

EPISCOPAL DIOCESE OF EL  
CAMINO REAL  
VESTRY/TREASURER WORKSHOP  
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EMPLOYMENT ISSUES

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# COVID – MANDATE VACCINE?

- EEOC – Legally permissible but advises encouragement, EUA status
- Alternatives: offer incentive, e.g., money, PTO, wellness benefit, prizes, or leave of absence
- Mandate must be job related/ consistent business necessity; lack of vaccine must be direct threat to employer and other employees, not eliminated by accommodation.
- Potential liability if employer mandates and vaccine causes problem
- If mandate, must allow exceptions for religious or disability reasons and interactive process
- Law firm surveys show most employers will encourage rather than mandate
- Employer cannot exclude employee due to inability to be vaccinated

# POST COVID – RETURN TO WORK - NO?

- Employee says no and requests accommodation
- Employer requests medical documentation – specific diagnosis and suggested workplace accommodation. Review job duties.
- Confidentiality of all health info – keep separate
- Alternatives: Work from home, moving to segregated area
- Unlawful for employer to reveal employee receiving accommodation
- Must be **interactive** process
- Employee's fear alone not valid reason for not returning
- May ask employee for proof of vaccination
- EEOC cautions on termination for refusal

# BREAKOUT ISSUE TO DISCUSS

Your office is planning its reopening, all in a safe manner and according to regulation.

An employee contacts you to say he/she is fearful of returning to the office.

The work of this employee requires interaction with those working in and visiting the office once opening restrictions are lifted.

How do you respond? What is the process?

# CALIFORNIA FAMILY RIGHTS ACT CHANGES

- Applicable to employer five or more employees no matter number hours
- Employee worked at least 1,250 hours for the employer during previous 12-month period
- Must allow up to 12 workweeks of unpaid, job-protected leave during any 12-month period to bond with a new child
- Both parents, even if same employer
- Or care for own serious medical condition or that of the employee's child, parent, spouse, or domestic partner. Adds three categories of family members—grandparents, grandchildren, and siblings

# LACTATION ACCOMMODATION as of 1/1/21

- Employer provide reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time the employee has need to express milk
- Provide private place – seat, electricity, near sink and refrigeration

# SALARY HISTORY

- Cannot rely on salary history in deciding to employ or what salary to offer
- Cannot seek information on salary history of applicant
- BUT, if salary info voluntarily revealed by applicant, Employer may rely
- May ask salary expectations
- After interview, upon applicant request, employer must reveal pay scale/range

# ANTI-HARASSMENT TRAINING

- Employers of 5 or more
- Provide one hour sexual harassment and abusive conduct prevention training to nonsupervisory employees and 2 hours of sexual harassment and abusive conduct prevention
- Available online
- For supervisory and managers
- Every two years
- Post DFEH (Dept. Fair Employment and Housing) poster
- More info: <https://www.dfeh.ca.gov/shpt/>



# RACE DEFINITION

- SB 188 expanded Fair Employment and Housing Act's DEFINITION OF RACE to include traits historically associated with race, such as hair texture and "protective hairstyle" (e.g., braids, locks, and twists).

# PERSONNEL POLICIES

- Sample revision 2/25/21 available diocesan website, already legally vetted
- Extremely helpful in preventing confusion, dissatisfaction of employees
- Includes several recent changes to California employment law
- Sample may be edited for particular church provisions, e.g. workweek, amount of vacation, how accrued
- Many provisions legally mandated, seek advice on any revision

# KEEP IN MIND

- Civil law – ministerial exception, Hosanna Tabor case et seq. Who is a minister?
- Employees and parishioners. Better to separate roles
- Office
  - Not all info with one person. Record of passwords
  - Manager manual – be prepared when that one person not available
  - Personnel files stay in office – rector should be in charge
  - Use outside payroll provider who keeps up on laws/regulations

# MINIMUM WAGE/BENEFITS

- California - for employers of 25 or fewer: \$13 an hour; Will rise yearly
- Local law could increase that amount.
- Parity lay/clergy for health benefits & fairness
- Pensions – 18% of clergy salary and housing
  - Lay – 403(b), employer 9% salary, employee may add
- Social security – normal for lay – clergy are self employed or employees, choice of clergy and vestry
- Unemployment insurance – not required to participate – can be issue upon termination
- Many requirements re wage statements – rely on payroll provider

# INDEPENDENT CONTRACTOR

- ABC test codified
- (A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- (B) The person performs work that is outside the usual course of the hiring entity's business.
- (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

# INDEPENDENT CONTRACTOR CONTINUED

- Increased enforcement
- Not applicable to volunteers – employee cannot also be volunteer
- No minimum work time for applicability
- Exception - certain types of professional services so long as the individual:
  - Maintains a separate business location
  - Has a business license and necessary required permits
  - Can set or negotiate own rate of pay
  - Can determine work hours
  - Holds self out to customers as available for hire
  - Customarily exercises discretion and independent judgment,
  - Free from control and direction of hiring party as shown by contract and in fact
  - Provides services to contracting business and not its customers
  - Has written contract
- File 1099 for IC earning \$600 or more

# EXEMPT/NON-EXEMPT

- Exempt must earn at least \$54,080 per year (\$1,040/week) (Amount for employers of less than 25)
- Non-exempt entitled to overtime pay, breaks, must keep time records

# EMPLOYEE REVIEWS, TERMINATIONS

- Document, document
- Written expectations, goals
- Review at least annually
- Give warnings of problems in writing
- Seek advice
- Release may be prudent in some terminations



# CREDIT CARDS

- Use limited to very few people; no lending use to others
- Adopt expense policy to reconcile credit expenses
- Dollar limit on what charged
- Use sparingly, e.g., when vendor won't issue statement
- Control person monitors monthly
- Do not “help” clergy/employees by issuing or allowing church credit card for personal expenses