

Doing Business in California

Gail Zirkelbach
David Ginsberg
Nancy Saracino
Mana Lombardo



Agenda: Doing Business In California

- Complying with California Labor and Employment Requirements
- New Developments in California Environmental Law
- Procurement Issues When Contracting with the State of California
- Nuances of the California FCA

Labor and Employment – 2014 Case Developments

- *Cochran v. Schwan's Home Services, Inc.*, 228 Cal.App. 4th 1137 (2014)
 - Personal cell phone reimbursement
- *Iskanian v. CLS Transportation*, 59 Cal.4th 348 (2014)
 - Class action waivers in arbitration agreements
- *Escriba v. Foster Poultry Farms* (9th Cir. 2014)
 - FMLA

Labor and Employment – 2014 Legislative Developments

- No Mandatory Arbitration of Hate Crimes
- Training on “Abusive” Conduct
- Mandatory Paid Sick Leave
- Expanded Anti-discrimination and Anti-harassment requirements

Labor and Employment – 2015

Legislative Expectations

- 16 bills pending that could increase employer expenses
- Family Rights Act expansion
- Mandatory Arbitration prohibition

California Environmental Law

- California's desire to aggressively drive down GHG emissions will continue to shape electric supply and affect rates
- Technological advances now provide customers a greater degree of flexibility to manage energy use and participate in the grid
 - Demand response & storage
 - Distributed generation & electric vehicles
 - Virtual net metering

California Environmental Law (cont'd)

- **SB 350 - Clean Energy and Pollution Reduction Act of 2015**
 - 50% of Electricity Generated Per Year from Renewable Resources by Dec. 31, 2030
 - 50% Reduction In Petroleum Use by Motor Vehicles by Jan. 1, 2030
 - Double Energy Efficiency in Buildings by Jan. 1, 2030
- **SB 32 - California Global Warming Solutions Act of 2006: Emissions Limit**
 - Current: Reduce GHG emissions by approx. 15% from 1990 level by 2020.
 - Update: Reduce GHG emissions to 80% of 1990 level by 2050

California Environmental Law (cont'd)

- Governor Brown continues to push hard on climate initiatives
 - Executive Order B-30-15 – issued April 29, 2015
 - GHG reduction target of 40% below 1990 levels by 2030
- Federal involvement under review
 - *FERC v. Electric Power Supply Association* (US Supreme Court granted cert. May 4, 2015)

California State Procurement

CPRA & Proprietary Information

- No Express Exemption for Trade Secrets
 - Cal. Gov't Code § 6254(k):
 - “Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”
 - Cal. Evid. Code § 1060
 - Record must meet the definition of a trade secret.
 - “[T]he owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.”

California State Procurement (cont'd)

Treatment of Contractor Bids

- Bids and resulting contracts are generally disclosable after bids have been opened or the contract is awarded. Public Contract Code §§ 10305, 10342.
- State Contracting Manual
 - “Although a rejected bid may have pages marked ‘Confidential’ or ‘Proprietary,’ the bid is a public record subject to release in response to a public records request. In order to prevent the release of bid documents that are marked ‘confidential’ or ‘proprietary,’ the bidder must obtain a court order enjoining the state from release of the document.”

California State Procurement (cont'd)

Practice Pointers

- Identify and mark proprietary information and trade secrets
- Understand what state agencies consider to be releasable
- Negotiate notification into contract



California Whistleblower Statute

- Amendments to California's general whistleblower statute (Cal. Labor Code section 1102.5)
 - Whistleblower protections extended:
 - to individuals making internal reports to supervisors and compliance officers
 - to employees who are responsible for raising compliance issues as part of their duties (such as compliance officers or general counsel)
 - to instances of anticipatory retaliation

California False Claims Act

- California Adopts Implied Certification Theory
 - *San Francisco United School District ex rel Contreras v. First Student, Inc.* No. A136986, Cal. Crt. App. (Mar. 2014)
 - Holding: “a vendor impliedly certifies compliance with express contractual requirements when it bills a public agency for providing goods or services.”

California False Claims Act (cont'd)

- Reducing Exposure to California FCA suits
 - Compliance program
 - Continuous employee training
 - Regularly audit business activities
 - Investigate whistleblower complaints

Questions?

Gail Zirkelbach
213-443-5549
mtroy@crowell.com

David Ginsberg
213-443-5545
dginsberg@crowell.com

Nancy Saracino
415-365-7433
nsaracino@crowell.com

Mana Lombardo
213-443-5563
mlombardo@crowell.com