456] Initial Determination and Reconsideration.

4. Appeal to Administrative Law Judge.

- (a) [§457] Procedure.
  - (b) [§458] Payment Pending Appeal.
- 5. Appeal to Appeals Board.
  - (a) [§459] Procedure.
  - (b) [§460] Decision as Precedent.
  - (c) [§461] Payment Pending Appeal.
- 6. [§462] Judicial Review.
- C. Right to Disability Benefits.
  - 1. [§463] Nature of Right.
  - 2. [§464] Employments Included.
  - 3. [§465] What Constitutes Disability.
  - 4. [§466] Procedure.
- D. Right to Unemployment Benefits.
  - 1. Employment.
    - (a) [§467] Employments Included.
    - (b) [§468] Employments Excluded By State Law.
    - (c) [§469] Employments Excluded By Federal Law.
    - (d) [§470] Independent Contractors.
  - 2. Eligibility.
    - (a) [§471] Statutory Conditions.
    - (b) [§472] Acts and Events Not Affecting Eligibility.
    - (c) [§473] Corporate Officers.
    - (d) [§474] Teachers and Athletes During Recess or Off Season.
    - (e) Availability for Work.
      - (1) [§475] In General.
      - (2) [§476] Parental Responsibilities.
      - (3) [§477] Student Workers.
      - (4) [§478] Part-Time Workers.
      - (5) [§479] Physical Appearance.
      - (6) [§480] Religious Beliefs.
      - (7) [§481] Leaving State.
      - (8) [§482] Seasonal Employment.
      - (9) [§483] Allergic Reaction.
      - (10) [§484] Illegal Aliens.
- E. Disqualifications.
  - 1. Leaving Work Without Good Cause.
    - (a) [§485] In General.
    - (b) [§486] What Constitutes Most Recent Work.
    - (c) What Constitutes Good Cause.
      - (1) [§487] Compulsory Retirement.
      - (2) Leave of Absence.
        - (aa) [§488] Compulsory Pregnancy Leave.
        - (bb) [§489] No Job on Return.
      - (3) [§490] Resignation and Attempted Withdrawal.
      - (4) [§491] Job Rotation Under Seniority Provisions.
      - (5) [§492] Acceptance of Layoff by Worker With Seniority.

- (6) [§493] Minor Reduction in Pay.
  - (7) [§494] Refusal To Pay Union Dues.
  - (8) [§495] Physical Appearance.
  - (9) Work Conflicting With Religious Beliefs.
    - (aa) [§496] In General.
    - (bb) [§497] Voluntary Acceptance of Conflict.
  - (10) [§498] Discrimination Based on Union Activities and Whistle-Blowing.
  - (11) Prohibited Discrimination.
    - (aa) [§499] In General.
    - (bb) [§500] Failure To Reinstate After Maternity Leave.
  - (12) [§501] Sexual Harassment.
  - (13) Domestic Responsibilities.
    - (aa) [§502] Leaving To Join Spouse or Domestic Partner.
    - (bb) [§503] Leaving To Join "Marvin" Partner.
    - (cc) [§504] Leaving To Prevent Domestic Violence.
  - (14) [§505] Long Commute.
  - (15) [§506] School Attendance.
  - (16) Fear of Health Hazard.
    - (aa) [§507] In General.
    - (bb) [§508] Tobacco Smoke.
  - (17) [§509] Imprisonment.
2. Leaving Work Because of Trade Dispute.
    - (a) [§510] Statutory Rule.
    - (b) [§511] Volitional Test.
    - (c) [§512] Strike: No Benefits Payable.
    - (d) [§513] Lockout: Benefits Payable.
  3. Discharge for Misconduct.
    - (a) [§514] In General.
    - (b) [§515] Intentional Disregard of Employer's Interests.
    - (c) [§516] Offensive Remarks or Threats.
    - (d) Disobedience of Order or Rule.
      - (1) [§517] In General.
      - (2) [§518] Order Believed to Be Dangerous to Health.
      - (3) [§519] Order To Submit To Drug Test.
    - (e) [§520] Intoxication.
  4. Refusal To Accept or Apply for Employment.
    - (a) [§521] In General.
    - (b) [§522] Position Vacant Due to Labor Dispute.
    - (c) [§523] Employment Conditioned on Loyalty Oath.
  5. [§524] Fraud in Seeking Benefits.
- F. Effect of Payments From Other Sources.**
1. [§525] In General.
  2. [§526] Workers' Compensation Benefits.
  3. [§527] Severance or Dismissal Pay.
  4. [§528] Retirement Pay.



**G. Repayment Where Ineligible.**

1. [§529] General Rule and Exceptions.
2. [§530] Notice of Intent To Seek Recoupment.

**XVII. LABOR RELATIONS AND DISPUTES: IN GENERAL**

**A. [§531] Development of the Law.**

**B. Federal Legislation.**

1. National Labor Relations Act.
  - (a) [§532] Nature and Purpose of Act.
  - (b) [§533] Collective Bargaining.
  - (c) [§534] Concerted Activity.
  - (d) [§535] Unfair Labor Practices.
  - (e) [§536] Practice and Procedure.
2. Labor-Management Relations Act.
  - (a) [§537] Nature and Purpose of Act.
  - (b) [§538] Case Law.
3. [§539] Norris-La Guardia Act.
4. [§540] Fair Labor Standards Act.
5. [§541] Labor-Management Reporting and Disclosure Act.
6. Railway Labor Act.
  - (a) [§542] Nature and Purpose of Act.
  - (b) [§543] Case Law.
7. [§544] Other Statutes.

**C. State Legislation.**

1. [§545] In General.
2. [§546] Public Policy Favoring Unions.
3. [§547] Ban on Using State Funds and Facilities.
4. [§548] Antitrust Exception.
5. [§549] Other Statutes.

**D. Conflict of Federal and State Jurisdiction.**

1. Federal Preemption.
  - (a) [§550] In General.
  - (b) [§551] Federal Decisions Upholding Preemption.
  - (c) [§552] California Decisions Upholding Preemption.
2. State Power.
  - (a) [§553] In General.
  - (b) [§554] Picketing on Private Property.
  - (c) [§555] Unemployment Benefits to Strikers.
  - (d) [§556] Union's Action for Defamation.
3. [§557] Unlawful Objects of Concerted Action.
4. [§558] Unlawful Means of Concerted Action.
5. [§559] Collective Bargaining and Arbitration.
6. Controversies Between Union and Employee.
  - (a) [§560] Contract Action Against Union.
  - (b) [§561] Tort Action Against Union.

**XVIII. LABOR RELATIONS AND DISPUTES: PUBLIC EMPLOYEES**

**A. In Absence of Statute.**

1. [§562] Traditional View.
  2. Right To Strike.
    - (a) [§563] Former Common Law Rule Prohibiting Strikes.
    - (b) [§564] Repudiation of Rule.
    - (c) [§565] No Tort Damages for Illegal Strike.
    - (d) [§566] Distinction: Police Work Stoppage Is Illegal.
- B. Nature and Scope of Statutes.**
1. [§567] Statutory Framework.
  2. [§568] Administration and Enforcement.
  3. [§569] Special Authorization of Concerted Action.
  4. [§570] Injunction Against Transit Strike.
- C. Meyers-Milias-Brown Act (MMBA).**
1. Nature and Scope of Act.
    - (a) [§571] In General.
    - (b) [§572] Law Enforcement Employees.
  2. [§573] Public Employment Relations Board.
  3. Rights and Obligations.
    - (a) [§574] In General.
    - (b) [§575] Agency Shop.
    - (c) [§576] Union Representation.
  4. Meet and Confer Requirement.
    - (a) [§577] In General.
    - (b) [§578] Chartered Cities and Counties.
    - (c) [§579] Attorneys Employed by County Counsel.
    - (d) [§580] Drug Testing.
    - (e) [§581] Emergency Exception.
  5. [§582] Agreements.
  6. [§583] Unfair Practices.
  7. [§584] Impasse Procedures.
  8. [§585] Invalid Local Regulations.
  9. [§586] Judicial Review.
- D. Education Employment Relations Act (EERA).**
1. [§587] Statutory Development.
  2. [§588] Nature and Scope of Act.
  3. [§589] Public Employment Relations Board.
  4. Rights and Obligations.
    - (a) [§590] In General.
    - (b) [§591] Scope of Representation.
    - (c) [§592] Objections to Fair Share Fee.
  5. Unfair Practices.
    - (a) [§593] By Employers.
    - (b) [§594] By Employee Organizations.
    - (c) [§595] Procedure.
  6. Exhaustion of EERA Remedy.
    - (a) [§596] Exhaustion Requirement.
    - (b) [§597] Local Concern Exception.

7. [§598] Recognition, Certification, and Decertification.
  8. [§599] Impasse Procedures.
  9. [§600] Judicial Review.
- E. Higher Education Employment Relations Act (HEERA).**
1. [§601] In General.
  2. [§602] Student Employees.
  3. [§603] Judicial Review.
- F. State Employer-Employee Relations Act (SEERA).**
1. [§604] Nature and Scope of Act.
  2. [§605] Rights and Obligations.
  3. Fair Share Fee Deduction.
    - (a) [§606] In General.
    - (b) [§607] Objections to Fair Share Fee.
  4. [§608] Meetings and Agreements.
  5. [§609] Unfair Practices.
  6. [§610] Impasse Procedures.
  7. [§611] Judicial Review.
- G. Rights of Excluded State Employees.**
1. [§612] Nature and Scope of Statute.
  2. [§613] Rights and Prohibitions.
  3. [§614] Representation by Employee Organizations.
  4. [§615] Supervisory Employees.
- XIX. LABOR RELATIONS AND DISPUTES: PRIVATE EMPLOYEES**
- A. Relations Between Union and Members.**
1. [§616] In General.
  2. [§617] Opposition to Union Policies.
  3. [§618] Union's Duty To Represent Members Fairly.
- B. Objects of Concerted Action.**
1. Valid Objects.
    - (a) [§619] Wages and Working Conditions.
    - (b) [§620] Union Recognition and Bargaining.
    - (c) [§621] Unionization of Businessperson-Workers.
  2. Invalid Objects.
    - (a) [§622] Object Violating Statute or Contrary to Public Policy.
    - (b) [§623] Object Violating Contract.
    - (c) [§624] Object Not Related to Labor's Interests.
    - (d) [§625] Proportional Hiring of Racial Group.
    - (e) [§626] Union Representation of Supervisory Employees.
  3. Closed Shop With Closed Union.
    - (a) [§627] Racial Discrimination.
    - (b) [§628] Discrimination Against Businessperson-Worker.
    - (c) [§629] Discrimination Against New Applicants.
  4. [§630] Closed Shop.
  5. Rival Unions Seeking Exclusive Representation.
    - (a) [§631] Early Cases.
    - (b) Jurisdictional Strike Act.

- (1) [§632] Nature and Scope of Act.
- (2) [§633] What Constitutes Jurisdictional Strike.
- (3) [§634] Independent Labor Organization.
- (4) [§635] Withdrawal of Union Recognition.
- (5) [§636] Where Union Does Not Claim Exclusive Right.
- (6) [§637] Where Original Dispute Remains.
- (7) [§638] Conduct Other Than Strike.

**C. Types of Concerted Action.**

**1. [§639] Strike.**

**2. Boycott.**

(a) [§640] In General.

(b) [§641] Secondary Boycott Against Carrier.

(c) [§642] Concerted Action Against Neutral Party.

**3. Picketing.**

(a) [§643] Legality of Peaceful Picketing.

(b) Violence or Intimidation.

(1) [§644] Unlawful Acts.

(2) [§645] Scope of Injunction.

(c) [§646] Fraud.

(d) Place of Picketing.

(1) [§647] In General.

(2) [§648] Shopping Center.

(3) [§649] Parking Lot.

(4) [§650] Private Property.

(5) [§651] Domestic Employee Picketing Private Home.

**D. Limitations on Remedies.**

**1. [§652] In General.**

**2. [§653] Scope of Permissible Injunction.**

**3. [§654] Procedure for Injunctive Relief.**

**4. [§655] Recovery of Damages.**

**E. Agricultural Labor Relations Act.**

**1. [§656] Nature, Purpose, and Scope.**

**2. [§657] Agricultural Labor Relations Board.**

**3. [§658] Certification of Bargaining Units.**

**4. Required Union Membership.**

(a) [§659] In General.

(b) [§660] Membership Rules Held Valid.

(c) [§661] Membership Rules Held Invalid.

**5. Unfair Labor Practices.**

(a) [§662] In General.

(b) [§663] Prepetition Employee List.

(c) [§664] Acts of Farm Labor Contractor.

(d) Remedies and Sanctions.

(1) [§665] In General.

(2) [§666] Interest on Back Pay Award.

(3) [§667] Make-Whole Remedy.

**6. Jurisdiction.**

(a) [§668] Exclusive Jurisdiction of Board.

(b) [§669] Jurisdiction of Court.

**7. [§670] Procedure.**

**8. [§671] Mediation of Impasse After Certification of Exclusive Representative.**

**9. Judicial Review.**

(a) [§672] In General.

(b) [§673] Review by Mandamus.

(c) [§674] Standing of Aggrieved Parties.

**10 . [§675] Actions Between Employers and Unions.**

**11. [§676] Organizers' Access to Growers' Property.**