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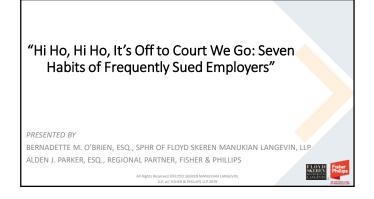
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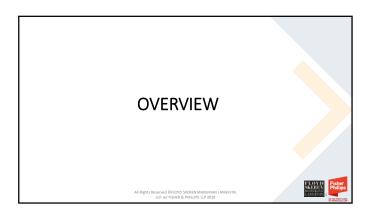
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# OVERVIEW OF THE PRESENTATION

This presentation will review the "Seven Habits" of frequently sued employers:

- ONE: Failure to prevent harassment/discrimination in the workplace;
- TWO: Meal and rest breaks are not provided as required;
- THREE: Failure to accommodate disabled employees and conduct the interactive process;

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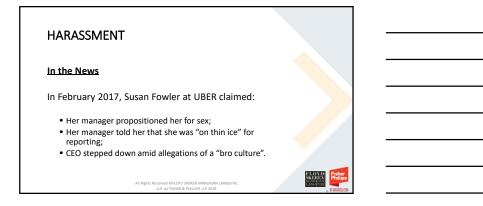
- FOUR: Statutorily mandated leaves of absence are not provided as required;
- FIVE: Lack of oversight for payroll and HR software providers;
- SIX: Outdated employee handbooks;
- SEVEN: Termination of employees without proper assessment and documentation.

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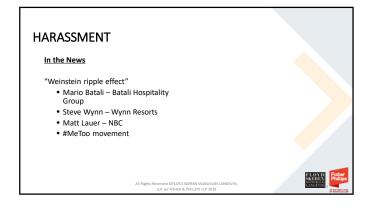




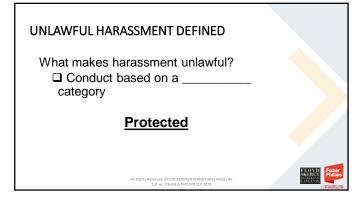




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# **PROTECTED CATEGORIES**

- 1. Race/Color
- 2. National Origin
- 3. Ancestry
- 4. Sex/Gender 5. Sexual Orientation
- 7. Citizenship Status
- 8. Marital Status
- 9. Age

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10. Religion

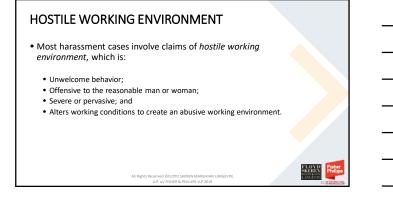
11. Pregnancy

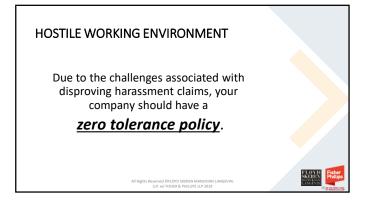
12. Disability

13. Medical Condition

14. Whistleblowers







# ABUSIVE CONDUCT

- Abusive conduct can lead to claims of harassing conduct.
- Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, yelling, use of profanity, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or undermining of a person's work performance.

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• Managers and supervisors must be trained on this.

# A LOOK AT RECENT DEVELOPMENTS IN NEW YORK Statute of limitations increased to 3 years for sexual harassment claims; Bans arbitration agreements for all discrimination claims; Expands definition of employer, includes all workers (independent contractors); Eliminates "severe or pervasive" standard and replaces it with subjected to "inferior" terms of employment; Prohibits non-disclosure agreements.

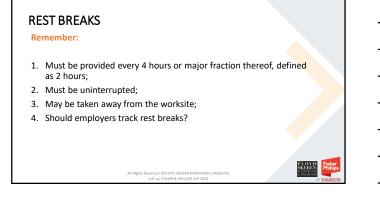
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# NEW ME-TOO LAWS IN CALIFORNIA AS OF 2019

- AB 2770: Defamation Protection
- AB 3109: Bans Agreements That Prevent Party From Testifying
- SB 820: Bans Non-Disclosure Agreements
- SB 826: Requires female board members
- SB 1300: Numerous provisions including a single incident may be sufficient to create a triable issue re a hostile working environment
- SB 1343: Expanded harassment training requirements

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# KEY CASE: AUGUSTUS V. ABM SECURITY SERVICES, INC.

- ABM Security Services employs security guards and required them to remain on-call even while taking their rest breaks.
- The California Supreme Court concluded that the on-call rest break policy violates California law. The nature of rest breaks requires employees to be relieved of all duties.
- The mere possibility of being called back does not invalidate breaks.
  Limited DLSE exemption process for on-duty rest breaks if there would be an undue hardship for employer.

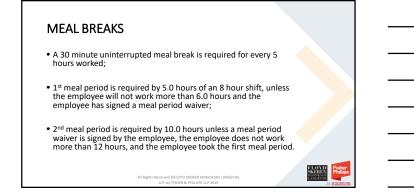
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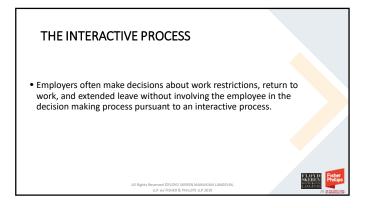
#### TAKEAWAYS

- Rest period policies must be updated to explicitly state that employees are relieved of all duty.
- Need to implement policies and procedures to dissuade inference that field employees, with cell phones or dispatch equipment, are "on-call" on their rest break (i.e. advise them to turn off devices during rest period).
- Increasing importance to have acknowledgement in timekeeping system or timesheets that uninterrupted rest periods have been provided.

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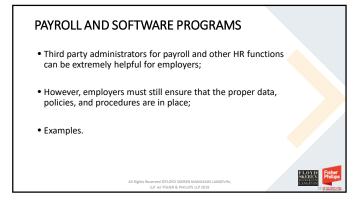
THERE ARE NUMEROUS STATUTORILY MANDATED LEAVES INCLUDING:

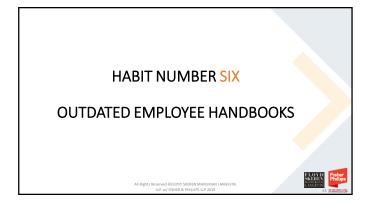
- Family and medical leave pursuant to the Family and Medical Leave Act/California Family Rights Act;
- Pregnancy Disability Leave;
- Military related leave;
- School Activities and Emergency Childcare Leave
- Domestic Violence related leave
- Crime Victims Leave
- Rehabilitation Leave

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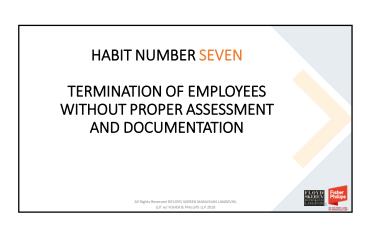




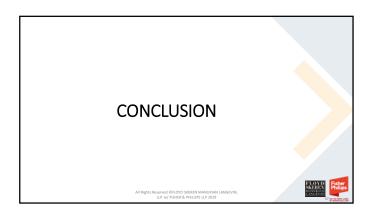
### EMPLOYEE HANDBOOKS BEST PRACTICES

- Due to changes in employment laws, and changing workplace needs, employee handbooks should be updated and reviewed by counsel every year.
- Employee handbooks should be tailored to the employer's specific needs;
- Question: What are the pros and cons associated with electronic employee handbooks?

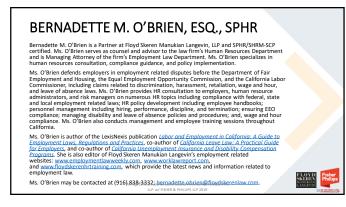
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#### **10 KEY TERMINATION RISKS** The following are 10 key termination risks: Failure to consider the protected status of an employee (e.g. disability, age, religion, gender, race; pregnancy); 1. Preprint (1) Prailure to properly and timely respond to and document personnel issues and violations of company policy; Prailure to consistently and uniformly apply disciplinary measures; 4. Failure to engage in the interactive process when required; Failure to group in the interface process much required, Failure to comply with applicable wage and hour laws; Failure to grouperly investigate a workplace complaint before terminating an employee; Failure to grant an extended leave as an accommodation; 5. 6. 7. Failure to treat the employee fairly; Failure to to consider input from other executive/administrative personnel on the termination decision; 8 Failure to exercise patience when considering an employee termination. Remember: Termination should rarely be a surprise. FLOYD SKEREN Fisher All Rights Reserved ©FLOYD SKEREN MANUKIAN LANGEVIN LLP. w/ FISHER & PHILLIPS LLP 2019









# ALDEN J. PARKER, ESQ.

Alden Parker is the managing partner of the firm's Sacramento office and the co-chair of the Hospitality Industry Group. Alden represents employers in all facets of employment law matters. He has considerable experience defending employers in highton involving dains under the Medical Laws Act (FMLA). Colformia Family Rights Act (CFRA), and the Age Discrimination in Employment Act (FMLA). Colformia Family Rights Act (CFRA), and the Age Discrimination in Employment Act (ADLA). Alden has also defended employers against whistleblowing and retailation calaims under the California Whistleblower Act and various provisions of the California Labor Code.

Alden has extensive experience defending employers in federal and state court, as well as in investigations by the Equal Employment Opportunity Commission (EEOC), the California Department of Fair Employment and Housing (DFEH), United States Department of Labor (DOL) and the National Labor Relations Board (NLRB).

In addition to defending his clients in litigation, Alden frequently counsels employers to assist them in avoiding litigation. He regularly advises clients on leave management issues and the interactive process for employees with disabilities, reinstatement obligations under various leave laws and wage and hour compliance. Alden has prepared employee handbooks and a variety of agreements, including independent contractor, employment, confidentiality and trade secrets agreements.

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