

# HUMAN RESOURCES

*& Employment Law*



*Presented by*



**MARSH & MCLENNAN  
AGENCY**



# Stuart Kane LLP

## #MeToo Momentum Leads To Significant Changes In California Employment Laws For 2019

The #MeToo movement has been an omnipresent force in society over the past year. The movement is credited with shining a light on a wide variety of sexual misconduct, and has been associated with many high-profile sexual harassment and assault scandals including those involving Harvey Weinstein, Bill Cosby, Kevin Spacey, Les Moonves, Matt Lauer, Steve Wynn, Russell Simmons, Al Franken, and countless others.

The #MeToo movement is now able to take credit (at least partial credit) for several new California laws or changes to existing laws regarding sexual harassment in the workplace.

### SB 820 – No More Non-Disclosure Provisions In Sexual Harassment Settlements

The most significant change comes in the form of SB 820, which adds a new Section 1001 to the Code of Civil Procedure. The law invalidates provisions in sexual harassment settlement agreements which purport to prevent the disclosure of factual information related to the claim, other than the identity of the plaintiff. Specifically, any provision within a settlement agreement entered into on or after January 1, 2019 that “prevents the disclosure of factual information related to the claim . . . is void as a matter of law and against public policy.”

The legislative history of the bill mentions “the now notorious case of Harvey Weinstein” by name, and states that the law is intended to “stand with victims of sexual harassment and assault by ending [the] unjust practice of secret settlements that keep these aggressors unaccountable and able to prey on other victims.” According to the bill’s author, State Senator Connie M. Leyva: “These perpetrators should not be allowed to endanger others or evade justice simply because they have a fat wallet at their disposal. SB 820 will not prevent people from mutually agreeing to settle, but it will simply prevent the perpetrator from requiring the victim to remain silent about the harassment as a condition of settlement.”

Critics of the bill argue that false accusations do occur, and that defendants in these cases may be less likely to settle with plaintiffs or will offer less money in such settlements if they are not able to gain the advantage of confidentiality in a settlement.

### SB 1343 – New And More Onerous Requirements For Employer Sexual Harassment Training

Another new bill, SB 1343, specifically mentions the #MeToo movement as an impetus for the change in law. SB 1342 amends Gov’t Code 12950 to require sexual harassment training for any employer having 5 or more employees, instead of the prior requirement for employers having 50 or more employees. The new law also requires one hour of sexual harassment training for *nonsupervisory* employees every two years, in addition to the prior requirement of two hours of training for supervisory employees every two years. The upshot is that many more employers will now be subject to mandatory sexual harassment training requirements and a far larger group of employees for each employer (i.e. supervisory and nonsupervisory employees) will now be subject to such training.

### SB 1300 – Easier Burden Of Proof For Plaintiffs Alleging Hostile Work Environment Harassment

A third bill, SB 1300 will amend Gov’t Code 12923 to decree that a *single incident of harassing conduct* is sufficient to create a triable issue of fact regarding the existence of a hostile work environment if harassing conduct has unreasonably interfered with the plaintiff’s work performance. Prior law had stated that if the harassing conduct was not severe in the extreme, more than a few isolated incidents must have occurred to prove a hostile work environment claim. The result is that it may now be easier to prove hostile work environment claims, and it certainly will be easier for plaintiffs to allege colorable claims that can get past summary judgment. In fact, amended Gov’t Code 12923(e) specifically codifies that “harassment cases are rarely appropriate for disposition on summary judgment.”

SB 1300 also adds Government Code Section 12964.5 which provides that it is an unlawful employment practice for an employer, in exchange for a raise or bonus, or as a condition of employment or continued employment, to require an employee to sign a release of FEHA claims (including sexual harassment claims) or non-disparagement agreements. The new Section does not expressly apply to severance pay, meaning that the practice of providing severance pay in exchange for releases of FEHA claims (including sexual harassment claims) should still be lawful, although this is somewhat unclear. The law expressly does not apply to negotiated settlement agreements entered into after an employee has filed a FEHA action.

#### About Stuart Kane LLP

Stuart Kane was founded to create a new law firm, better suited to a changing legal world—more efficient, more responsive, more focused and more specialized. Our commitment is to continue delivering the highest caliber of legal expertise while improving the quality of service and efficiency of time and costs. We offer big-firm expertise, but with more personalized service, and at boutique law firm rates.

The depth of experience of the attorneys of Stuart Kane LLP makes us more efficient at every task. Our commitment to service makes us more responsive to every client. Our emphasis on our core practices areas - real estate, employment and litigation - keeps us steadily focused.

#### Shane Criqui

Shane Criqui is a trial attorney with a focus on employment litigation (employer-side), employment counseling, as well as real estate and business litigation. Mr. Criqui engages in aggressive legal representation to achieve clients’ objectives in litigation, and provides accurate and thoughtful counseling to clients regarding their legal, business, and employment needs. He has been selected as a Southern California “Rising Stars” by Super Lawyers magazine continuously since 2015. He can be reached at (949) 791-5126 or [scriqui@stuartkane.com](mailto:scriqui@stuartkane.com).





# AN AGE-DIVERSE WORKFORCE NEEDS A COMPREHENSIVE COMMUNICATION STRATEGY.

**From boomers to centennials, keeping your employees engaged and informed is a priority.**

MMA helps clients develop a year-round benefits communication strategy for a multi-generational workforce.

Learn how we can help you keep every generation connected in the moments that matter.

**[MMA-West.com/Benefits-Communication](https://MMA-West.com/Benefits-Communication)**



CA Insurance Lic. 0H18131

EMPLOYEE HEALTH & BENEFITS  
BUSINESS INSURANCE  
EXECUTIVE RISK  
WORKERS COMPENSATION  
RETIREMENT SERVICES  
COMPENSATION CONSULTING

Orange County | Los Angeles | San Diego | San Francisco | Walnut Creek | 949.900.1780 | [MMA-West.com](https://MMA-West.com)





## Artificial Intelligence: How It Can Help HR Professionals

As an HR professional, you know that a good part of your job consists of saying “No.” You reject far more people than you hire, maybe even at a 100:1 ratio in some fields. All that rejecting eats up a lot of your time — but it’s worth it to find the right person for the job you’re trying to fill.

Wouldn’t it be terrific if you could spend less time on “No” and more time with the short list of candidates who might truly be the right person? Artificial intelligence (AI) is starting to make that possible.

### How Can AI Help in Recruiting?

One of the top ways that AI helps in the recruiting process is by screening resumes. Given that 75 to 88 percent of the resumes received for a given job are from people who aren’t qualified, all that manual screening amounts to a giant waste of time. Do you really want to spend 23 hours per hire screening resumes and creating a short list?

AI can take over here, speeding through resumes and pulling the most qualified candidates for your personal attention. The automation provided by AI also helps drastically in scheduling interviews and handling rejection letters. Because your time to hire is cut down, you stand a better chance of snagging the best talent before your competitors do.

Are you a bit skeptical about the using a computer to make judgments about humans? Don’t be. AI is able to sort and process that data with a thoroughness that people can’t manage. For example, it can standardize the process of matching job requirements to all the candidates’ skills and experience.

Even better, because AI uses past data to learn and improve its own processes, it can take the past information gathered on various jobs, measuring how various candidates do after they’re hired. Now you know which qualifications actually pair successfully with the job performance your company wants to see. You can hire candidates who are more likely to be productive, to fit in with the company’s culture, and to be happier on the job, reducing turnover down the road.

The result of incorporating AI software into your recruiting and hiring processes? You’ll have the time to be strategic and proactive, rather than coping with documents all the time. You can put more time into building relationships with candidates and determine their cultural fit with your company because you’re not distracted by tasks involving the people you already know you’re not going to hire.

Finally, because AI lets you track job performance after a candidate is hired, you can determine over time where you’re finding your most successful hires. That way you can determine whether to put more emphasis on seeking personal referrals, posting positions on job boards, or promoting from within. The end result? More time to focus on what matters and less frustration from dealing with paperwork.

### AI Features That Augment and Speed Your Hiring Process

AI shows up in several types of recruiting software. One of the most useful is smart screening software. The AI in this software is able to look at the qualifications that previous successful candidates have, applying its ever-evolving knowledge to the next batch of applicants.

Smart software can also scrape social media and public data, so you learn a little more about candidates than they revealed on their resumes. With all this data, the AI is able to rank and group candidates, providing you with a short list that lets you bring your skills and experience to play where it’s most needed.

Another valuable type of AI for HR is the recruiter chatbot. Your chatbot can handle the day-to-day interactions with each candidate, confirming the receipt

of an application, setting up job interviews, sending rejection letters, and keeping short-listed candidates up to date on the status of their application.

While all this chatbot activity certainly frees up your time, it has an added bonus from the applicant’s point of view. Job seekers tend to think negatively about companies that don’t respond to them in a timely manner — which means you could create a negative impression just because your desk is piled high. With an AI chatbot at work, you maintain a positive impression without any impact on your to-do list.

Take a look at some of the specific AI software available to help you with everything from simple tasks to helping you make your assessments:

- **Textio:** Helps you create stronger job descriptions that aren’t gender-biased
- **HiredScore** and **ClearFit:** Scans resumes and grades them based on qualifications to avoid keyword searches
- **LinkedIn Recruiter:** Matches candidates to potential jobs while weeding out unqualified applicants
- **Fetch:** Presents former silver- or bronze-medalist candidates for consideration for new positions
- **Workday:** Reviews candidate profiles, imports social media data, schedules interviews, and tracks hiring metrics, all available on mobile devices
- **Engage Talent:** Searches for passive seekers and initiates contact as needed
- **Pymetrics:** Analyzes the way candidates play games to assess character traits (risk-taking, fairness, etc.), then matches those traits to business roles

### Using AI for Future Hires

HR departments are swimming in data, but until now, it’s been difficult and time-consuming to try to use or even access that data. Maybe you interviewed the perfect candidate for a position you’re trying to fill — but the interview actually took place a year ago, when the candidate was short-listed for a different position that they didn’t get.

With AI, you can now complete a quick search to find that candidate and ascertain that yes, they are indeed a good fit for the current position. You already know they impressed you. Now you can access the transactional data you need to reconnect with them, leapfrogging your hiring process forward, thanks to AI tools. In addition, you have the reassurance that you’re assessing and hiring candidates fairly since AI doesn’t pay attention to keywords like “fraternity” or “Harvard” that might have skewed shortlists in the past.

### The Bottom Line

Those HR departments and recruiting firms that have adopted AI software to aid in recruitment have experienced significantly reduced costs per hire, as well as decreases in turnover. At Marquee Staffing, we’re committed to employing state-of-the-art tools to help identify great hires fast in a tight employment market, and we’re ready to help you fill the positions you have open

### Chris Kappes, Executive Vice President

With over 20 years of experience in the industry, specializing in Engineering and IT staffing. Chris’s strong understanding of the new product development, NPI, IT infrastructure and cybersecurity process and correlating technological needs of clients has supported the growth of many Southern California technology leaders. Chris Kappes can be contacted at [ckappes@marqueewfs.com](mailto:ckappes@marqueewfs.com)





# Marquee delivers proven talent – add to your success team today!



**Issues:** Attracting & Retaining  
Quality Talent in a  
Candidate-Driven Market

**Solution:**

Partner with Marquee Staffing –  
Our staffing experts deliver  
solutions for your needs



[www.marqueestaffing.com](http://www.marqueestaffing.com)

## We **work wonders** for you:

- Premier services – exceeding your expectations
- Discovering talent that fits your culture
- Relationship – helping you achieve your goals
- We deliver talent in Engineering – IT  
Medical Device – Accounting – HR  
Customer Service – Admin Support





## What does today's top talent want in an employee benefits package?

While most still want healthcare coverage, retirement contributions and paid-time off, employees are looking for help with new challenges, such as student loan debt and balancing their always-connected work life with their home life. As important, they are seeking a broader range of health and wellness benefits to support their families and active lifestyles.

Across California, employers are partnering with their brokers to develop innovative benefit programs to compete successfully for talent in today's full-employment economy, while keeping employees motivated and happy.



### Student Loan Debt Relief

According to a study commissioned by Gradifi, a provider of student loan debt repayment programs for employers, 90% of those with outstanding student loan debt said a student loan repayment benefit would positively impact their decision to accept a job offer, to recommend an employer or to stay at their current employer.

Eight in 10 people with student loan debt said it is a significant source of stress. Fifty-eight percent of those with outstanding student loan debt said they prefer their employer help them pay down their student debt rather than make additional contributions to their retirement savings.

For a loan of \$26,500 – the median amount borrowed for a bachelor's degree – a \$100 per month employer contribution would save over \$10,000 in principal and interest over 10 years for a loan with a 4% interest rate. The loan would be paid off three years earlier as a result.



### Family Benefits

More employees are investing in their careers at an earlier age, placing priority on professional achievement over other personal milestones, like having kids. When they do focus on starting a family, many are looking for assistance from their employers.

To offset high costs, some employers are offering fertility treatments through a direct reimbursement model. Employees receive an allotted amount to spend on fertility treatments – egg freezing, IVF, IUI.

Some employers are also offering direct reimbursement programs for qualifying adoption process expenses.



### Supporting Caregivers

Women are the majority of the caregivers and approximately two-thirds miss work or take unpaid leave. Each caregiver costs a company \$2,000 per year in lost productivity, according to AARP. Mothers are the fastest-growing segment of the workforce.

As more support is needed beyond paid maternity/paternity leave, employers are providing on-site day care or subsidized childcare service; on-site nursing/mother rooms; food delivery service for parents who are traveling or staying late; work-from-home and flexible schedules; and financial coaching and budgeting assistance, including short-term loans repaid through payroll deductions.



### Health and Wellness

Wellness offerings are expanding, including on-site medical clinics for health check-ups or flu shots; telemedicine offerings; free same-day prescription delivery; onsite therapists and massages; and spaces where employees can take a mental break – sleep pods, relaxation rooms, and game and arcade rooms to help manage stress and work-life balance.

In terms of making life easier, employers are also providing on-site or pick-up laundry service, free meals, healthy snacks, and grocery delivery services. Progressive employers realize that healthier and refreshed employees are more productive.

Employers who offer employee benefit programs that match the needs of today's workers not only have an advantage in competing for talent in today's marketplace. They also create happy, loyal employees who help recruit others to the team.

**Learn how Marsh & McLennan Agency can design an employee benefits strategy to help your company attract and retain the next generation of talent.**

**MMA-West.com**



#### BRIAN HEGARTY

Principal, Managing Director LA,  
Marsh & McLennan Agency

310.702.6220

Brian.Hegarty@MarshMMA.com





# FRAGOMEN

## WORLDWIDE

### California Employers Required to Walk an I-9 Tight Rope

by Mitchell Wexler and Tiffany Chang Wu

With the strong immigration rhetoric put out by the current administration, California has seen a substantial increase in the number of immigration crackdowns and Form I-9 (Employment Eligibility Verification) inspections. Now, more than ever, it is critically important for employers to strike a delicate balance of employing authorized workers without limiting, specifying, or discriminating based on the worker's race or national origin.

On one hand, the Fair Employment and Housing Act (FEHA) prohibits California employers from discriminating based on race, religious creed, color, national origin, and ancestry, among other bases. On the other hand, the Immigration Reform Control Act (IRCA) prohibits employers from knowingly hiring, referring, recruiting, or employing unauthorized immigrants. IRCA requires employers to confirm an employee's identity and employment eligibility during the Form I-9 process.

With a significant uptick in I-9 inspections, it is increasingly important for California employers to understand and be mindful of both FEHA and IRCA provisions throughout the interview and hiring process.

Prior to providing an offer of employment, employers are not allowed to inquire about citizenship status (unless there is a legal job requirement) nor may they request candidates to produce employment authorization documents prior to hire. Such inquiries are likely deemed discriminatory. Instead of asking about citizenship status, employers may ask a candidate whether s/he is authorized to work lawfully in the U.S. – however, this question should be equally applied to all candidates, rather than directed to a select group.

After employment is offered, employers are required to verify the employee's identity and employment authorization. During this verification process, employers

must be careful not to limit the types of documents that an employee can present or impose additional documentary burdens. Employers must examine documentation presented by each employee and accept documents that *reasonably* appear to be genuine and relate to the person presenting them. While the government has clearly stated that employers are not required or expected to be "document experts", employers must tread carefully to minimize exposure to liability.



**Mitchell Wexler** is a partner with Fragomen, Del Rey, Bernsen & Loewy, LLP, and manages the firm's Los Angeles, Irvine and San Diego offices. Mitch's practice includes representing individuals, families, and employers consisting of start-ups through Fortune 500 companies. Mitch has been practicing immigration law for over thirty years and is a certified specialist in Immigration & Nationality law. He can be reached at MWexler@fragomen.com

**Tiffany Chang Wu** is an associate with Fragomen's Irvine office and is an active member of the American Immigration Lawyers Association, currently serving as Chair for the Southern California Chapter. She can be reached at TChang@fragomen.com



The world's leading  
immigration law firm,  
right here in Orange County.

#### A WORLD OF DIFFERENCE IN IMMIGRATION

From visas and work permits to advisory services and corporate compliance, we work with each client to understand their business and immigration priorities. As the industry leader in immigration law, we're here in Orange County working with individuals, investors (EB-5), families, small start-ups, mid-size local companies and large corporations in the state's most prominent industries.

Fragomen, Del Rey, Bernsen & Loewy, LLP  
18401 Von Karman Avenue, Suite 255, Irvine, CA 92612

[www.fragomen.com](http://www.fragomen.com)

**Mitch Wexler, Partner**  
mwexler@fragomen.com  
T +1 949 660 3531

**James Pack, Partner**  
jpack@fragomen.com  
T +1 949 862 9443

FRAGOMEN  
WORLDWIDE



# PAYNE & FEARS

ATTORNEYS AT LAW

## Converting to Paperless HR

By Eric C. Sohlgren and Philip K. Lem

Congratulations, your organization has decided to transition to a paperless human resources environment. While the benefits are numerous, such as increased efficiency and cost savings, the actual process of conversion can be daunting. As an increasing number of organizations go paperless, understanding best practices and how to ensure compliance with legal requirements are critical. Below are key issues to consider.

### Selecting a Document Management System and Indexing Employee Records

There are a variety of Human Resource Information Systems ("HRIS") that convert and digitally store converted paper records. The most common now are cloud-based solutions, as well as software installed locally on a network at the organization's location. When selecting an HRIS system, employers should consider the ease with which paper files can be scanned and converted to a digital format and then integrated into the system and indexed. Organization of the documents is also critical because states like California require that personnel files be timely provided to current and former employees upon request, with monetary penalties imposed against employers for failures to promptly comply.

### Managing and Protecting Access to Electronic Records

Because employee records contain private information, access to the document management system must be restricted. The most effective way to restrict access to HR records is by granting access to the records via system permissions that are password protected. Beyond access to employee records, organizations should also implement records management practices to protect against loss. Among other things, electronic records should be sufficiently labeled and backed up.

### Electronic Signing of Documents

Organizations that elect to utilize e-signatures on documents should, at minimum:

- Ensure that employees affirmatively agree to complete the employment documents using an electronic signature.

- Give each employee a unique username and password to access the HR system, which should require all users to create a private password before signing electronic documents.

- Ensure that each electronic signature is accompanied by an accurate date and time stamp, along with the IP address of the device the employee used to sign the document.

### Record Retention

Employers must also comply with recordkeeping requirements imposed by federal and state laws. Employee records stored electronically are subject to the same record retention laws and regulations as paper records.

### Conclusion

Because going to a paperless environment implicates many legal requirements, experienced employment counsel should participate in the planning process and review the conversion plan before implementation.

For more information, read the in-depth version:

<https://www.paynefears.com/insights/primer-converting-paperless-hr>.



**Eric C. Sohlgren** is an employment law partner in the Irvine office of Payne & Fears LLP. Contact Eric at [ecs@paynefears.com](mailto:ecs@paynefears.com)



**Philip K. Lem** is an employment and business litigation attorney in the Irvine office of Payne & Fears LLP. Contact Phil at [pk1@paynefears.com](mailto:pk1@paynefears.com).

## Call for Nominations

Deadline January 10, 2019



The Excellence in Entrepreneurship Awards program allows for the recognition of clients and associates who exemplify the American entrepreneurial spirit – through creativity and determination in the establishment and nurturing of business ventures.



### Luncheon & Awards Program

March 12, 2019  
12:00 p.m. - 2:00 p.m.

**HOTEL IRVINE**

Tickets\*: \$175 / Table of Ten: \$1650

### Nominate Today!

Visit: [www.ocbj.com/bizevents](http://www.ocbj.com/bizevents)  
Melanie Collins, Signature Events Manager  
at [collins@ocbj.com](mailto:collins@ocbj.com) or 949.664.5056

Presented By

**ORANGE COUNTY  
BUSINESS JOURNAL**  
The Community of Business  
[www.ocbj.com](http://www.ocbj.com)

Platinum Sponsor



Sponsorship  
Opportunities  
Available!

\*Tickets are non-refundable. Ticket price includes self-parking and a six-month subscription to the Orange County Business Journal (\$15 allocated to the subscription). New subscribers only. Current subscribers may gift the subscription to a colleague.



YOUR HUMAN RESOURCES SOLUTION

## Do You Think Perhaps Maybe Possibly We Could Help You Sound a Little More Confident?

by Kathi Guiney, GPHR, SPHR, SCP, President, YES! Your Human Resources Solution & Jocelyn Schamber, Creative Director, Fuzzy Red Pen Copywriting

Based on that opening question of course you don't! What makes that sentence so unconvincing? A lack of confidence! Words convey a powerful message about your professional presence, which is so important in today's business world. Are you using words that undermine your confidence and credibility? Consider the following:

**Just.** "I *just* wanted to check..." sounds insecure, tentative, even apologetic! Nix *just* to make your sentences more competent, direct and determined.

**Like, Um.** Filler words suck the value from your speech. A few may go unnoticed, but too many will break up your thoughts and make you sound like a gossipy teenager. *Like-um* be gone!

**Maybe.** "Could you *maybe*..." cedes all your power and certainty. Adding *maybe* to a request sounds like you're bracing for (and opens the door for) rejection, so get rid of it!

**Actually.** The sure-sounding *actually* seems confident, but it can *actually* make you sound like a know-it-all. (See what we did there?) It can also sound like a cover up for a lack of knowledge or certainty.

**Sorry.** You're hurting your career if *sorry* is your go-to. Every statement you start with an apology makes you subordinate, and can make you seem insincere, insecure, or powerless. So, use *sorry* only when you need to heal a relationship, not to preface requests, refusals or your opinion.

Vague or passive language is counterproductive in the ebb and flow of daily business. Be conscious of your words and choose ones that convey confidence!