

LGBTQ Employment Rights in California Webinar Transcript – August 1, 2020
Language: English

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Morning, folks. Thanks for joining. We're going to give attendees another minute or so to trickle in and get started.

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Good morning, everyone. I'm Amanda Goad with the ACLU So Cal. Thank you so much for joining this morning's webinar on LGBTQ employment rights in California.

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I want to share, first, our goals for today, which are to help everyone understand the rights that LGBTQ workers have in California.

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Also, what the heck just happened at the United States Supreme Court, and how does that affect our rights.

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We also want to make sure everyone's clear on what you can do if you have a problem and think your rights might have been violated and some of the places you can turn for help.

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We love questions. So if you have any please feel free to ask along the way you can do that either in the chat function on zoom or using the Q and A box, which will send a question privately to the presenters.

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We again would love to respond to questions, but please don't take any of what we're saying today as legal advice.

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And also to remind folks we're recording this session for the benefit of those who couldn't make this time.

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And we will also be sharing with everyone who signed up a copy of the presentation from today. So don't feel like you need to hustle to take notes or screenshots or anything like that.

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I want to thank my colleague Angelica Lujan, also from the ACLU So Cal, who did a lot of the legwork to make this feasible.

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And here's the more detailed agenda of what we're going to focus on today, starting with some background about the economics of being an LGBTQ person in the workforce and California

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Getting into some of that Supreme Court news and what's going on with federal law, and we'll talk about state law both issues specific to LGBTQ folks and issues relevant to workers more broadly.

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We'll talk about leave and accommodations and we'll talk about what you can do when issues arise. At the end there will be time for questions. But again, don't be shy if you have a question along the way.

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And so again, my name is Amanda with ACLU So Cal, normally based in our Los Angeles office. I use she/her or ze/zir for pronouns and I'm going to pass it to Elizabeth to continue the intros.

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Good morning, everybody. Thanks, Amanda. I'm Elizabeth Kristen, I use she her pronouns. I am the director of the gender equity and LGBTQ rights program at Legal Aid at Work, and I'm going to pass the intros to David Nahmias.

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Hi everyone, I'm delighted to be here. My name is David Nahmias. And I'm a law fellow and an attorney at the Impact Fund, we're a small civil rights nonprofit organization in Berkeley and I lead Impact LGBTQ our initiative specifically supporting LGBTQ workers in California.

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Hey everybody. This is Laura Diven, I'm the LGBTQ legal director at California Rural Legal Assistance. We have 16 offices through the state, but I am located in Oakland, and I use she/her pronouns. Thanks everybody. Aditi?

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Good morning, everyone. Thank you for joining us today on this Saturday morning.

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My name is Aditi Fruitwala. I am a staff attorney at the ACLU of Southern California. I'm located in the LA office and I use she her pronouns.

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use She/Her pronouns.

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Great. So Elizabeth will start us off with some context.

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Great. Thank you, Amanda. And this context is probably well known to all the attendees because members of our community are well aware that our community is discriminated against and harassed and disadvantaged in many ways.

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But because there's this popular perception. Sometimes that the members of the LGBT community are more well off or

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Economically advantaged than people in general, we wanted to just really ground this presentation. And what are the scope of the issues and problems that our community faces and employment.

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And what are the general statistics about who we are here in California. And so about 5.3% of California's adult population identify as LGBT and this surpasses the national average.

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California is also home to the highest number of transgender adults. And so it shows to us that California is a place where we are strong members of the community. We are part of this state, and we need our rights to be protected.

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Our community is more likely to be low income. As of 2018, about 612,000 LGBTQ Californians live below 200% of the federal poverty level which is about 24,000 per person annually.

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Which of course is incredibly low, especially in urban areas in California, like San Francisco and Los Angeles. And about 20% of our community is experiencing food insecurity compared to 14% of non LGBT California

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Next slide please... LGBTQ adults are almost twice as likely as the general public and then transgender adults are about six times as likely to report recent experiences of homelessness.

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And 30% of transgender Californians report experiencing homelessness sometime in their life with 11% experiencing it within the past year.

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Transgender Californians are also three times more likely to be unemployed. Black and Latinx LGBTQ individuals also report much higher rates of homelessness than their white counterparts.

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Latinx are the largest group of LGBT adults who are low income and LGBT adults who identify as Black or two or more races also experienced disproportionately high rates of poverty. Bisexual cisgender women and men have higher poverty rates than cisgender straight women and men.

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Our community also experience employment discrimination and harassment at very high rates. more than one in five LGBTQ Americans have experienced discrimination in housing or the workplace. 26% of transgender Californians

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reported being fired denied a promotion or not being hired in the past year because of their gender identity or expression and LGBT people of color report over twice the rate of discrimination related to sexual orientation as white LGBT individuals when applying for jobs.

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More than half of LGBTQ women report having experienced sexual harassment over the course of their career that's 1.4 times more than straight women and 1.9 times more than LGBTQ+ men.

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And compared with straight women and straight men bisexual women are more likely to have experience micro aggressions and slightly over half of bisexual respondents reported having experienced employment discrimination at some point in their lives.

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So what this means is that all of you are in the right place to be learning about your rights to either be addressing anything that's happened to you in the past.

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Or to just be ready proactively to understand and know about what to do if you experience employment discrimination. and I'm going to pass this back to Amanda to talk about what happened at the Supreme Court.

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Alrighty, thank you, Elizabeth. I was in the midst of trying to fix the tech thing. Can you all see my screen correctly.

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We see it, but it does not show this. There it is. There you go.

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Okay.

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Let's make sure the whole slide is involved.

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Perfect. Okay.

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So,

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I'm going to talk about federal civil rights law and how it applies to LGBTQ folks in the workplace. You very well may have heard that earlier this summer

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There was a positive decision from the US Supreme Court about Title seven. We thought it was important to clarify, what the heck is Title seven?

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It's a part of the Federal Civil Rights Act from 1964. The Civil Rights Act was a comprehensive law at the time, seeking to address discrimination in various life contexts and one of those, under Title seven, was employment.

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Originally Title Seven explicitly applied to discrimination based on race or skin color, sex, national origin, and religion.

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Here we've got a picture of President Johnson shaking hands with Reverend Martin Luther King, as they were working out what this law was going to look like back in 64

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As time has gone by Congress has passed some additional federal laws to provide explicit protection on some other bases. So you can see those characteristics listed here.

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However, over time, understandings of what those words in the(Title Seven law) really mean have evolved.

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And people who thought they were experiencing discrimination in the workplace, or something just didn't feel right,

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Increasingly brought their arguments to both the courts and also the Equal Employment Opportunity Commission the EEOC. That's the federal agency that deals with issues of employment discrimination.

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And over time, people's understanding of what exactly it meant to legally discriminate on the basis of sex

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So these are a series of examples of things that probably wouldn't have been considered illegal in 1964 but there were court decisions gradually finding that yes they are illegal and not okay.

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It's no longer acceptable to label a job posting as being a job for men or a job for women.

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It's definitely not okay to refuse to hire someone because they also have caregiving responsibilities; that has a disproportionate negative impact on women.

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It's not okay to tell people who become pregnant that they need to go on leave or quit their job.

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It's not okay to pay someone different benefits or a different salary just because you perceive them as the head of their household.

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It's not okay to sexually harass anyone in the workplace and we'll talk more later about how that works, but it's illegal, regardless of the gender of the people involved. And it's also not okay to impose or enforce gender stereotypes in the workplace.

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The sort of classic case on this is one that went to the Supreme Court on behalf of a woman accountant who was told that she could never make partner in her accounting firm,

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Unless and until she cut her hair, got a makeover and took a course in charm school because the company didn't think that the way she presented herself was becoming of a woman

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Working for them. But that's imposing stereotypes and that's not okay.

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So over time, people who were lesbian, gay, bisexual and trans all started to realize that when they were discriminated against, or treated unfairly at work that also seemed like a form of sex stereotyping and therefore not okay.

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So here we've got photos of a few of the people who were brave enough to bring kind of early legal challenges

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to what had happened to them in the workplace based on being LGBTQ, saying, that feels like a violation of Title Seven, that feels like I was treated negatively because of my sex, and that's not supposed to be legal.

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And over time, a number of lower courts, as well as the EEOC, ruled in favor of these folks and they came from all over the country and all different parts of the economy. Jennifer Chavez was an auto mechanic. Couple of other people had law enforcement or other government jobs.

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A college professor and a librarian. So it was really popping up all over that this didn't feel right and the courts agreed.

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And that brings us to the cases that the Supreme Court ultimately decided to hear so as to settle this question.

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Once and for all, Aimee Stephens had been working for a funeral home in Michigan for a period of time.

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And during that time she was also outside of work going through this personal struggle,

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which culminated in sending a letter to all the people she worked with at the funeral home that was basically her coming out letter. She said,

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You know, this might be surprising to you--honestly it's surprising to me. But I've come to realize I'm a woman.

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And I'm going to take a short vacation. When I come back. I'm going to go by the name, Aimee. I'm going to wear

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women's suits, as opposed to the men's suits I used to wear to work. Just wanted to give everyone a heads up. And Aimee's boss unfortunately wasn't okay with that and told her explicitly, I'm not okay with that, I'm letting you go

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So that was one of the cases considered by the Supreme Court. At the same time,

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There was also the case of Don Zarda who had been working for a company on Long Island that gave skydiving lessons.

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If you've ever taken a skydiving lesson, you might know the way that works is you start with a tandem jump and that means that you, the student, are strapped very closely to your instructor when you go for the dive.

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That can be awkward. So Don was actually trying to make a woman customer feel better about this awkward close body contact with this guy she just met and told her. Oh, don't worry about it. I'm gay. I have a husband to prove it.

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When the boss found out about that he wasn't okay with it and let Don go. So these two folks were ACLU clients, whose cases happened to

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work their way up through the system and be selected for hearing by the Supreme Court. Kind of a sad side note is that neither Don, nor Aimee lived to see what ultimately happened in the Supreme Court.

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Aimee had some health problems. And when she lost her job, she lost her health insurance. And that really didn't help with the kidney issues and other stuff she was dealing with.

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Her health declined over time and she actually passed away just a few weeks before the Supreme Court decision this spring.

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Don, meanwhile, had trouble getting another job in skydiving and he was casting about for other related work he could do, that was really the field that he loved.

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He started getting into BASE jumping. If you're not familiar skydiving is when you jump out of a plane but BASE jumping is when you jump off of a solid object like a cliff or a bridge and that's even more dangerous.

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Don actually was in a BASE jumping accident and died in 2014. So fortunately, both of them have supportive families who were able to pick up these fights in their name.

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But I think it's important to remember, not only does almost everyone need a job in our society to make a living, but

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whether you have stable employment can impact so much else about your life and can have a lot to do with your risk of having issues in terms of your health or even losing your life. So that is part of why what we're talking about today so critically important.

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And that brings us to June 15 2020 when we got the decision from the Supreme Court in these cases.

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I should also mention that in addition to the ACLU clients Don and Aimee whose stories. I know better, there was the third gentleman and his case was involved. Gerald Bostock.

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He was working in Georgia for a county welfare agency. His boss actually found out he was playing on a gay softball team and had a problem with that, and Gerald also lost his job.

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And out of the three cases Bostock was the first last name in alphabetical order. So it was also the last name that ended up attached to

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the caption of the case first. And that's probably the primary one that's going to go down in history.

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But the result from the Supreme Court was a six three decision saying the answer to this fundamental question is yes, it is illegal under Title Seven

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to fire someone or treat them negatively in the workplace, because of their sexual orientation or gender identity.

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and the opinion was written by Justice Gorsuch, who's a Trump appointee.

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Using a school of analysis called textualism, which basically means looking very literally at the words of the law that you're analyzing and not at the surrounding context.

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So Justice Gorsuch spent a lot of time going over the words "discriminate" and "because of" and "sex."

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And really just concluded that there's no way you can explain what happened to Aimee and Don and Gerald without it being about their sex.

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So this was a great result. It was a little difficult to celebrate because of the social distancing that we're all dealing with. But here we've got a photo of folks celebrating in a distanced, masked way in front of the Supreme Court.

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I did want to mention there was another development from the Supreme Court, that could be relevant to some folks,

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that wasn't as positive this year. And this has to do with religious employers and the degree of protection that you have from discrimination if you work for one of those.

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Civil rights laws generally do not apply to

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houses of worship, like a church or a mosque, you know, if you think about freedom of religion in the United States, it only makes sense that the government is not going to tell, for example,

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a Catholic church or parish that they're required to hire women on an equal basis as priests, because that is a matter of religious doctrine, but

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if you work for religiously affiliated organizations such as a Catholic hospital or Catholic school, the basic rule is that those workers are protected by federal civil rights law.

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However, you're not protected if your job is considered ministerial, and that basically means that if your function in that job is to convey teachings of the religion,

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then that freedom of religion part comes into play, and you're not protected by these Title Seven provisions.

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The case that the Supreme Court heard this year was on behalf of a couple of teachers at Catholic elementary schools in the LA area. One of them was alleging age discrimination and the other disability discrimination.

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The Court looked at the nature of their jobs as elementary school teachers and concluded that there was some component of conveying religious teachings and therefore

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concluded that it was okay for the Catholic diocese to treat them as ministerial which means in practice, you're not going to get protections under Title Seven. So those cases weren't explicitly about being LGBTQ, but the

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message there seems to be that the courts are moving in a direction of being more friendly to an employer's argument that a particular role is not protected.

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And that could be dangerous for some LGBT folks working for religiously affiliated organizations. This area of the law is complicated.

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And if a problem arises, we really encourage folks to get in touch with the ACLU, or one of the other presenting organizations here, because we can help with analyzing what's going on and and what are the chances of these protections applying.

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Last thing I wanted to mention is that we still really need the Equality Act, which would be a comprehensive federal law, building on

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The Civil Rights Act of 1964 and explicitly adding sexual orientation and gender identity protections...

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Not just in employment which the Supreme Court has now spoken to clearly,

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But also in housing and health insurance and education and jury service and all these other situations where people need protection from discrimination.

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In addition to explicitly dealing with the LGBT question and hopefully saving some time because the Trump administration is planning to fight

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the argument by civil rights advocates that, same way because of sex under Title Seven covers LGBTQ folks, the same reasoning has to apply under a variety of other federal laws that also protect people from discrimination because of sex.

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There are some loopholes in current law, such as federal law doesn't have anything to say about sex discrimination by retail businesses and not every state enjoys strong state law on that. We really just could use the Equality Act to clarify and

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expand protections for several different communities.

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Here we've got a photo of the launch of the current version of Equality Act. And this was Congressman John Lewis speaking out in favor of it. Unfortunately, we just lost Congressman Lewis.

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And he was kind of an irreplaceable figure in some ways for the civil rights movement, but there's a really broad coalition of folks committed to making these changes and expanding these protections and it's important that we get that done. I also just want to say

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having these explicit protections across different areas of federal civil rights law is necessary, but it's not sufficient to achieving true equality.

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All these years that the law has been clear, people are protected from discrimination based on race and based on sex, has not eradicated

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discrimination or economic disadvantages for women or for people of color. So we're going to have lots of different kinds of work to do still, once these explicit protections are in place, but we also need this legal tool.

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So with that, I'm going to pass the mic to David to talk about some California specific law.

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Thank you so much. Amanda and hello everyone. Again, my name is David Nahmias, and I forgot to mention this earlier, but I use he/ him pronouns.

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So today we're going to talk, I'm going to talk a little bit more about common LGBTQ challenges at work, and specifically laws in California that protect LGBTQ workers.

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Next slide please. So Amanda just explained a lot about the Bostock decision and federal law. And as you probably know, in the United States we have laws on different levels.

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Federal, State and local levels. And now we're grateful for the Supreme Court's decision in Bostock v. Clayton County. It was momentous.

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But that decision does not practically affect the state law here in California. Here in California for many years,

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our state law has explicitly prohibited discrimination and harassment because of a person's sexual orientation, gender identity and gender expression

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And those bases have joined a number of other protected bases in our state law, including discrimination, or prohibitions against discrimination

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And harassment based on sex and gender, disability, which includes HIV status, a person's race, national origin, including their language, their age,

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their marital status, veteran status and more. So as you can see a lot of the same bases in California are covered as under Title Seven. But as we'll talk about now, they're actually quite broader and

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Stronger

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Next slide please. So all of these protections are part of California's Fair Employment & Housing Act and that law covers workplaces, with five or more employees.

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So that is actually another distinction between state law and federal law because federal law covers workplaces with 15 or more employees. So this means that in California, far more businesses are covered, including those much smaller businesses.

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And even within that coverage, there's an additional exception that says that

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The law for purposes, excuse me, the law prohibits harassment and workplaces with over just one employee. So that basically means that any workplace must protect you from unlawful harassment.

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The Fair Employment and Housing Act applies to private employers/private businesses, unpaid interns, unions, staffing agencies, and state and local government employees. It does not apply to employees who work for the federal government, they're covered by Title Seven only.

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And the Fair Employment and Housing Act protects people regardless of their immigration status. But of course, practically speaking, we notice that a person's immigration status will affect how safe a person will feel in pursuing their rights,

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either in administrative procedures or actually in court, and other forms of retaliation they may experience. But it's important to know that undocumented folks are covered by these laws.

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And the last thing is that the Fair Employment & Housing Act prohibits discrimination based on a person's perceived status. So how someone perceives another person... they perceive a disability of another person or they perceive someone's sexual orientation.

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So ultimately, the bottom line is this: under both our federal and state laws, you have the right to work free of discrimination and harassment because of your sexual orientation, gender identity and gender expression and HIV status.

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The federal civil rights slack applies to every state and in California, our state law is more developed and more explicit and that's especially true for non binary and gender non conforming people, and I'll talk about that towards the end of my presentation.

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Now other states have other laws. So if you do decide to live outside of California and move outside of California, be sure to check the state laws there because they do differ.

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But again, federal law, federal Title Seven covers you everywhere.

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Now the first thing to think about is, you know, are you out, at work or not. And if you're not out at work, it's your choice to decide whether or not you come out. Again, it is a personal decision. And I actually heard a statistic recently that 50% of LGBTQ employees are still not out at work.

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And what that means is, you know, coming out and telling, telling your employer, your supervisor, your co workers about your sexual orientation. could also mean coming out about you, that you're transgender, or that you're in the process of transitioning.

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Now a person may want to come out because it helps eliminate the need to feel like you have to hide...hiding your identity, hiding your authentic self.

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And it allows you to be more productive and more confident in the workplace. It can also strengthen your relationship with your coworkers, and remember...our laws protect you if you come out, and now it protects you as an LGBTQ person.

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But you know as Amanda alluded to earlier, just having these laws in place doesn't necessarily mean that harassment or discrimination doesn't happen. So unfortunately, a person may still be subject, subject to some harassment or offensive conduct if the workplace is not as friendly.

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Some things to consider if you're not actually, if you're not yet out at the workplace.

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If your employer has specific non discrimination policies on the books already

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Are there other open out LGBTQ folks at your workplace, and what is their experience like, and for that matter, are there other folks who, you know, are LGBTQ, but they're not yet out.

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What are your larger work relationships like? are people open about their personal lives? Is it very supportive and friendly or, on the other hand do people make derogatory comments and jokes?

00:29:15.960 --> 00:29:20.520

You have the right to share your identity openly and live your authentic life as you as you want to.

00:29:21.750 --> 00:29:27.540

But your employer does not have the right to ask you about it. Again, this is a personal decision from you.

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Next slide please.

00:29:33.480 --> 00:29:39.330

So now I'm going to talk specifically about workplace harassment and that can occur in various different ways, which include

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Sexual or sexist, racist, anti gay or anti trans remarks, it could be inappropriate questions about a person's body or about private matters. It could be touching or even unfortunately up to assault.

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Harassment could actually also include misgendering which is the word we use when someone is using the incorrect name, pronouns, and gender of a transgender gender non conforming person.

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Now workplace harassment is illegal and the way the law.

00:30:11.640 --> 00:30:19.410

sets out workplace harassment, first you have to show that the conduct was unwelcome. it means it has to be something that bothers you, or that makes you uncomfortable.

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In California, the law is what we call subjective, which means it depends on your experience of the, of your harassment.

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And a couple years ago, our state legislature amended the Fair Employment and Housing Act to explicitly say and adopt what lots of courts in California had already been saying

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To really make it clear that harassment is based on your individual perspective and the way that that the law says it is that it must, and I quote,

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Affect your emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with or undermine the victim's personal sense of well being. I think that's really important to think about, is how it really affects and disturbs the person's

00:31:04.680 --> 00:31:06.090

You know, emotional status.

00:31:07.680 --> 00:31:14.160

You also don't have to show any concrete or tangible change in your ability to to to do your job or you don't just show that you were demoted.

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Just to show that your emotional tranquility was disrupted.

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Even a single comment could amount to workplace harassment if it unreasonably interfered with your ability to do your job.

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So therefore, in the case of misgendering for instance a casual or innocent slip up by a coworker probably is not going to be harassment, but if it continues repeatedly

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And it seems to be meant to sort of harm or damage you in to change those power dynamics in the workplace, like other forms of harassment do, it may.

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And several empirical studies, you know, have said and I think, personal experience of trans and gender non conforming folks demonstrates this, that misgendering can be very, very emotionally damaging

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So even a single incident. of misgendering if it causes the person severe emotional harm could be illegal.

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Now, your, your employer is required to protect you against harassment and it is illegal to be harassed by your supervisors or managers, by your co workers, and even by third parties. So for instance, if you work in a, in a restaurant or a retail store, by customers.

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So retaliation. And that's another form of illegal discrimination and that occurs when your employer punishes you or takes a negative action against you for

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For reporting a violation of your rights or making a complaint about discrimination and harassment, for instance.

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And that could be a report about discrimination and harassment that you personally experienced or discrimination or after that you witnessed occurring, to another person. Another co worker.

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And retaliation can take many different forms. It can be, you know, a termination. It could be a reduction of your hours or your shift. It could be threats to do that.

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Retaliation is illegal, as this as a separate form of discrimination. However, unfortunately, there's still always a risk.

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And if you're ever concerned about retaliation or that speaking up about your rights, going to HR and saying, I'm being harassed, and you might have been retaliated against...

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It's really important to talk to an attorney, speak to one of us. And at the end we'll give out our contact information. And if we can't help then we will send you to the folks, others in California, who can.

00:33:42.810 --> 00:33:49.680

And we can sort of counsel you about the costs and benefits of making a complaint, to understand those risks of retaliation.

00:33:53.190 --> 00:34:01.860

So now, specifically speaking about rights of transgender folks at work, California has some of the strongest protections for transgender and gender non conforming workers in the country.

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And trans workers and gender non conforming workers have the right to use their chosen name and pronouns.

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in the workplace and as I just said, if a co worker or a boss fails to do that repeatedly, and actually, misgenders you, it may actually rise to the level of harassment.

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Now it doesn't matter if a person hasn't done a legal name and gender change. And that is where a person goes to court and gets a court order that specifically changes their name and gender on the documents and then they can use that court order to then go to the DMV and change their

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driver's license, to the passport agency and change it on their passport.

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So again, you don't actually have to do that to be able to use your chosen name and pronouns in the workplace.

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Your employer, however, may continue to use your legal name

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On things like-- this is your former or dead name--

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on payroll documents other legal documents that have to be kept confidential. But for all intents and purposes of your job experience, working with your co workers and your boss and your manager, they have to use your correct name and pronouns.

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You also have a right to access the restroom and locker room that corresponds to your identity and if you work in a in a place with a specific dress code like some restaurants, you have the right to wear the dress code that corresponds to your identity.

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So everyone has the right to access restrooms that align with their gender identity and if a work site has a single stall restroom,

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The law says it has to be labeled all gender, gender neutral. And that can be really advantageous for folks who identify outside of the gender binary. But if, if the employer has, you know, the binary restrooms, male or female. What this means is that a transgender woman

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Is entitled to use the women's restroom.

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Your employer cannot ask you about your gender or require you to prove your gender, your gender identity or make your gender identity a condition of hiring you.

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They also cannot ask you any questions about your medical history or any personal matters.

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And the way that I sort of like to think about it is if it's inappropriate to ask

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sort of a non transgender person these questions it is absolutely inappropriate to ask a transgender person these questions.

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You, on the other hand can tell your employer that you're transgender, or that you're transitioning, especially if you're seeking a certain accommodation. Like for instance, you know, you're, you're transitioning and aligning your gender identity as a woman.

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And you're seeking to use the women's restroom.

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And this can be kept confidential.

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Finally, make sure that your employer has placed a poster outlining these rights specifically, in a common space in your work.

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You might see in in the break room. For instance, number of these posters that talk about all of the rights we're talking about today, there has to be one in California, specifically talking about transgender rights.

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So California also has laws protecting non binary and gender non conforming folks. Our laws and regulations define gender identity very broadly to include those identities specifically and other identities, such as a person who's genderqueer.

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And they go on to define gender identity as including both a combination of male or female, or neither male and female. Those are the words of the regulations.

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You also have a right to obtain a non binary gender marker on your driver's license.

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Now regarding restrooms, if there's not already a designated all gender restroom in your workplace, then

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folks who are nonbinary will have to pick which of the binary options they're most comfortable with. For now, what I'd encourage you to do is organize among your

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coworkers who are also LGBTQ and your allies to fight to get a multi user restroom designated as all gender, but unfortunately right now there's no legal obligation for an employer to make an all gender option available.

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And my next slide please. Thank you. And my, my last slide is talking specifically about health care coverage and this is especially important now given the COVID-19 pandemic.

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Now, most people get their health insurance through their employers. Others, you know, pay for it separately on the Covered California exchange or others have their health insurance covered by the state public insurance plan Medi-Cal.

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Now no matter what health insurance plan you have, your provider cannot discriminate against you for being LGBTQ.

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That means for transgender and gender non conforming people, your doctor and your health insurance cannot deny gender affirming care if it's been prescribed by a doctor. That includes hormone therapy or surgery.

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Now, if you have a partner who is also covered by your plan, same sex spouses or registered domestic partners must be treated the same as different sex spouses or registered partners.

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We actually had a question about this specifically. So if a person who is a registered domestic partner, who has then

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Received the special certifications from the secretary of state that they are registered domestic partners that person must be covered the same as an opposite sex partner.

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And specifically speaking of registered domestic partners, for a long time that was only for same sex spouses, but

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as of last year, I believe, the legislature changed it and now opposite sex partners can also be

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certified as, get a certification of registered domestic partnership from the Secretary of State.

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Now this health care coverage. These health care coverage protections, excuse me, apply to any private and public plan that operates in California.

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Now, it's very complicated. It's probably too, you know, complicated to talk about in one slide. So if you do have a problem, please contact one of our organizations.

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Especially the ACLU and California Rural Legal Assistance, who are dealing with these issues right now and they kind of do work in this area, and they can help you.

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And with that, I will turn it over to Laura. Thank you so much.

00:40:32.310 --> 00:40:42.870

Thank you, David. Again, this is Laura Diven from California Rural Legal Assistance. Hi, everybody. So we've talked about the additional barriers LGBTQ folks face in terms of employment and income.

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We've talked about employment discrimination and harassment and retaliation. We've also gone over some recent triumphs.

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And the rights LGBTQ folks have at work. So now we're going to jump into some basics of California employment rights laws. These are laws that are available to anyone in the state. So not just LGBTQ folks. Next slide please.

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California is an at will employment state. That means that the default rule is that either party can end the employment relationship for any reason

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at any time but the caveat there is, it has to be a legal reason, so not retaliation, not discrimination,

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not harassment, not any of the things we've been talking about. But either party can end the relationship for any legal reason.

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Things that change this relationship, are an employment contract, a collective bargaining agreement-- if you have a union network, you probably have a CBA, which changes the employment relationship.

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Or wrongful termination laws like we just talked about, retaliation, discrimination, harassment, and these may protect or modify the default at will employment law rules.

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Wage and hour rights. We're going to go into minimum wage and employers are required to pay all California employees minimum wage. In California as of January 1 2020

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minimum wage for employers that have less than 25 employees is \$12 an hour and \$13 an hour for businesses that have more than 25 employees.

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But-- and this is an important but!-- look at the minimum wage laws for your particular jurisdiction, the municipality or city that you live in.

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In San Francisco minimum wage is \$16.07 per hour in Los Angeles, it's \$14.25 an hour for employers with less than 25 employees and \$15 an hour for employers that have 25 or more employees. So be sure to check the minimum wage laws where you live and work.

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Meal and rest breaks. You have a right to meal and rest breaks for every 3.5 hours shift you've earned 1 10-minute

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break, and your employer cannot bother you during that rest break. And I'll talk more about that in a second.

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For every five-hour shift completed, you're entitled to 1 30-minute rest break. So for most people, they're going to work a five hour shift and they're going to have a right to a 30 minute rest break.

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And what does that rest break mean? During rest and meal periods, the employer must relieve the employee of all duty, so it can't be a working lunch, or I'm just going to answer emails during lunch. It has to be a clean break. And you also have to relinquish control over employee activities.

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So, oh sorry, go ahead. And overtime, you have the right to overtime pay for any time worked over eight hours a day.

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Or over 40 hours per week. Let's get into how to calculate that overtime pay. For hours eight to 12, so you work for eight hours consecutively starting at that eight hour,

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pay is 1.5 times your normal rate. For hours eight to 12, 1.5 times your normal rate. So if your normal rate of pay is \$20 per hour,

00:44:06.720 --> 00:44:22.530

For hours eight to 12 it's \$30 per hour. And for any hours beyond that 12 hour work period in one day, the pay is two times your normal rates. If you made \$20 an hour, your pay rate after hour 12 would be \$40 per hour.

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Okay.

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We're going to go into some COVID-19 updates. Now I understand that some of these these provisions have just sunsetted and I will talk about that when we get to those provisions.

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But I did want to go over some COVID-19-specific rules. Several state and federal laws are providing workers who are experiencing job loss, reduced hours additional help for COVID-19,

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including additional sick leave and family medical leave, State Disability and paid family leave, unemployment insurance, pandemic insurance. Pandemic insurance is past the deadline.

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I will talk about that and the disaster relief for immigrants or DRAI program, which is also past its deadline.

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Next slide. If your employer has reduced your hours, shut down operations, or laid off employees, you can file for an unemployment insurance claim.

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A lot of people don't realize they can file an unemployment insurance claim when their hours are reduced. So if you generally work - Let's say 37 and a half hours a week -

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And your hours are reduced to 20 hours a week, you can file an unemployment insurance claim. Benefits range from \$40 -\$450 a week.

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Depending on your income before filing for unemployment insurance and the requirement to certify - and certifying means that you're certifying that you're looking for work - that certification

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requirement is temporarily suspended during COVID because they understand people can't look for work because work is not available, because most businesses are shut down,

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Those claiming partial benefits for reduced hours must still certify hours and report their earned income. So if you are in that situation where you're working 35 hours a week

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And you were working 35 or 37 hours a week and your hours are reduced to 20 hours, you still have to certify that you're working that 20 hours per week.

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The CARES Act, which just sunsetted last week, entitled recipients to an extra \$600 every two weeks from March 29 through July 25.

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So again, that program just ended last week. We don't have news yet on whether that program will be re-upped or not. There is some word that if the federal government does not re-up that program, the state government might, but that is not certain at this point, so

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that program has officially ended.

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I get also

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The COVID

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offered an additional 13 weeks of UI for a total of 39 weeks, so additional 13 weeks of unemployment benefits.

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Next slide please.

00:47:13.440 --> 00:47:14.310
Laura, if I may

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interrupt for one second. There was a

00:47:15.870 --> 00:47:22.350
question going back to overtime. Someone said

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I thought overtime only kicked in for non-exempt positions if the

00:47:25.710 --> 00:47:27.720
total hours in a week exceeded 40.

00:47:29.880 --> 00:47:35.100
So it's eight hours per day or 40 hours per week. either/or

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Thank you.

00:47:39.810 --> 00:47:47.490
Okay, if you do not otherwise qualify for unemployment insurance because - and this is a really important program - pandemic unemployment

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Assistance because you are self-employed, because you're a gig worker, because you drive for Postmates or Door Dash or Lyft, or lack

00:47:57.420 --> 00:48:07.800

sufficient work history, you may still qualify for pandemic unemployment insurance. This started on April 28 and applied retroactively to February 2.

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The benefits are a minimum of \$167 per week, but it may be higher with proof of passive income. Additionally, PUA recipients - so people who wouldn't otherwise qualified for unemployment assistance -

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Received the additional \$600 per - oh says per week; it was actually every two weeks - Every two weeks from March 29 through July 25 2020.

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The PUA benefits last up to 39 weeks minus any weeks of regular and extended unemployment benefits.

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So again, this program was for people and is for people who are self-employed, independent contractors, gig workers, or lack sufficient work history. So these are a lot of people who are left out

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of unemployment benefits that are able to access unemployment benefits now. If this is you, make sure you're applying under the PUA or pandemic unemployment Assistance Program.

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Okay. This program was a one time payment - DRI or disaster relief for immigrants - was a one time \$500 payment to people who otherwise didn't

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qualify for unemployment benefits because of their immigration status. The maximum was \$1,000 per household; and in order to apply for it, people had to show that they were an undocumented adult,

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that they were not eligible to receive federal assistance, and that they'd received a heart, excuse me, experienced a hardship as a result of COVID-19.

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Again, this program has not been extended. It may be extended, but it was a one time payment.

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Next slide please.

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And I'm going to hand it over to Aditi for leaving accommodations. I'm just going to check if there any questions first.

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Actually, yeah, Laura. Someone wanted clarification under CARES. Was it \$600 additional per week, or every two weeks?

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You know what I think I got that wrong. Let me double check really quick.

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Great.

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This is Amanda. There was another question also. I can respond to, because I mentioned

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religious entities and someone asked a great question. Could a Catholic nonprofit that is not a church be allowed to discriminate against LGBTQ employees? And the answer to that, as so often with legal questions, is: probably not but it depends.

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California law actually has a broader religious exemption. So, FEHA had that David spoke to generally doesn't apply if the employer is religiously affiliated.

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But Title VII does apply unless you're a ministerial employee. So to answer this question under federal law, you could get into what are the duties of that specific job. It

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could matter is this a job where you're required to swear to some sort of religious creed or pledge.

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It could matter whether you're required to be a member of a particular faith to get the job. It could matter whether your customers or the people you're serving

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Are all part of the same faith as well. If it's hospital, for example, that serving with public, and the role is a doctor and there's no religious content to

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What's happening in that role, then most likely that person would be protected under federal law, but it's complicated, and it is a good idea to talk to a lawyer if you have questions about a particular situation.

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Alright, then I think we're going to be moving on to leave and accommodations.

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So we'll start off with paid sick leave. Paid sick leave has become a really hot topic recently because of this global pandemic. But the reality is, as we all know, we've always needed paid sick leave.

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And the question that people have when we talk about paid sick leave is: How long do I get; and for what reasons can I take paid sick leave?

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So for the first question: How many days you get depends on where you live.

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In California, there's a State law that says that the minimum amount of paid sick leave that an employer can give is three days. And then there are local jurisdictions that have passed more protective measures. So in LA,

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If you work in the city of LA, you get six days. San Francisco, Oakland Berkeley, Emeryville, and Santa Monica: nine days. And San Diego is our California winner with 10 days minimum.

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Your employer can always give you more than this allotment, but they cannot give you less. If you work in any of these cities or in the state of California, this is the minimum amount of paid sick leave that you get per year.

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The reasons that you can take paid sick leave. There are three. The first is, if you are sick. The second is, if your family member is sick and you have to care for them.

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And the third is if you have a healthcare appointment, like a dentist appointment, a therapy appointment. Those are all reasons that you can take paid sick leave.

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So paid sick leave during COVID-19. So there have been many laws that have passed recently to address COVID-19 specifically and they're pretty complicated.

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They're also really specific to what employer you work for. But we're just going to go over the basics and please feel free to ask questions.

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So the federal government passed a law saying that you get 10 days if you work for an employer with under 500 employees.

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Then in California Governor Newsom passed an executive order saying you get 10 days if you work in the food service industry for an employer with more than 500 employees.

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Then several local jurisdictions said, you know, this isn't good enough. We need to give more paid sick days or paid sick days to more people.

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So LA, San Francisco, San Jose, and Oakland expanded to 10 days for everyone who works for an employer with more than 500 employees, except

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Healthcare workers, emergency responders, parcel carriers, and government workers. If you're confused by all of this, you're not alone.

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Aditi Fruitwala (she/her), ACLU SoCal:ACLU and Legal Aid at Work just published a guide on paid sick days in LA. And we're working on guides for San Francisco, San Jose, and Oakland.

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But the bottom line is during COVID-19, most people will receive 10 days. But there are exceptions and please reach out if you have questions about your particular situation.

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Speaking of that Aditi, someone asked a great question. For these local laws, is it based on where you are or where your employer is, for example, I live in LA, but I work for an employer based in Sacramento.

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That's an excellent question. It's based on where your employer is.

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So paid sick days during COVID-19. In addition to expanding the amount of time that you can take, these laws have also expanded the number of reasons that you can take paid sick days.

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So you can take these paid sick days for: if you're sick with COVID-19, if you're over 65, if you're vulnerable to COVID-, 19 if a doctor tells you to stay home for any reason

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because of COVID-19, if you have to care for a family member who's sick with COVID-19, or if your child's school is closed and you have to stay home to care for your child.

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So we have said family member several times. You can take paid sick leave to care for a family member. So you may be wondering, what is a family member?

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This is especially true, obviously, for our communities. LGBTQ communities may think of "family" a little differently. And some laws are more inclusive than others.

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So in California, there's a list of what a family member is. A family member in California is a spouse, domestic partner, parent, child, parent of law, grandparent, grandchild, and sibling.

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San Francisco and Oakland have adopted California's list, but then added that if you don't have a spouse or a domestic partner, you can designate a person.

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You can designate your best friend, your roommate, your neighbor. It doesn't matter who you designate, but you get one designated person to take paid sick days for.

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In the US, a family member includes an immediate family, roommate, or similar person with whom the employee has a relationship that creates an expectation of care.

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So for example, if your best friend would expect that you would care for them if they're sick, then you can take a paid sick day under US law to care for them.

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And LA - I've listed LA last because it's really the one that we're hoping that other laws will work their way up to.

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You can take a paid sick day to care for any individual related by blood or affinity who's close relationship with you is the equivalent of family. So, this essentially means chosen family. If you consider them your family, in LA you can take a paid sick day to care for them.

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Family and Medical Leave. So when we talk about paid sick days, we're usually talking about very small amounts of leave. You can take it in hours. You can take it in days.

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With Family Medical Leave, we're usually talking about large amount of leave. You can take weeks or months. There are a lot of laws that apply to family & medical leave. This presentation will just cover basics. But again, please read out with specific questions.

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So when we talk about family and medical leave, people generally want to know three different things. They want to know when can I take family medical leave, how long can I take it, and how much will I get paid when I take it?

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So when can you take it. You can take family and medical leave for three reasons. One, to care for your own serious health condition. Two, to care for a family member's serious health condition. And three, to care for a new child. And that child can come to you by birth, by adoption, and by fostering.

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How long can you take off is a little complicated, because there's a different number for how long is job-protected and how long

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Is your income is replaced. So 12 weeks off his job protected, meaning that you can be gone for work for 12 weeks, return to work, and your job will be saved for you.

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Eight weeks is wage-replaced, meaning that for eight of those 12 weeks, you will be paid. So essentially eight weeks will be paid and four weeks will be unpaid.

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How much will you be paid? The amount depends on what your income is. If you earn more than \$22,000 a year, you will be paid 60% of your income for 8 weeks. If you earn less than \$22,000 a year, you will receive 70% of your income for eight weeks.

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So what makes someone eligible to take family medical leave? Because unfortunately, not all workers automatically get access to family and medical leave. So, do you get it?

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There are different laws that apply to the job-protection part and the wage-replacement part. So for the job protection - that's the 12 weeks you take off work and not be fired -

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- there are essentially three requirements. The first is that you worked for your employer for one year.

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The second is that you've worked for your employer for 1250 hours, which works out to approximately 24 hours a week for one year.

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And the third is that you work for an employer with enough employees. So if you want to take family and medical leave to go for yourself or a family member, you have to work for an employer with 50 or more employees.

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If you wanted to care for a new baby, you have to work for an employer with 20 or more employees. Then for the wage replacement part - are you eligible for that?

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The wage replacement is managed by the state of California. And if you pay taxes on your income in California, you most likely qualify for this benefit.

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So to figure out if you qualify, you look at your, your pay stub. And if 1% is taken out for CA SDI, which stands for California State Disability Insurance

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then you qualify. If those those letters are on your pay stub, then that means you're paying into the system. And if you need family & medical leave, you can take benefits from that system.

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An important thing to know is that immigration status does not matter. If you are undocumented and you pay into the system, which most workers in California do, then you qualify to take benefits from that system.

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Pregnancy Disability Leave. So this is for people who are pregnant and wondering how much time off they get.

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So, as you all know, A pregnancy lasts for nine months; but you don't get to take off that entire period of time because for most of that nine months, most people are not disabled by pregnancy. They can still continue to do their job.

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So the reason to take off is when you become disabled from pregnancy or related conditions. Because at some point during pregnancy, you likely won't be able to do your same job anymore.

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The length of time that you get for pregnancy disability leave is four months total. But most people don't take that full amount of time. The, the average time is

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four weeks before the birth and six to eight weeks after the birth, but you have 4 months total in case you need it.

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The payment works the exact same as family & medical leave. You get eight weeks of wage replacement at 60% or 70%, depending on your income.

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If the employer size is different. So for family & medical leave, we said it was 50 employees or 20 employees. For pregnancy disability leave, it's five employees. So most people will take pregnancy disability leave.

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How to request paid family leave. There are essentially three steps. The first is that you talk to your doctor. Your doctor will need to certify that you have a serious medical condition that's eligible for the leave.

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Second, you talk to your employer and let them know what's going on and the amount of time you need to leave.

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And third, for the wage replacement part - that comes to the state of California. It comes from an agency called the Employment Development Department. So you file a claim

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With the Employment Development Department; and they are the ones that will administer the checks to you at 60% or 70% of your income.

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So reasonable accommodations for disabilities.

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Most people have probably heard the term reasonable accommodations. We talk about accommodations a lot. But there's a legal requirement for how you get

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reasonable accommodations and how you request from your employer.

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So first, reasonable accommodations are used when someone is disabled.

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But there are actually different definitions of disability in the law. So I'm just going to give two of them here that are applicable to what we've been talking about today.

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So for SDI payment - that's the 60% or 70% from the Employment Development Department - you take SDI when you have a physical or mental condition that stops you from performing your usual work for longer than one week. That's what it is to be disabled under SDI.

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To be disabled for purposes of reasonable accommodation is your physical or mental condition limits a major life activity, such as walking or breathing or hearing or working.

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And when that happens, you request a reasonable accommodation, which is a change or modification at work that helps you to do your job.

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And the way you request it is called the interactive process. You tell your employer that you need a reasonable accommodation for a disability; and by law, they're required to talk with you about the changes you need and to try to make that happen.

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The exception is if your employer can prove that providing you with a reasonable accommodation would be an undue hardship.

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This is rare, and most people will be able to work something out that they can be reasonably accommodated to do their job.

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Like pregnancy disability leave, the employer threshold for reasonable accommodations is five employees. Some examples of reasonable accommodation is that if you are pregnant, you might need a chair to sit in if your job is typically on your feet all day

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or you might need longer breaks. If you have compromised immune system during COVID-19, then a reasonable accommodation could be you would have to telework or you have a change in your schedule where you go into the office when no one else is there.

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And the last thing I'm going to talk about today is lactation accommodations. California has really great laws around lactation accommodations at work that many people don't know about.

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So I'm really excited to talk about this today. Lactation accommodations are for when you just had a baby, and you're breastfeeding your baby, and you need to pump breast milk at work.

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Your employer is required to provide you with a room that is private, secure, clean, shielded from view, and is not the bathroom. This has to be a separate room entirely that your employer is providing you for the purpose of lactation.

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As of January 1st of this year - this is the brand new law - the room also has to contain a chair, table, access electricity so can plug in a breast pump,

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And there needs to be a sink and refrigerator in close proximity to the room. Your employer also has to provide you with reasonable break time to pump.

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And what that means really differs from person to person. Some people need to pump for 10 minutes; some people need to pump for 20 minutes. So what a reasonable time is is really what's reasonable for that individual person.

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ACLU has a guide on lactation accommodations as well. So if your employer is not providing you with these minimum requirements, please see our guide, or reach out to us or any of the organizations on this webinar. And I'm going to pass off to Elizabeth.

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Before you pass the mic Aditi, we got several questions about leave that we should probably pause and take care of now. Somebody asked, does paid family leave run concurrently with non paid FMLA?

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Yes, yes. So paid family leave, and FMLA are essentially two different laws that have been passed a different times and don't always line up.

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But yes, they run concurrently, meaning that FMLA provides you with 12 weeks of job protection that's unpaid. And then paid family leave provides you with eight weeks of payment at 60% or 70%. And that will run at the same time.

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And that brings us to another question. How do you coordinate wage replacement for family leave with other employer benefits such as using your vacation and sick days, full wage replacement versus the 60 or 70% from SDI. How does that work?

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Yeah, that's a great question. So that's actually that the number two step of

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utilizing paid family leave is talk to your employer, because as that question implies most employers - not most - many employers do have additional benefits. Many employers will top off

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that 60% or 70% and provide you with the remaining 30 to 40%, or and or they will allow you to take sick leave or vacation time or other types of leave to

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to essentially earn 100% while you're on family and medical leave. So that is actually something that you need to just work out with your employer to see at what points, they'll let you take certain leave and how much your employer leave benefits are.

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Next question was also kind of about how FMLA fits with other protections. Would I be eligible for FMLA if I use six weeks after birth of a child and six more for bonding time or is that all FMLA?

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Yeah, that's a, that's a great question. So the six weeks after birth of a child to recover

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Is is for the the pregnant person who has given birth and needs to recover - and then the, the, it's actually, it's, it's, yeah. Six weeks of bonding time is for any parent

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That wants to bond with their child, whether they're the the birth parent or not. So yes, you do get that entire period of time.

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Time job protected and partially wage replaced

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Okay, thank you. People are having great questions. I think there's two more.

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If FMLA per year? Can someone continue taking those weeks every year they're taking care of a family member with a chronic condition?

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My understanding is that it is per year.

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And I'm wondering, Elizabeth, if you happen to know that for sure.

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Yes, and I put some information about that in the chat, as did Laura. So yeah, the FMLA is per year, but there are different ways that an employer may count the leave year.

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Typically they do it on a rolling basis. And so in general, you should be eligible to get 12 weeks per year. Obviously if you have specific questions get in touch with one of us. But yes, in general, it's a per year entitlement.

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Thank you both. Speaking of that, Aaron had a question about workarounds if your employer doesn't pay into SDI. I think that's one we're going to need to take offline and the interest of time, but happy to do that. Last one for you, Aditi,

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For purposes of sick leave and overtime during COVID, does it matter if you're an essential worker, does it matter if you're working at a hospital, does it matter if you're having to interface with patients, things like that.

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Yeah, so it does matter where you work. If you have access to certain portions of the sickly and so for example if you work if you are an emergency responder. If you are a healthcare worker who works in LA, for example.

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You would be, you would have access to the six dates, the six days that are permanent paid sick days; but you wouldn't receive the 10 days

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That were supplemental because healthcare is one of the exceptions. So that, that feels like a really complicated answer because

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annoyingly paid sick days are actually very complicated for something that should be really easy. So I urge you to reach out to us with your specific question because we can we can kind of help you work through that. There is a definite answer, but it's really fact-specific.

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Excellent. Thank you, Aditi.

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And I think that brings us to Elizabeth's piece.

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Yes, thank you Aditi. I love talking about leaves of absence, and so this is exciting for me to get to tag in on that.

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My next section is going to be about what do you do on a practical basis - if you have questions, if you have concerns, if you have problems at work.

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What should you do? And so first I'm going to give some sort of practical advice and then I'm going to talk more about what the law allows you and requires you to do in terms of pursuing your rights.

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So in general, what should you do think something's wrong at work? I think the first thing you want to do is gather more information. Next slide please.

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You want to take a look at what information do you have about your employer's policies. Do you know where your employee handbook is?

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Have you looked at those posters that maybe are in the break room or the copy room or somewhere else in the office? Try to figure out what policies are there at your workplace, what you think has been violated.

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With respect to discrimination or harassment or retaliation, often this is something that it's hard to put your finger on. You're not 100% sure

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if this is because you're a member of the LGBT community, or if this is because you're a woman, or why this stuff is happening to you, but you have a feeling that something is not right.

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And so I always think you should trust your instincts, but make sure that you also check in with someone else in your life. Check in with

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a friend, check in with a family member, check-in with a co worker. If you're in a unionized environment, you may want to check in with a union steward.

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And you want to just kind of get a sense of what other people think about what's going on. Are there other explanations for it? But I feel like what we often come down to if something is happening,

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and you can't really explain it based on any other reason,

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Sometimes it does come down to a protected status. It comes down to the fact that you're the only lesbian in the office, or you're the only transgender person of color, or whatever it is, maybe it does have to do with a protected category.

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Then you want to start gathering all the relevant information. You want to save any text messages. You want to save any kind of materials. I had a client once whose supervisor was

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giving her pornography in an unwelcome manner, and she saved those things. They were horrible. They were offensive to her. But she kind of like, put them in a box and hid them away in her apartment.

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And she had them when it came time to bring the lawsuit. So try and save those kinds of materials but do be careful not to take anything from the workplace that doesn't belong to you.

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You know, sometimes employers have confidential proprietary information and you don't want to get in trouble later for having taken something like that home.

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Save any text messages. I definitely hear from clients all the time that they lost their phone, that their phone was broken, that they had a text and that it's now gone. Same thing with social media - try to create a permanent record

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of those kinds of harassing or discriminatory materials. But do not audio or video record without someone's permission. California is a two party consent state.

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And even though I know it sometimes seems like a good idea to go into a meeting with your boss and take a recording,

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it could cause you problems later because even though they might say something horrible or offensive during that meeting,

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They can come after you for having made an offer recording. So be very careful about recording. If you have made a recording, don't delete it, but just do not make recording -s video recordings, audio recordings - without this other person's permission.

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If you need advice - you've talked to all your friends and family members, you've kind of exhausted the resources you can find that work,

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you still have issues and problems, feel free to reach out to us and there's going to be more information that we'll provide at the end about how to reach all of our organization.

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next slide please. If you've then decided that you want to seek legal help, there are a number of different agencies that you can approach and in sometimes are required to approach. And so,

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with respect to discrimination and harassment and retaliation, you're required to file an administrative charge before going to court.

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In California, you have up to three years. As of January 1 of this year, they extended that time limit. So you should double check with a lawyer or one of our organizations before making a final decision about whether you're

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within the three years because there have been also some extensions on statutes of limitations due to COVID times.

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But you need to file generally with Department of Employment and Housing within three years.

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You should not ask for what's called an immediate right to sue letter, unless you have a lawyer ready to help you because once you get that right to sue letter, you only have one year to go to court.

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Possible outcomes from seeking to enforce your rights at the state agency are that they might have a mediation or settlement between you and your employer.

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Or they might take on your case - that happens rarely, but they could and you can get things like back pay if you lost your job.

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Or if you didn't get a promotion, you can get damages for emotional distress and you can get your attorneys fees paid. You also can get things like changes to training and policy.

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Next slide please. There's certain kinds of legal claims that we've talked about today that you have to go to the labor commissioner, predominantly things like wage and hour violations.

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You didn't get your meal and rest breaks, you weren't getting minimum wage - those all go to the labor commissioner and you can file a claim with them for unpaid wages and penalties.

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You generally have between one and three years to file with them, depending on the kind of claim that it is. And so if you think you have a wage and hour violation,

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you seek help right away, because if you have an ongoing wage and hour problem that's continued over many years, there may be

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lost wages that you then can't recover because you haven't pursued it. So you want to make sure that seek information and help on that.

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With respect to retaliation, there are certain kinds of claims of retaliation that are enforced by the Labor Commissioner.

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Predominantly, we think about things like you asked to get paid and your employer fired you

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Or took other negative action against you. That has a six month statute of limitations file with the Labor Commissioner retaliation unit within six months.

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The other one that we see a lot is that if your domestic violence or sexual assault survivor and you need time off to go to court or seek counseling or services, and you suffer at your workplace because of that

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that's also a labor commissioner retaliation claim and you have one year to file that type of claim. Again, we urge you to reach out to us if that kind of situation that you're facing.

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Next slide please. Finally, I'm going to talk about the federal agency, the Equal Employment Opportunity Commission. This is the agency that enforces our federal laws like Title VII that we've talked about today.

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They require you to file - again this is in California - within 300 days of the last discriminatory or harassing act. You can go ahead and file that with them

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Or the process online. They will contact you and they'll conduct an intake interview. Same deal with them - do not ask for an immediate right to sue letter.

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Because you may have a very short time

- 90 days to file in court. So make sure that if you're going to go through that process, you ask them to conduct an investigation. They also have a potential mediation.

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And that you have DFEH and the EEOC should cross file with each other. They work share, which makes sense because our state laws and our federal laws have a lot of overlap.

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If you're filing the kind of claim that would be covered by either state or federal law,

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EEOC should cross file with DFEH, you should ask the DFEH to across file with EEOC. These can be complicated and technical questions, so if you have any questions or concerns, reach out to us. And I believe I'm passing it on to Amanda for resources.

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Thank you so much, Elizabeth. I'm going to breeze quickly through this, in part because we want to make sure there's additional time for questions. And in part because again we are going to be sharing these materials, so you'll have the links.

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But we wanted to lift up some resources that exist in writing that go into more detail on some of the same topics we've talked about today.

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Elizabeth's organization, Legal Aid at Work, has published fact sheets on a whole wide range of specific issues relevant to workers rights in California. So a lot of the topics that we've touched on today, you can learn more about there.

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The ACLU is a multi issue organization, so some of our know your rights resources are about workers rights. We've got one specifically about LGBTQ workers in California. Another about the rights of sex workers and another about lactation rights that work like Aditi mentioned.

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But we also have materials on a number of other topics, like the rights of anyone to access the restroom congruent with their gender identity, which is sometimes an issue at work, but in many other situations too.

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Pride at work is an organization that specifically supports LGBTQ union members and their families. I think both Elizabeth and Laura mentioned that a union can be a good resource, but this is important as well.

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We wanted to highlight that there are a number of groups that specifically work on supporting the trans community and trans employees in the workforce.

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Trans Latin@ Coalition and Trans Can Work are both LA based but doing a number of programs that include support and training for trans folks entering the workforce.

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Trans Can Work has an interesting partnership with the restaurant industry and programs for placing people in careers there.

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Both the San Francisco and Los Angeles LGBT community centers have trans empowerment programs that focus on economic support for the trans community and sometimes have trans-specific job fairs.

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And then Out & Equal is a national advocacy group that's put out a bunch of resources on things like what does it look like to make sure your workplaces non binary-inclusive, like David spoke to or

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how do you make sure that everyone's pronouns are being respected in the workplace.

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On that note, there are a number of resources out there intended for employers who want to do the right thing but need some help identifying, you know, how to best support their trans workers as well as trans customers and beyond.

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A couple of the same groups I just mentioned provide training and consulting services to employers. Transgender Law Center has published some model policies for employers and the Human Rights Campaign has a whole package of resources for employers.

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We also wanted to highlight that there are some resources specifically about the LGBTQ community and dealing with COVID. Our community, unfortunately, has been hit especially hard, not only on the economic side but health wise.

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Equality California has set up a helpline for LGBTQ folks in California with COVID-related concerns. Out & Equal again has a bunch of resources about implementation at work.

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and we wanted to stress again that all of our organizations that were involved in presenting today's webinar would love to hear from you going forward.

01:21:11.070 --> 01:21:21.420

Aditi, Angelica, and I are all part of the ACLU of Southern California, but we work closely with the ACLU of Northern California and San Diego. So happy to help with questions from all over the state.

01:21:22.770 --> 01:21:28.890

California Rural Legal Assistance, Laura's org, has presences and all these different rural regions of California.

01:21:30.750 --> 01:21:39.600

Legal Aid at Work, Elizabeth's organization, operates workers rights clinics in all these different communities and there are remote ways to get help, even during COVID times.

01:21:40.980 --> 01:21:44.730

and here's contact info for David and the other folks at the Impact Fund.

01:21:46.440 --> 01:22:01.140

So with that we want to turn back to taking y'all's excellent questions. And I know there was one from Christina about how to handle customer difficulty with working with the trans employee and I think David wants to speak to that.

01:22:02.040 --> 01:22:10.470

Yeah, thank you so much Christina for sharing, sharing your story, and I'm sorry if you're experiencing this kind of her harassment from from customers.

01:22:11.100 --> 01:22:21.120

So the first thing I want I want to do is sort of as a on the outset, I really appreciate you sharing both of your identities that you're

01:22:21.630 --> 01:22:30.630

transgender identity and your identity as a person with autism. And I know we talked a little bit about disabilities in the beginning, but I think it's also important to note that

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studies show that LGBTQ folks are more likely to have that have disabilities. And just like with, you know,

01:22:41.010 --> 01:22:42.930
People of color who are LGBTQ

01:22:44.070 --> 01:22:55.290
People with disabilities who are LGBTQ are also often subjected to sort of compounding forms of discrimination and you know the intersectionality really also encompasses folks with disabilities.

01:22:57.030 --> 01:23:06.030
Separately, but the law divides, you know, two different protected classes -disability and gender identity. They're both protected.

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And in, in this case, your employer is required to protect you from harassment, based on your gender identity and your, your disability status. So in your particular case by as you mentioned, if a customer is

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harassing you, making inappropriate comments that you as a trans woman, a woman what using women's restroom. Well, it is your right to use the women's restroom at

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at your employer or sort of in the world at any sort of place of public accommodation, especially because you're working at at movie theater - you're entitled to that. And the law is very clear that customer preference or customer

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you know, discomfort, does not outweigh a person's right to be free from discrimination and harassment.

01:24:01.770 --> 01:24:16.110
And that is also separate from whether or not this is in COVID times or post-COVID. Person being may grumpy during, during COVID, but we're all feeling a little grumpy during COVID, but that does not outweigh your rights to be free of discrimination.

01:24:17.730 --> 01:24:21.090
Good. Any other questions, please feel free to reach out to me or for anyone else here.

01:24:23.310 --> 01:24:24.060
Thank you, David.

01:24:24.090 --> 01:24:25.920
Thank you, Christina for that question.

01:24:26.250 --> 01:24:26.940

Any others.

01:24:55.980 --> 01:25:06.690

Like I said, we will be sharing the presentation materials from today including our contact info and would love to hear from folks if questions arise after today.

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Also, all of our orgs are really interested in getting the word out about these rights that people have in California and rights on paper are meaningless if you don't know how to exercise them. So we're very open to sharing presentations like this.

01:25:20.820 --> 01:25:26.820

Being guest speakers at your local event. Anything of that nature that seems like it could be helpful in a particular community.

01:25:28.890 --> 01:25:41.940

Really appreciate everyone taking the time to listen today; and I'm making one last check, um, someone posted the question I would like to know more about over time. And I don't know.

01:25:43.050 --> 01:25:45.990

if that's something Elizabeth would like to speak to anymore.

01:25:48.000 --> 01:26:02.220

Yeah, I'm happy to speak to it. I think in part, it will depend on a lot of different factors. And so I suspect that if you could take a look at the division of labor standards enforcement link that I sent around. I'll put it back in the chat.

01:26:03.030 --> 01:26:06.600

With respect to overtime, take a look and see if that answers your question.

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And if not, feel free to get in touch with my organization or Laura's organization and we'd be happy to walk you through because it may be one of these very

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specific situations, depending on what industry you're in, there's different wage orders. So we want to answer your question, but it may be very personal and specific, so feel free to let us know if those general materials don't answer your question.

01:26:35.400 --> 01:26:35.900

All right.

01:26:36.900 --> 01:26:46.350

Thanks everyone for spending time with us this morning and engaging in dialogue and asking such great questions. Appreciate the chance to chat and look forward to being in touch again, going forward.