



Compliance Alert

## New AI-in-Hiring Rules: What You Need to Know

STARTING OCT. 1, 2025, any California employer that uses artificial intelligence and other automated tools in recruiting, hiring, promotion and related human resources decisions will have to ensure that the tools don't discriminate against protected classes.

The new regulations, promulgated by California's Civil Rights Department, cover any "automated decision system" (ADS) which the rules broadly define to include any computer-based process that makes or influences employment decisions, such as:

- Artificial intelligence,
- Machine learning,
- Algorithms,
- Statistics, and
- Other data-processing techniques.

If your firm uses AI or another data-driven system in hiring, you'll want to beef up record-keeping and set testing procedures to ensure that the tools you use comply with the new regulations.

### ADS bias risks that can expose you to litigation

**Résumé screeners** – These may favor applicants who use certain wording, which can disadvantage older workers or those from different cultural or educational backgrounds.

**Targeted job-ad delivery** – Tools may push job ads to preferred genders, age groups, races and other protected classes.

**Puzzle or game-style assessments** – These tools may screen out people with certain physical or neurological conditions.

**Voice and facial analysis tools** – Tools that assess "enthusiasm" or "communication style" may produce biased results against those with disabilities, speech differences or accents.



### Basics of the new rules

**Discrimination risk** – It is unlawful to use an ADS or other selection criteria that discriminate based on any protected characteristic such as race, gender and ethnicity. Crucially, an employer can be liable even without intent if the ADS causes an adverse disparate impact on a protected class.

**Anti-bias testing** – Employers are required to perform anti-bias testing of their systems. Regulators and courts may look at six factors to determine whether an employer took reasonable steps to avoid discrimination:

1. Quality of the testing
2. Efficacy (how well it detects bias)
3. Recency (how current it is)
4. Scope (which systems or data were tested)
5. Results of the testing or due diligence
6. The employer's response to those results (what was changed or fixed afterward)

**Record-keeping** – The rule requires employers to keep ADS-related records for four years.

### What you can do

One of the keys to a successful defense is showing you have taken steps to remedy issues with tools that you use in employment decisions.

If you use an ADS system in your personnel decisions, focus on the following to comply with the new rules:

**Tracking** – Track your ADS system's involvement in recruiting, hiring, promotion, training selection, performance screens or advertising. Include vendor tools and "off-the-shelf" filters.

**Testing** – Build a defensible bias-testing program. Document the six factors that regulators will look at (see list to left).

**Planning** – Establish a plan to regularly test your ADS systems for bias-tainted decisions, and address any problems you find.

As a side note, employers should expect more AI-related legislation in the years to come as more companies use it in their day-to-day operations.



## Human Resources

# Preventing Substance Abuse in the Workplace

DRUG AND alcohol use by employees on or off the job is a troublesome societal plague that has put many employers on the defensive.

Research by the U.S. Department of Labor shows that between 10% and 20% of the nation's workers who die on the job test positive for alcohol or other substances.

The same research shows that industries with the highest rates of drug use are the most physically dangerous and involve the operation of machinery, such as construction, mining, manufacturing and wholesale.

With this in mind, you need to know all of the tools available to you as an employer to ensure that you keep a strong drug- and alcohol-free workplace policy in place, while trying to minimize the effects of employees who are heavy users off the job.

An effective policy can reduce the risk of workplace injuries to an impaired employee as well as co-workers and anybody your company may come in contact with, particularly customers or vendors. The actions of one impaired person, or someone that uses heavily off the job, can have far-reaching effects and turn out to be a significant liability for your company.

Various Occupational Health and Safety Administrations at both the federal and state level offer employers help in sorting out the complexities of putting together an effective drug- and alcohol-free workplace policy.

Federal OSHA outlines five components it considers necessary for a drug-free workplace: a policy, supervisor training, employee education, employee assistance and drug testing.

Drug testing, it says, "must be reasonable and take into consideration employee rights to privacy."

The federal agency has guidelines available to help resource-challenged small businesses formulate a policy aimed at a drug- and alcohol-free workplace. They include:

- **Drug-Free Workplace Advisor Program Builder.** For employers needing to develop a policy from scratch, this guides them through the various components of a comprehensive written drug-free workplace policy. It then generates a policy based on an employer's specific needs.

- **Substance Abuse Information Database.** This includes sample drug-free workplace policies, surveys, research reports, training and educational materials and regulatory information.
- **Resource directories.** These contain current lists of national, state and local resources, including summaries of state laws on workplace-related substance abuse, community organizations that help make businesses drug-free, and help lines for those who have a drug problem.
- **Training and educational materials.** These include presentations, articles, fact sheets and posters to help employers provide workplace drug and alcohol education.

More detailed information for each of the above guidelines is online at: [www.osha.gov/SLTC/substanceabuse/index.html](http://www.osha.gov/SLTC/substanceabuse/index.html)

## Example from Down Under

One good approach to drug and alcohol policies comes from New Zealand. Its OSHA – in simple, practical language – advises employers in that country to:

- Formulate rules, agreed to by all parties, which apply the same for everyone: employees, contractors and employers.
- Write the policy clearly and make it available to all in the workplace.
- Describe steps needed to ensure a drug- and alcohol-free workplace.
- Enforce the rules "consistently and fairly."

## Employee assistance programs

If you do not have one already, you should seriously consider instituting an employee assistance program (EAP).

The program should be free for employees to access and open to all staff.

It should provide quality education, counseling, direction and referrals for rehabilitation services, and it must coordinate with local and available community resources.

Trained EAP providers can direct employees to get the help they need and advise them on their rights. They can also inform employees regarding available resources.

# New Law Expands Protected Paid, Unpaid Leave

A NEW CALIFORNIA law has further expanded the circumstances under which employees can take protected paid and unpaid leave.

AB 406, which took effect Oct. 1, 2025, expands on last year’s revisions to the state’s paid sick and safe time and crime-victim leave laws, adding new categories of protected absences that cross multiple statutes – and increasing the complexity of managing employee leave.

Employers will have to revise their HR policies to ensure they comply with the new law as some law firms warn that AB 406 affects a number of intersecting statutes.

## What AB 406 does

**Effective Oct. 1** – The new law adds two new reasons for which employees can take protected time off:

- To appear in court as a witness to comply with a subpoena or court order, including if the employee is a crime victim.
- To serve on an inquest jury or trial jury.

**Effective Jan. 1, 2026** – The law also extends job-protected leave for employees or their family members who are victims of certain serious crimes (the law cites 14 of them). Covered workers may take leave to attend court or administrative proceedings related to those crimes, such as arraignments, pleas, sentencing hearings, parole hearings or other proceedings where victims’ rights are at issue.

## Overlapping leave laws complicate compliance

The new rules expand and interlink several different statutes – the Healthy Workplaces, Healthy Families Act, the California Family Rights Act and the Fair Employment and Housing Act – making it more difficult for HR departments to determine which law applies to each situation.

For example, an employee attending a sentencing hearing on behalf of a family member could qualify for leave under both the paid sick and safe time law and CFRA if that family member also has a serious health condition. HR teams must carefully review each request to ensure the proper leave type is designated and tracked.

## Notice, documentation requirements

The Civil Rights Department has issued a new mandatory workplace notice titled “Survivors of Violence and Family Members of Victims – Right to Leave and Accommodations,” which you can find [here](#).

Employers must post and distribute this notice and train managers on confidentiality and retaliation protections.

## Steps you can take

- Update employee handbooks and leave policies to reflect AB 406’s new covered uses.
- Train HR staff and managers to identify overlapping leave rights and apply the proper designations.
- Post the new CRD notice and review confidentiality and anti-retaliation procedures.
- Audit HR systems and time-off codes to ensure new leave categories are captured.
- Coordinate state and local leave requirements to avoid conflicts.
- Discuss any planned changes with your legal counsel to ensure compliance with the new law.



# How to Rebuild on Time After Property Damage

FOR BUSINESSES that suffer property damage, getting repairs or rebuilding completed on time and within budget is becoming an uphill battle.

A mix of inflation, supply chain challenges leading to material shortages, a tight construction labor market and the inherent complexity of commercial construction have pushed costs higher and stretched timelines longer. This can leave a company unable to operate or producing revenue at only partial capacity while they wait.

As the problem worsens, it's important that property owners have a strategy to jump-start repairs through planning and by establishing a network of contractors in advance.

## Why repairs take longer, cost more

**Persistent inflation** – Verisk reports that commercial reconstruction costs rose 5.7% year over year through the second quarter of 2025, with concrete prices jumping by more than 9%.

**Supply chain disruptions** – Tariffs on imported materials, supply chain issues and transportation delays are further inflating prices and lengthening delivery times. It's not uncommon for a project to be delayed for months because of part shortages.

**Labor shortages** – Nearly 900,000 skilled trade positions remain unfilled nationwide, and many contractors are struggling to meet demand for work.

**Complex project requirements** – Unlike a home, a commercial property may include multiple systems such as HVAC, fire suppression, medical gases, industrial machinery or commercial kitchens, all of which must meet strict codes and specialized standards.

**Local contractor limitations** – Contractors accustomed to routine maintenance may lack the expertise or workforce to manage large-scale reconstruction, leading to delays as businesses search for more capable contractors.

## Risk multiplies after disasters

After natural disasters, these problems are compounded. Local labor, materials and equipment become scarce almost immediately after a disaster, as affected businesses vie for the same resources.

In these situations, unprepared property owners can end up paying steep premiums for scarce labor or settling for subpar work just to reopen sooner. Insurers face their own exposure as delayed repairs prolong business interruption claims and push overall loss costs higher.

## Steps you can take

While these challenges are significant, property owners can take practical steps to mitigate repair delays and inflated costs when filing commercial property claims.

**Build a broad contractor network** – Developing relationships with a wider network of pre-qualified commercial restoration firms can give you options when demand spikes. A vetted network also allows property owners and insurers to match each job to the right expertise rather than defaulting to whoever is available.

**Use time-and-material pricing models** – Fixed-price contracts can create inefficiencies and inflated costs when project scopes shift. A time-and-material model charges based on actual labor hours and materials used, which provides transparency and flexibility.

This approach also allows for detailed tracking and frequent review of expenses so both owner and contractor understand exactly where costs are going.

**Establish pre-loss agreements** – Pre-loss agreements set expectations in advance by outlining pricing frameworks, response times and emergency protocols before a loss occurs.

By having these contracts in place, property owners can mobilize resources immediately after a loss without wasting time negotiating terms. This proactive planning is particularly valuable for multi-site operations or organizations located in catastrophe-prone regions.

**Emphasize proactive project management** – Active oversight keeps contractors accountable, coordinates multiple trades and helps ensure the contractor stays on schedule. This requires someone on the team to regularly check on work progress.

Whether through an internal facilities team, a dedicated project manager or virtual monitoring tools, close supervision helps ensure the repair process stays on course and minimizes costly delays.



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