hr roundtable

**Topic: 2025 End-of-Year Legal Review**

*Q&A – Provided by Fisher & Phillips* | **unitedag.org/hrnetwork**

**Wage Orders / Applicability**

1. **Will this webinar be focused on employment laws applicable to Wage Orders 13 & 14?**
    a) Generally, the presentation was applicable to employers governed by Wage Order No. 13, 14, or other Wage Orders as much of the presentation was materially unaffected by a particular governing Wage Order.

    *If there are any specific questions, re: pay, overtime, breaks, etc., for an employer covered by a particular Wage Order, we can address specific questions, etc.*

2. **We fall under Wage Order 1 for Manufacturing employees. Would it be worth my while to stay on?**
    a) Definitely. Again, most of the presentation was applicable to employer irrespective of which Wage Orders affect the employer.

**Arbitration Agreements – Implementation & Enforcement**

3. **With regard to our Arbitration Agreement, aside from having it in our team member handbook, should we have employees sign a standalone Arbitration Agreement annually?**
    a) Yes. We recommend stand-alone arbitration agreements, separate from an employee handbook. Most employers do not roll out annual arbitration agreements for all employees. New employees will sign a new version for that year. Whether longer-tenured employees sign a new arbitration agreement depends on the language of the prior agreement.

    Typically, every employee should sign a new agreement approximately every 2–3 years because of the changes in the language of new annual agreements. If an employer does not have any push back from employes signing, then having employes sign the new annual version each year is a great idea.

4. **What do you do when a long-time employee does not want to sign the arbitration agreement? We've had agreements in place since 2004, updated in 2025, but two supervisors are refusing to sign. It is now a condition of employment for new hires.**
    a) This puts employers in a tough position: have employees under different policies or enforce a rule that everyone must sign. Most employers require everyone to sign. If there are only one or two holdouts, they are long tenured, perhaps they signed prior versions, and they are valuable to the organization, an employer might make exception.

    If the vast majority of employees sign, then one or two not signing is not as large of a deal because there are insufficient employees who have not signed to constitute a class, and the class waiver is

the most valuable part of the arbitration agreement.

5. **What if we can't get our employees to sign arbitration agreements at all?**
    a) We should discuss methods to roll out the agreements. It is rare that more than a handful of employees will not sign. Agreements are too valuable to not roll them out. Most low-wage employees will sign without much pushback if there is a well-executed plan to implement the agreements. We should discuss.

6. **If arbitration has historically been non-mandatory, how would you suggest transitioning to mandatory for existing employees?**
    a) We can discuss rollout based on employer size, logistics, etc. Most low-wage employees will sign without much pushback if there is a well-executed plan to implement the agreements. We should discuss. It is mainly messaging. Typically, as part of a (or a few) general meetings with employees disclosing and discussing new policies.

7. **If arbitration is required as a condition of employment, can employees later claim it was signed under duress or that they were forced to sign?**
    a) Yes. But "duress" is a specific legal defense to contract formation. And as a condition of employment, it does not constitute legal "duress."

8. **In the Velarde situation, even though she didn't want to sign, would she have been obligated to if arbitration was made a condition of employment?**
    a) Great question. Legally, the employer could enforce a mandatory arbitration agreement. But the process and the content were both problematic. Mainly, the false representations by a manager were problematic. The employee did not want to sign. But employers can still require signed agreements assuming that the agreements themselves are substantively conscionable and the process of rolling them out is procedurally conscionable. In *Velarde*, there was neither.

9. **Can arbitration agreements be presented and signed during new hire orientation, or should they be handled separately?**
    a) Orientation is an opportune time as employees should sign before commencing work. Employers should have a well-understood plan for rollout to avoid arguments that undermine the validity of the agreement based on unconscionability. If there are questions on rolling out agreements during orientation, we should discuss a gameplan to make the process run smoothly.

**PAGA / Compliance**

**10. Do you have a checklist or best practices for conducting a PAGA audit?**

a) We perform PAGA audits. Others can too. But it remains to be seen whether a Court will find that internal audits, etc., constitute the all reasonable steps to comply with the law. (Lab. Code, § 2699, subds. (g)(2), (h)(2).) Likely so, but it depends. If the employer wants to the statutory reduction, the auditor might be deposed, etc., and all the audit work might become discoverable. If the audit was done well, great. If not, then the affirmative defense for 85% or 70% statutory reductions might not succeed.

Generally, the new law requires that employers take all reasonable steps to comply with wage-and-hour laws, defining all reasonable steps, in large part as: conducting payroll audits, taking action in response to the audit, disseminating lawful policies, trainings supervisors on wage-and-hour compliance, and taking correction action with supervisors, etc.