

Transcripts are generated automatically using AI and may contain errors or omissions.

Rich Meneghello (00:00)

Welcome to The FP 5: Five Things for Your 9-to-5. We help employers make sense of the fast-moving world of workplace law and compliance by breaking topics down into five parts. I'm Rich Meneghello, Chief Content Officer here at Fisher Phillips.

California Governor Gavin Newsom just signed a new wave of workplace laws into effect, and there's a lot for employers to unpack. And there's nobody I'd rather have on here to help us make sense of it all than Ben Ebbink. Ben is a two-time podcast guest, and he's a partner in our Sacramento and Washington, DC office, and he heads up our firm's California Government Relations Practice.

Before joining FP, he spent nearly 15 years as a chief policy advisor on labor and employment matters for the California State Assembly, where he helped draft hundreds of pieces of legislation. So Ben not only knows what these new laws say, but he knows how they got here, what employers should be thinking about next, he saw the behind the scenes stuff, he knows how things ended up. Ben, welcome back to the FP 5. Congratulations making it here a second time.

Ben Ebbink (01:09)

Great to be here. Am I the record holder? Has anybody appeared more than twice?

Rich Meneghello (01:14)

Nobody's appeared more than twice, but I know you're good friends with Usama Kahf in the firm. He was the first person to reach number two.

Ben Ebbink (01:19)

Okay. Well I'll have to come back and defeat him.

Rich Meneghello (01:23)

Yeah, yeah, yeah. Give it a shot. We'll see, it really depends on how well you do today.

Ben Ebbink (01:28)

All right, we'll see. We'll see.

Rich Meneghello (01:29)

Before we get started, you've obviously watched a ton of California legislative sessions over the years. Was there anything about this one that felt different?

Ben Ebbink (01:38)

They're all different. You know, this one was different in a couple of respects. Number one, it was Gavin Newsom's last year as governor. So that's always sort of interesting, coupled in with a dynamic of somebody who's running for president and how that impacts, you know, how they position themselves their last term as governor and bills they sign and veto. So that was interesting.

And then it's just it's been fascinating with a Trump administration and a very polar opposite governor administration and legislature in California. All of the things happening during the year and the reactions in California, a lot of focus on immigration in response to activities that the Trump administration was taking on immigration. So it's just interesting to see how the legislative year is determined on that contrast between California and the Trump administration. So that was sort of interesting to see this year.

Rich Meneghello (02:30)

Yeah, well I'm glad you survived yet another year.

Ben Ebbink (02:32)

Yeah, and we literally just got through it. A few days ago was the deadline for the governor to sign and veto bills. And they always do a bunch right at the end. It seemed like this year he really waited, and a lot of the labor and employment bills we were waiting on, he waited until the very last day of session. So as you know, we were all texting and emailing back and forth. "Any updates? What's he gonna do?" And we didn't really know until the last day of session. So, the suspense was high.

Rich Meneghello (02:59)

And as somebody who heads up the team that edits and finalizes all of the Insights that you and your team write, yeah, it was a scramble. September 30th was a scramble that evening. So let's hope that the next governor isn't as dramatic as Newsom.

Ben Ebbink (03:15)

Yeah, it'd be nice. They have a whole month to sign and veto bills, you know. You could spread that out a little bit. You don't have to wait all until the end.

Rich Meneghello (03:21)

Yeah, do some magic, Ben. Let's see what you can do.

Alright, well that's a perfect segue to our first thing, Ben. Governor Newsom is wrapping up his final year in office after eight years as governor of California. He's term limited, so he's forced to step down. How should employers view his tenure? Looking back on those eight years, what are the things that employers are gonna think about?

Ben Ebbink (03:46)

I think it's mixed, you know. I mean, he's a very progressive politician on a lot of different issues. I think overall in labor and employment, I would say he was mixed. He's somebody who is and was a business owner, has businesses like restaurants and wineries and things like that. And so I think to some extent he really sort of got some of the issues that employers and businesses face and concerns they had over bills.

He obviously signed some very progressive, pushing-the-envelope labor and employment legislation that California always does. But there were some issues in some areas where he kind of tried to draw a more moderate line. He was particularly close to Silicon Valley. We'll talk about some of the AI bills and things changed a little bit this year. But in previous years, he really tried to balance the need for innovation in Silicon Valley here in California with the push to regulate the AI industry. So, you know, it's kind of mixed.

I would say one thing that employers should appreciate is he was really the driving force between the PAGA reform we had two years ago, and his office really led those negotiations and brought the parties to the table. Regardless of how you feel about the PAGA reform and whether it was effective or not, he was really the key driver in making that deal happen.

Rich Meneghello (05:04)

Yeah, interesting. You probably have a prediction about who the next governor will be once the elections roll around, right?

Ben Ebbink (05:10)

Yeah, we got an election coming up just about a month away. I mean, I think the overwhelming likelihood is that Xavier Becerra, the Democratic candidate, is gonna be the next governor of the state of California.

Rich Meneghello (05:23)

Are employers gonna look back fondly and miss Newsom once Becerra takes office, do you think?

Ben Ebbink (05:28)

It's hard to say at this point. Overall, just looking at the two, Becerra is, I think, overall more moderate, seen as a more moderate individual, not as progressive across the board as Newsom. The other interesting thing is he received the endorsement from the California Chamber of Commerce, which was notable. It's the first time the Chamber endorsed a Democrat for governor in the state of California. So I think there's some hope in the employer community that that means something. He's gonna be a little more open to business concerns.

It's hard. Candidates when they're running for office, they make a lot of statements. And he's made a lot of statements on labor employment issues. And I kind of take those with a grain of salt when people are running for office. And then once they get elected, they show their true colors a little bit. So I think the jury's still out, but I think overall there's at least an expectation in the employer community that he's hopefully going to be maybe a little bit more moderate than Governor Newsom.

Rich Meneghello (06:25)

Yeah, gotcha. To let the audience know like what a political nerd you are, Ben, you texted me a photo a few months ago, you bumped into Becerra in the airport and got a selfie with him and you had a smile on your face as if you had seen like a baseball star or something like that.

Ben Ebbink (06:40)

Yeah, I ashamed myself a little bit and you know, just went up to him and said, "Hey, can I get a selfie?" like my twelve year-old daughter would do, or something like that.

Rich Meneghello (06:49)

Did you even tell him that like you you're in the legislative field or you just walked up and said ...

Ben Ebbink (06:53)

Yeah, yeah. He we had a conversation and he's, he said "What do you do?" And I said, "I do some lobbying work" and he said, "I guess you'll be talking to me in a couple of months probably" and I said, "Yep, probably."

Rich Meneghello (07:03)

Yeah, I'm sure he loves I mean but he's in election mode, so he has to smile for anybody, right?

Ben Ebbink (07:08)

And he's a super nice guy. I mean, some people, even politicians, you meet in public and they don't, you know, want anything to do with you. He was very humble, nice, gracious, gracious guy.

Rich Meneghello (07:19)

Okay. Well let's wrap this first question up with a quick prediction, Ben. Newsom, you've said running for president. He's not announced he's running for president, but he's obviously running for president, at least gonna try. What's your prediction in terms of how far he gets?

Ben Ebbink (07:34)

You know, I think he's gonna do pretty well. Now, you talk to a lot of political pundits and they say, no, no, he's too, you know, these coastal Democrats are too liberal, too progressive for sort of middle America. But I think he's gonna do well. He's got this personality thing, this sort of ineffable, he has the "it" factor. You know, kind of Bill Clinton had that despite all his issues, he had that sort of charisma. And as much as policy and politics matters, I think for a lot of voters, it's that charisma. And Gavin Newsom has it, no question. He's a charismatic person. And so I feel like he's gonna do very well. And I think there's some little question he's told CNN a couple of weeks ago he would not run if Kamala Harris ran. And but the last couple of days he said, "Well, I'm not gonna wait around forever." But I do think if he does run, I think he's gonna be the Democratic nominee.

Rich Meneghello (08:30)

Oh wow, okay. Bold prediction by Ben. We'll have to come back and look at it again. When we do our 2028 podcast, we'll have to dig this one up.

Ben Ebbink (08:38)

Only if I was right. If not you can you can forget it.

Rich Meneghello (08:40)

Yeah, okay. Okay.

All right, well, let's dive into the substance now, Ben. Thing number two: No Robo Bosses finally becomes law. California is going to become the first state that will require a human to independently confirm any workplace kind of decision before employers primarily rely on artificial intelligence to either discipline or fire a current employee. This is Senate Bill 947. Under the new law, employers are going to need human corroboration for AI decisions, a standalone written notice delivered with the decision. But Ben, the reason we say this finally became law, No Robo Bosses. Newsom vetoed it last year, but what changed between that bill and this bill that led Newsom to sign it?

Ben Ebbink (09:30)

Well, there are a few changes in the bill itself. I mean, it was a little bit narrower in some respects, but his veto message last year was pretty harsh. And I think this had more to do about sort of external factors. He vetoed the bill last year. He got a lot of flack from organized labor from doing so. And so this time around, they had a whole package of bills. I think there were 11 bills in there: AI, privacy, workplace surveillance package. And they basically came out and said, "Look Governor, if you expect to receive our support running for president, we're gonna expect

you to sign these bills to protect workers.” So I think they really put the pressure on him. And then the other thing is kind of I think what’s occurred over the last two months, whatever you want to call it, the AI panic with all the news about AI agents running around. And we’ve seen President Trump’s reaction to that, which is very hands-off, deregulatory. He calls this a hoax and all that sort of stuff. And again, this is one of those issues where Governor Newsom set himself up as the perfect foil to that and said, “Well, we’re gonna, you know, if you’re not gonna do it, we are.” He issued an executive order, signed some legislation around audits of AI tools. And so I think just sort of any way he could, you know, highlight the difference between himself and President Trump. And then this tranche of bills related to worker protection, related to AI comes to him at sort of the perfect opportunity. So I think those factors, sort of the pressure he was getting from labor groups to be more active on this front and the things sort of occurring globally putting all this attention on AI really set this up to sign this one differently than he than he acted last year.

Rich Meneghello (11:08)

Okay. Ben, we had you on our show in April to preview the legislative session and we asked you to break out the Ebbink Meter, which is your prediction, a percentage prediction of whether or not you thought certain bills would pass. I’m gonna ask my producer, Evan Banks, to roll the tape here, so you can hear your prediction about whether Newsom would sign the No Robo Bosses Act, okay?

Ben Ebbink (11:35)

So the No Robo Bosses, I’m gonna say 90 percent pass. It passed last year. Okay. Whether the governor signs, I’m gonna say 40 percent.

Rich Meneghello (11:46)

Hm. So there you go, Ben.

Ben Ebbink (11:48)

Well like I said, I think the last couple months and all the sort of attention and worry and concern drove the needle a little bit more towards him signing the bill. So, but wow, I’m surprised I only predicted a 40 percent chance of signing it.

Rich Meneghello (12:04)

Yeah, are you a little nervous for other clips we might play on this the rest of this episode?

Ben Ebbink (12:08)

I mean, what else you got up your sleeve? Uh-oh.

Rich Meneghello (12:10)

We’ll, I guess you’re gonna have to wait and find out. Let’s wrap up on No Robo Bosses here. How should employers read “primarily relies upon” ... so again, the bill says that humans need to independently confirm a decision before they primarily rely on AI to either discipline or fire a worker. So what’s the line between AI-assisted and AI-driven?

Ben Ebbink (12:39)

I think that’s a great question. It’s ambiguous, the law does not define “primarily relies.” So, you know, I think employers we’re gonna be figuring this out a little bit as we go. I mean I think it’s safe to say it probably doesn’t

mean just using AI somewhere in that decision-making process or AI helping provide you information, but when the AI is serving as you know the primary basis for the decision, I think that's kind of where that line is. But even that is, like, who's to say, and employment decisions, termination decisions, discipline decisions, they're complex. And there's usually lots of factors and things employers look at to make that decision.

So I do think in a practical manner, it's gonna be very difficult to say when you've crossed that line and you're primarily, you know, relying on AI. I would say if you're using AI and it's like performance metrics and things like that, and that's the primary basis of your making a decision is performance that was evaluated by AI, that's probably primarily relying on the AI. But if you're looking at a whole variety of different factors and inputs and AI is just one component of that, then maybe you're short of that.

Rich Meneghello (13:49)

So you're saying lawyers are gonna have a field day with this one?

Ben Ebbink (13:52)

I'm gonna say it depends. The lawyer's favorite answer.

Rich Meneghello (13:56)

You're now nervous about making any predictions now that you know that ...

Ben Ebbink (13:59)

I know, now that you're gonna play it back to me six months later, so ...

Rich Meneghello (14:08)

Well, let's talk about another AI bill, thing number three. AI regulation is gonna have a bigger footprint now in California when it comes to layoffs, thanks to Senate Bill 951. In the future, California WARN notices, things that employers send out when they have certain kinds of layoffs, will need to flag a technology displacement when AI drives a mass layoff, and the state is gonna publish quarterly summaries of those displacements.

Before we dive in, Ben, let's roll the tape and I'll ask my producer Evan to let us hear what you predicted about whether Newsom would sign this one into law.

Ben Ebbink (14:46)

I'm glad you're playing it before I discuss it or answer.

Rich Meneghello (14:50)

AI layoff notices bill. What do we got there?

Ben Ebbink (14:55)

I think that'll pass.

Rich Meneghello (14:58)

Give me a number, Ben.

Ben Ebbink (14:59)

I think 90 percent pass, I would say 75 percent sign.

Rich Meneghello (15:03)

So good, so you nailed that one.

Ben Ebbink (15:05)

Yeah, good. Phew.

Rich Meneghello (15:08)

So the thing I think about this one that's most interesting is this public quarterly report that's gonna be published. Sounds like it's gonna like hand a roadmap to plaintiff's attorneys and unions about employers who are using AI to replace workers?

Ben Ebbink (15:24)

Could be, I mean I think it's more about the bad publicity, frankly. WARN Act notices right now are public and that's how you get a lot of newspaper reports about "X company has announced they're laying off 500 workers," so if you are falling under this and you're issuing a WARN Act notice and right at the top of it has this you know big language that says "This notice is for a technology displacement."

I think the media's gonna be all over that. And so I think that's the bigger concern really than any kind of liability or union organizing. I just think it's the bad publicity that a company is gonna be perceived as using AI to replace their workers. I think that's more what companies are gonna be worried about with these notices.

Rich Meneghello (16:06)

Okay. And we have a link in our show notes to the article that goes in depth about the specific notice, what it needs to say. And you're right, across the top it needs to say "This notice is for a technology displacement." I think that's going to be, like you said, the big, the big trigger. It also talks about "if a restructuring has many causes, if AI is a quote, 'substantial part' end quote, of that restructuring, that's when the notice will be triggered." How are we gonna figure that one out?

Ben Ebbink (16:34)

Yeah, that one's gonna be a little ambiguous too. And I think probably even more so than a termination decision being made by AI. A layoff decision is multi-factored, even more so, I would argue. You know, yes, technology developments could be a part of that, but there's many other reasons that go into it. Economic situation, market conditions, inflation, rise in labor costs. You know, it's a multi-factored, you know, decision. And so I think it's gonna be difficult to draw that line and say that this layoff was really caused in substantial part by AI or technology.

We all see the headlines in the newspaper every day about companies laying off and it's attributed to AI. The (California) Employment Development Department has actually looked at the WARN Act notices that have come in and done some analysis and they said they couldn't really identify a significant portion that were attributable to this. So it's gonna be complicated. I don't know if it's gonna be as easy as the proponents of this bill think that we're just gonna get all these and we're gonna see exactly how many jobs are lost to AI because I think it's a very complicated decision when companies decide to lay off employees or shut down.

Rich Meneghello (17:45)

It's funny too. I think like, I look back six months, a year ago, it was almost like a badge of honor when these tech companies would say, "We sliced all these workers 'cause of AI" and they would see their stock prices rise because, "Hey, we're telling the market, we're being more efficient" and blah, blah, blah. And now, like you said, just in the last couple of months, it's like the kiss of death.

Ben Ebbink (18:02)

Yeah, they don't say a word about AI, nope.

Rich Meneghello (18:05)

This is the FP 5. I'm Rich Meneghello, and we're here with Ben Ebbink. Ben's a partner in Fisher Phillips's, Sacramento, and DC offices. He heads up our California government relations practice.

We're breaking down the new California workplace laws that Governor Newsom just signed and what employers need to know about them. And quick reminder: you can find a full rundown of all these laws, we have a comprehensive roundup that covers all of the laws that that Ben's been tracking, plus individual insights that go into depth about many of them as well, in our show notes. So go ahead and check that out.

All right, thing number four, Ben, there's a new surveillance squeeze on employers. But there is a piece of good news when it comes to that. First, there's an interesting new bill that passed that permits employees to set down their badges, wearables, and other tracking devices, phones that are tracked, et cetera, before they enter a workplace bathroom. And employers can't use this restroom data to measure how often or how long someone's in there. So that's the one side.

There is positive news as well that there's a new law that was signed into effect that will eliminate private lawsuits over website tracking claims, alleging pen register and trap-and-trace CIPA violations, and it has a retroactive reach to a couple years of filing.

So let's talk about the surveillance part first, the bathroom thing. What everyday tech is gonna surprise employers the most when it comes to stuff that employees don't have to bring into workplace bathrooms?

Ben Ebbink (19:44)

Yeah, this is AB 1331. And I think when you tell people, "Okay, this is a law that says you can't engage in workplace surveillance of employees in the bathroom." People think that sounds reasonable and they think of, you know, you can't video or audio record somebody in the bathroom. But you know, the bill really defines a "surveillance tool" and "workplace surveillance" very broadly and includes a lot of things that are very common in the workplace. So things like access badges or IDs, wearable technology, smart watches and other wearable technology, geolocation on your company phone, time tracking software that you might have on a company phone. You know, I think those are all things people don't normally think as really being surveillance, but those are included in the definition of a "surveillance tool."

And so yeah, that's gonna be more complicated. And I think employers are really gonna have to take a look at all the tools and technology that they use and make sure they're not running afoul and you're gonna have to, you know, change some procedures and protocols. And you may even have to look for different options for some of these tools. If you just, you know, you're using a badge swipe and it's got an AI chip in it, that's not gonna be really

feasible for an employee to go in and out of the restroom. So you may have to look at other, you know, potential alternatives there.

Rich Meneghello (21:02)

Let's switch to some positive news, not overwhelmingly positive, but good. SB 690 is going to curb a certain kind of this digital wiretapping litigation that we've seen spring up, become this cottage industry of late. And our firm is heavily, heavily involved in that. In fact, our firm was heavily involved in passing 690, in that the co-chair of our Privacy and Cyber Practice Group, Usama Kahf, testified at the legislature in support of this bill. How much relief is it going to provide? Give us your sort of overview of this one.

Ben Ebbink (21:38)

It's a good first step, but you know, unfortunately it's not gonna solve the whole problem. And this is just sort of an example of the compromise that happens sometimes in the legislative process. So the bill started out, it would have been great, would have curbed all of the causes of action we're seeing in this area, would have had retroactive effect, and then it stalled. It was introduced last year, sort of stalled, they brought it back this year. And during the legislative process, they you know, they had to take a compromise to get the bill passed. And so they narrowed it to these pen register claims. And it is retroactive for up to two years back. So it is going to provide relief for those type of claims that are based on the pen register claims. The problem is that's only, I don't know, something like a third of the cases and the demand letters we're seeing.

The more significant proportion of these claims are based on the wiretapping provisions and those weren't touched by this legislation. So more work needs to be done. Governor Newsom issued a signing message when he signed this bill. They don't always do that. When they veto a bill, they always give a veto message and explain why. Sometimes, even when they sign a bill, they send a message. And he basically said, "Look, this is a good first step, but it doesn't address the whole problem." And so I encourage the legislature to revisit this issue next year and try to do more. He obviously is not going to be here, so he's sort of kicking it to the next governor, but even he acknowledged like, "Yeah, it's a good first step, but it doesn't address the whole problem and more work needs to be done in the space." So hopefully this isn't the end of the conversation and we're continuing to work on this next year.

Rich Meneghello (23:15)

Okay, and our final thing, there were over ten workplace bills that we were tracking that Newsom signed last week. So we're just scratching the surface here in this podcast. We cover all of them in our Insight accompanying the podcast in our show notes.

But I wanna switch up and do a lightning round here with you, Ben. I'm gonna give you a bill that was signed and on a scale of one to ten, you tell me the impact it will have on employers and explain why briefly, okay?

Ben Ebbink (23:46)

You really like to put me on the spot and give you like a hard, definite number. Which attorneys don't like to do, so ...

Rich Meneghello (23:52)

We put our guests through the paces here on the FP 5, this isn't one of these softy podcasts. You just come on and talk about your latest project or what you're sponsoring or something like that. We put you through your paces here. You ready?

Ben Ebbink (24:06)

All right, let's do it.

Rich Meneghello (24:07)

SB 1149 expands bereavement leave to cover extended and chosen family.

Ben Ebbink (24:14)

Yeah, I give that one a '3'; This is just the latest in a long line of bills in California, which extend leave to what they call "designated persons," which is subjectively to the employee, somebody who's like a family member. And we've done this in paid sick leave in California, we've done this for the California Family Rights Act, which is the state version of FMLA. We just had legislation last year adding this to our paid family leave program in California. So this is just really an extension of three or four other pieces of legislation. So I think employers are already used to this in those contexts. So I think this is gonna have a pretty low impact.

Rich Meneghello (24:49)

Okay. AB 1803: employers with five or more workers are gonna need to add an anti-hate speech component to their required sexual harassment training starting in 2028.

Ben Ebbink (25:01)

I give this one a '5'. Yes, it's a new training component. Your sexual harassment training, prevention training has to include this anti-hate speech component. But it has a section of the of the law that says if your training already covers harassment and abusive conduct based on protected categories, that satisfies the requirements for anti-hate speech. So I think a good employer that already has good training that covers those issues, they're probably not gonna have to change anything. They're gonna be covered and that's gonna be deemed sufficient.

So that's why I give it a five. Some employers, if their program's not up to snuff and they don't cover abusive conduct and harassment based on protected categories, you are gonna have to update in your training materials.

Rich Meneghello (25:46)

Gotcha. AB 2321: Cal/OSHA, the workplace safety agency, gets more enforcement power.

Ben Ebbink (25:56)

I give this one an '8'. This one's pretty significant. I think it's going to raise the stakes, they are basically trying to get more cases referred from Cal/OSHA to criminal enforcement, either through Cal/OSHA's Bureau of Investigations or to local DA. So it really ramps up the situations in which those referrals will be made, makes them have to occur immediately.

So I just think it raises the stakes that we're gonna see more potential criminal prosecution. It also has this other provision that makes it a misdemeanor to interfere with a Cal/OSHA investigation, which I think is overbroad. And I think employers have lots of rights that they exercise to ask for more information during an investigation. If Cal/OSHA shows up, and a warrant may be required under certain circumstances, asking for that warrant. And so I

think, anything that says that any kind of interference with the Cal/OSHA investigation is now subject to criminal liability, I think is a slippery slope and I think there's probably gonna be some constitutional challenges to that.

Rich Meneghello (26:57)

Wow, okay. SB 1237: if you are a repeat offender when it comes to pay data reporting, it could cost up to \$1000 per employee per violation, up from \$200.

Ben Ebbink (27:11)

I give this one a '5'. Again, I think this really depends on if you're compliant with the law, right? If you're already compliant and you submit your paid data reports, this isn't gonna impact you. But if you're not, yeah, the stakes are higher. These civil penalties, if the civil rights department takes you to court because you didn't submit your paid data report, these civil penalties are mandatory, the court doesn't have any discretion. And now they've quintupled the amount of the potential penalty for repeat violators. So if you're somebody who hasn't been taking the time and taking this requirement seriously, then the stakes are higher. But if you're already doing this, you're already compliant, this isn't gonna impact you.

Rich Meneghello (27:48)

Yeah. Okay. Final one, AB 2648: Agricultural employers are gonna have to pay \$19.75 an hour to H-2A workers and corresponding employees starting next year.

Ben Ebbink (28:01)

This one's big, I give it an '8', certainly if you're in agriculture, which relies heavily on H-2A workers. This bill is largely a response to efforts of the Trump administration to lower the wage rate required for H-2A workers. And so it's aimed at H-2A workers. It doesn't use the term H-2A workers, but that's basically who it covers. And also corresponding employees, which are other employees who aren't H-2A workers but work for the same employer in the same, you know, geographic area. So it's gonna have an impact.

This is sort of the latest in a line of industry-specific minimum wages we've seen in California. We have a fast food worker minimum wage. We have a healthcare worker minimum wage, which are all higher than our statewide minimum wage. So I think it's significant in that regard. I do think there'll be some litigation challenging this one on some preemption and other grounds. You know, they shied away from saying H-2A because I think they knew of the preemption issue, but I do think there will be litigation challenges before this law goes into effect.

Rich Meneghello (28:59)

Okay. Ben, we have a bonus question for you here. There was a bill, AB 1940, which would have expanded the state's anti-bias law. The definition of sex would have included explicitly perimenopause, menopause, post menopause, and related conditions. But Governor Newsom vetoed it. We asked you about this back in April. Evan, roll the tape about what Ben said about whether Newsom would sign this one.

Ben Ebbink (29:26)

If it does pass, I'm gonna put this at a hundred percent because like Gavin Newsom, running for president, already got flack from high profile celebrities for not caring about this issue. You know, the last thing he's gonna wanna do is alienate female voters the year before he's running for president. So I think if it gets to his desk, the pressure's gonna be on and it's almost guaranteed he's gonna sign this thing into law.

Rich Meneghello (29:50)

Well wait, you said a hundred percent and now you said almost guaranteed. What is it, Ben? A hundred percent or lower than a hundred percent?

Ben Ebbink (29:57)

Well, I was trying to say there was a chance, but okay, no chance, hundred percent.

Rich Meneghello (30:01)

Hundred percent; the Ben Ebbink guarantee, ladies and gentlemen. You heard it here first.

Ben Ebbink (30:07)

You're killing me. You're killing me.

Rich Meneghello (30:09)

We dug that up and we felt pretty good about that. I felt like it was back in my day, when I was a litigator and I would find ...

Ben Ebbink (30:14)

Do you remember saying this? Oh, you don't. Well, let me play the tape for you.

So here's my out on this one. The debate on this bill this year was how it was done. And so the bill added menopause to the definition of sex as a protected category. And that's what the governor called out in his veto message. And he said that's gonna make at least 50% of the workforce automatically a protected category, just by definition. He said really what we should focus on is specifying that there may be a requirement to provide reasonable accommodation to employees who have menopause or related conditions. And that's what other states have been doing. That's what the business community was pushing for this year when the bill was going through, saying like, look, let's not make this a protected category on its own. Let's just clarify the law and say, yes, you may have to accommodate menopause-related conditions. The bill wasn't amended to go in that direction. And so the governor vetoed it and called it out. I think if it comes back, the path to victory is there. The governor laid it out. If you do it as a reasonable accommodation rather than a protected category, I think it flies through and gets signed by the next governor. So we'll see if he gets any flack in the presidential race for vetoing this one. He had, like I said, some celebrities, I think Halle Berry like really called him out for some other menopause related bills that he vetoed last year and said, "Oh he doesn't care about women." So we'll see if this comes back to bite him.

Rich Meneghello (31:45)

We'll see. The next time we have you on our podcast, we'll see.

Ben Ebbink (31:48)

That's right.

Rich Meneghello (31:55)

All right, Ben, before we let you go, as you know, part of the show, we always like to ask folks to get to know you a little bit better. And we've already done this to you before, but now the audience is gonna get to know you even better, even better.

Ben Ebbink (32:07)
Wow, even better. Great.

Rich Meneghello (32:08)
Even better, even better. Five more questions, you ready?

Ben Ebbink (32:11)
I'm ready.

Rich Meneghello (32:12)
All right. Number one, what would you be doing if you were in a lawyer?

Ben Ebbink (32:15)
That's an easy one and I'm gonna flaunt my nerdiness. I would have my own used bookstore/coffee shop. I don't know if there's many used bookstores still around these days, but I'm old school. I read books, hard books, actual books. I ditched my Kindle because I thought it was destroying my eyeballs. So yeah, I would definitely have a used bookstore.

Rich Meneghello (32:38)
I love that you said "hard" books as opposed to easy books.

Ben Ebbink (32:41)
Yeah.

Rich Meneghello (32:42)
All right. Two, first of all, this is not the question, do you pronounce it "giff" or "jiff"?

Ben Ebbink (32:48)
I pronounce it "jiff."

Rich Meneghello (32:51)
Okay. I'm a "giff" guy. Either way. What's the "giff" slash "jiff" that you send via text the most often?

Ben Ebbink (32:58)
Well you unfortunately probably have personal knowledge of this because you're the victim of many of my late night texts. And I use so many .gifs. I would probably say two are my go-to: First, there's one of Snoop Dogg nodding his head in the affirmative. I use that one quite a bit. And then there's this other one that's a scene from the Brady Bunch movie, which is Marsha sarcastically saying, "Sure, Jan." I use that one probably once a day.

Rich Meneghello (33:27)
I've gotten that one from you. Yeah, absolutely.

Three, what was your high school mascot? And did you play any sports?

Ben Ebbink (33:33)

My high school mascot were the Bulldogs, Folsom Bulldogs. And I played a little bit of baseball, Little League, but I was a soccer player—something you and I have in common—my whole life until my freshman year in high school, I had a horrendous broken leg that was literally, I don't know if you remember Joe Theisman broke his, it was literally that bad. Like my bone snapped, the foot was dangling facing backwards. So that was the end of my soccer career.

Rich Meneghello (34:03)

I'm glad this is an audio-only podcast 'cause you just demonstrated with your hand what your foot looked like and I got a little grossed out.

Ben Ebbink (34:09)

Yeah yeah, it was gross.

Rich Meneghello (34:11)

So by the way, I'm gonna recommend that you change your security questions on any of your apps now that I'm giving you're giving away your high school mascot if that's one of your security questions.

Ben Ebbink (34:19)

Yeah, I'll have to go change all of those, 'cause I use the same password for everything. Like how it has to be.

Rich Meneghello (34:24)

So question four, what's your go-to cocktail?

Ben Ebbink (34:26)

That's an easy one. I'm a gin and tonic guy. I really like a gin and tonic. Close number two, I also enjoy a good bloody mary, like with a stalk of celery in it or a piece of bacon or something like that.

Rich Meneghello (34:39)

Very basic cocktail guy, but I love it. I appreciate both of those.

All right, five. Obviously you've just come through a whirlwind end to the legislative session. What's the wildest story you experienced or heard about that you can talk about on a firm podcast?

Ben Ebbink (34:54)

That's hard. You know, there's a lot of crazy stuff that happens during the legislative year. I always tell people I know where all the bodies are buried, so I can't really share all of the stories, I'd love to.

I mean, something that happened at the end, it was just, you know, it was Governor Gavin Newsom's last term. So the last night of session he went to both chambers of the legislature and he said goodbye to members and he came running out and all the lobbyists are congregating in the rotunda at the Capitol last night of session and are all, you know, lobbying on bills. And he comes and he literally walks right in front of me as he's running from the Senate to the Assembly. So, it's always a cool opportunity when you get to see the governor in person close up.

Rich Meneghello (35:38)

Yeah, that's cool. Well, Ben, thanks so much again. That's all the time we have for now. We appreciate you coming on the show once again and helping us make sense of another busy year in Sacramento.

Ben Ebbink (35:48)

Happy to do it and look forward to a future opportunity.

Rich Meneghello (35:53)

And thank you for listening to the FP 5. We only had time to cover a handful of the new workplace laws passed in California today, so be sure to check out all of the insights linked in our show notes for a full rundown of all the new workplace laws in the Golden State. And we will see you all next week.

Listening to this podcast doesn't constitute legal advice and doesn't establish an attorney-client relationship. For more information, visit [fisherphillips.com/legal-notices](https://www.fisherphillips.com/legal-notices).