RESOLUTION 08-01-2026

AREA OF LAW: Employment/Labor

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Labor Code section 1414 to read as follows:

§ 1414

(a) In any action under the statutes of this state or under common law, constructive discharge may only be established by either of the following:

(1) Evidence of objectively intolerable working conditions to the extent that a reasonable employee would feel compelled to resign, if the employer has been given at least fifteen days' notice by the employee that the employee intends to resign because of these conditions, and the employer fails to respond to the employee's concerns; or

(2) Evidence of outrageous conduct by the employer or a managing agent of the employer that is directed at the employee, such as sexual assault, threats of violence, or a continuous pattern of unlawful discrimination or harassment, if the conduct would cause a reasonable employee to feel compelled to resign.

(b) As a precondition to the right of an employee to bring a constructive discharge claim against an employer pursuant to paragraph (a), subpart (1) of this section, the employee shall take each of the following actions before deciding whether to resign:

(1) Notify an appropriate representative of the employer, in writing, that a working condition exists that the employee believes is so intolerable that the employee feels compelled to resign or intends to resign;

(2) Allow the employer at least fifteen calendar days to respond in writing to the matters presented in the employee's written communication; and

(3) Read and consider the employer's response to the employee's written communication.

(c) If an employee reasonably believes that the employee cannot continue to work during the period for the employer to respond to the employee's written communication regarding the conditions allegedly constituting constructive discharge, the employee is entitled to apply accrued vacation or paid time off hours, if any, or take an unpaid leave of up to fifteen calendar days or until the time when the employer has responded in writing to the employee's written communication, whichever occurs first. Nothing in this section prevents an employer from offering paid leave while the employer responds to the employee's written notice.

(d) Any communications or actions by an employer in response to an employee's communications about the employee's working conditions shall not be deemed an admission by the employer that it has committed any action that gives rise to any claim or cause of action by the employee against the employer.

(e) An employer shall be deemed to have waived the right to notice under paragraph (a), subpart 1 if the employer fails to provide written notice to its employees of the requirements of this section, which must include an identification by name, job title or department of an appropriate representative or representatives to whom employees must provide written notice under paragraph (b), subpart (1).

(f) Notwithstanding any other requirements of this section, an employee may bring a constructive discharge claim without prior written notice in the event of outrageous conduct by the employer or by a managing agent of the employer that is directed at the employee, such as sexual assault, threats of violence, or a continuous pattern of unlawful discrimination or harassment, if the outrageous conduct would cause a reasonable employee to feel compelled to resign.
(g) For constructive discharge claims to which subpart (1) of paragraph (a) of this section applies, the statute of limitations begins no sooner than fifteen calendar days after the employee provides written notice to the employer as set forth in subpart (2) of paragraph (b).

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): While at-will employment is the default in California, courts recognize that an employer may not unlawfully force an employee to resign by creating or knowingly allowing intolerable working conditions. An employer might not be aware of an employee's perception of intolerable conditions that, had the employer known, might have been corrected. The employee instead quits, which leads to loss of employment for that individual, pressure on the employer to fill or eliminate the role or delegate duties, and increased litigation. Constructive discharge is regarded legally as a firing rather than a resignation. (*Mullins v. Rockwell Int'l Corp.* (1997) 15 Cal.4th 731, 737.) It is a cause of action alleged with significant frequency in California, especially in wrongful termination suits.

The Solution: As a prerequisite to filing a constructive termination claim, the employee must (1) notify their employer, in writing, if a working condition exists that the employee believes is so intolerable that the employee feels forced to resign from their employment; (2) allow the employer at least 15 calendar days to provide a written response to the employee's written notice; and (3) read and consider the employer's response to the employee's written notice. At the employer's discretion, or the employee opts to use vacation or paid time off, the employee would be entitled to paid or unpaid leave during the 15-day period. Such pre-litigation communications promote fairness and respect and will in some situations lead to employee retention, improved workplace morale, and fewer lawsuits between employers and employees. Employees who comply preserve the right to bring a claim against the employer alleging that a working condition forced the employee to resign. Employees who do not comply cannot sue for constructive termination unless the employer's conduct was outrageous. Nothing alters employees' ability to sue for harassment, retaliation, discrimination, or any other legal claim.

Standing alone, constructive discharge is neither a tort nor a breach of contract, but a doctrine that transforms what is ostensibly a resignation into a firing. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1251.) Codifying the doctrine adds clarity while preserving the elements of liability, namely, that the employer intentionally created or knowingly permitted working conditions to exist that would cause a reasonable person to resign. (See CACI 2510.) This resolution is based on an Arizona law implemented in 1997. (A.R.S. 23-1502.)

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule. Constructive termination is currently a tort claim in California.

CURRENT OR PRIOR RELATED LEGISLATION
None.

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RESPONSIBLE FLOOR DELEGATE: Lisa Hird Chung

RESOLUTION 08-02-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 246 to read as follows:

§ 246
(a) (1) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section. For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code who also provides in-home supportive services in an applicable month, eligibility shall be determined based on the aggregate number of monthly hours worked between in-home supportive services and waiver personal care services pursuant to subdivision (d) of Section 14132.971.

(2) On and after July 1, 2018, a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, who works in California for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in subdivision (e) and subject to the rate of accrual in paragraph (1) of subdivision (b). For an individual provider of waiver personal care services under Section 14132.97 of the Welfare and Institutions Code, entitlement to paid sick days begins on July 1, 2019.

(b) (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.

(2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee's normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.

(3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period, and no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or 3 days of paid sick leave that is available to the employee to use by the completion of the employee's 120th calendar day of employment, and no less than 40 hours or 5 days of paid sick leave that is available to the employee to use by the completion of the employee's 200th calendar day of employment.

(c) An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.

(d) Accrued paid sick days shall carry over to the following year of employment. However, an employer may limit an employee's use of accrued paid sick days to 40 hours or five days in each

year of employment, calendar year, or 12-month period. This section shall be satisfied and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year, or 12-month period. The term "full amount of leave" means five days or 40 hours, which can be prorated for employees in their first partial year of employment based on the number of days remaining in the calendar year or 12-month period. Prorating is inapplicable when sick leave is received at the beginning of each year of employment. Prorated sick time entitlements must be rounded up to the nearest hour or the smallest increment that the employer's payroll system uses, whichever is smaller.

(e) For a provider of in-home supportive services under Section 14132.95, 14132.952, or 14132.956 of, or Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, and an individual provider of waiver personal care services under Section 14132.97 of, the Welfare and Institutions Code, the term "full amount of leave" is defined as follows:

(1) Eight hours or one day in each year of employment, calendar year, or 12-month period beginning July 1, 2018.

(2) Sixteen hours or two days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached thirteen dollars ($13) per hour.

(3) Twenty-four hours or three days in each year of employment, calendar year, or 12-month period beginning when the minimum wage, as set forth in paragraph (1) of subdivision (b) of Section 1182.12 and accounting for any years postponed under subparagraph (D) of paragraph (3) of subdivision (d) of Section 1182.12, has reached fifteen dollars ($15) per hour.

(4) Forty hours or five days in each year of employment, calendar year, or 12-month period beginning January 1, 2024.

(f) An employer is not required to provide additional paid sick days pursuant to this section if the employer has a paid leave policy or paid time off policy, the employer makes available an amount of leave applicable to employees that may be used for the same purposes and under the same conditions as specified in this section, and the policy satisfies one of the following:

(1) Satisfies the accrual, carryover, and use requirements of this section.

(2) Provided paid sick leave or paid time off to a class of employees before January 1, 2015, pursuant to a sick leave policy or paid time off policy that used an accrual method different than providing one hour per 30 hours worked, provided that the accrual is on a regular basis so that an employee, including an employee hired into that class after January 1, 2015, has no less than one day or eight hours of accrued sick leave or paid time off within three months of employment of each calendar year, or each 12-month period, and the employee was eligible to earn at least five days or 40 hours of sick leave or paid time off within six months of employment. If an employer modifies the accrual method used in the policy it had in place prior to January 1, 2015, the employer shall comply with any accrual method set forth in subdivision (b) or provide the full amount of leave at the beginning of each year of employment, calendar year, or 12-month period. This section does not prohibit the employer from increasing the accrual amount or rate for a class of employees covered by this subdivision.

(3) Notwithstanding any other law, sick leave benefits provided pursuant to the provisions of Sections 19859 to 19868.3, inclusive, of the Government Code, or annual leave benefits provided pursuant to the provisions of Sections 19858.3 to 19858.7, inclusive, of the Government Code, or by provisions of a memorandum of understanding reached pursuant to Section 3517.5 that incorporate or supersede provisions of Section 19859 to 19868.3, inclusive,

or Sections 19858.3 to 19858.7, inclusive, of the Government Code, meet the requirements of this section.

(g) (1) Except as specified in paragraph (2), an employer is not required to provide compensation to an employee for accrued, unused paid sick days upon termination, resignation, retirement, or other separation from employment.

(2) If an employee separates from an employer and is rehired by the employer within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated. The employee shall be entitled to use those previously accrued and unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the use and accrual limitations set forth in this section. An employer is not required to reinstate accrued paid time off to an employee that was paid out at the time of termination, resignation, or separation of employment.

(h) An employer may lend paid sick days to an employee in advance of accrual, at the employer's discretion and with proper documentation.

(i) An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited." The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226. This subdivision shall apply to employers covered by Wage Order 11 or 12 of the Industrial Welfare Commission only on and after January 21, 2016.

(j) An employer has no obligation under this section to allow an employee's total accrual of paid sick leave to exceed 80 hours or 10 days, provided that an employee's rights to accrue and use paid sick leave are not limited other than as allowed under this section.

(k) An employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(m) If the need for paid sick leave is foreseeable, the employee shall provide reasonable advance notification. If the need for paid sick leave is unforeseeable, the employee shall provide notice of the need for the leave as soon as practicable.

(n) An employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

(o) The State Department of Social Services, in consultation with stakeholders, shall convene a workgroup to implement paid sick leave for in-home supportive services providers as specified

in this section. This workgroup shall finish its implementation work by November 1, 2017, and the State Department of Social Services shall issue guidance such as an all-county letter or similar instructions by December 1, 2017.

(p) No later than February 1, 2019, the State Department of Social Services, in consultation with the Department of Finance and stakeholders, shall reconvene the paid sick leave workgroup for in-home supportive services providers. The workgroup shall discuss how paid sick leave affects the provision of in-home supportive services. The workgroup shall consider the potential need for a process to cover an in-home supportive services recipient's authorized hours when a provider needs to utilize their sick time. This workgroup shall finish its work by November 1, 2019.

(q) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Social Services may implement, interpret, or make specific this section by means of an all-county letter, or similar instructions, without taking any regulatory action.

(r) Subdivisions (g), (h), (i), (l), (m), and (n) shall preempt any local ordinance to the contrary.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem (including Existing Law): The law is unclear concerning the amount of paid sick time that must be provided up-front to employees hired mid-year by an employer that frontloads sick time. Specifically, there are two lawful methods for providing paid sick leave: (1) the accrual method, where employees earn sick hours bit by bit based on hours worked; or (2) the frontload method, where at least 40 hours (5 days) of paid sick time are provided up-front at the start of a 12-month period. Unfortunately, Labor Code § 246 does not address whether employers that use the frontload method can prorate sick hours for employees who are hired mid-year. Paragraph (d) reads instead that the frontloaded method requires that employees receive the "full amount of leave," defined as "five days or 40 hours," at the "beginning of each year of employment, calendar year, or 12-month period." Paragraph (b)(4) permits employers to provide not less than 24 hours or 3 days of sick time by the completion of the employee's 120th calendar day of employment; however, that subpart applies to employers that use the accrual method, stating, "An employer may *satisfy the accrual requirements* of this section by . . . ." Cautious employers err on the side of frontloading to new hires the full amount of paid sick time (40 hours/5 days), even if the person is hired a few months before the 12-month period restarts. This approach, even if the company implements a 90-day wait period for use of sick time (optional), can result in a windfall to new employees compared to their peers.

No court has resolved this issue. The California Labor Commissioner published a Frequently Asked Question on its website that advises prorating for "initial hires" is allowed. But agency guidance is not binding legal authority. Also, the Labor Commissioner ignores the qualifier "accrual requirements" and the definition of "full amount of leave" noted above. See https://www.dir.ca.gov/dlse/paid_sick_leave.htm.

Several California Supreme Court and appellate court opinions have determined that the Labor Commissioner's enforcement positions or manuals were not binding or were incorrect interpretations of California labor law. (See, e.g., *Troester v. Starbucks* (2018) [rejecting de minimus doctrine to CA wage and hour claims]; *Alvarado v. Dart Container* (2018) [calculating overtime on flat-sum bonus].) Violating the paid sick leave law exposes employers to individual liability, class actions, and Private Attorneys General Act penalties.

The Solution: Clarify that employers that use the frontload method can prorate the total amount of paid sick leave provided to employees who are hired after the start of the designated 12-month period. This solution will not affect employers who frontload sick time based on the employee's hire date, i.e. 40 hours/5 days provided at the start of each year of employment. But for employers that calculate the 12-month period based on calendar year or some other start date, prorating promotes fairness by preventing windfall allotments to new hires, and it avoids uncertainty and costly litigation by clarifying the law.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Lisa Hird Chung

RESOLUTION 08-03-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend sections 351 and 353 of the Labor Code, to read as follows:

351.
(a) No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

(b) An employer that requires employees to participate in any tip pool shall provide a written policy stating how tips are to be shared and shall provide each employee participating in any tip pool with an accounting of the receipt and payment of gratuities concurrently with distribution of tips. In any such action, the right to recover attorney's fees and costs shall be governed by Section 218.5.

(c~~b~~) The Labor Commissioner may investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of this section. If a citation is issued, the procedures for issuing, contesting, and enforcing judgments for citations and civil penalties issued by the Labor Commissioner shall be the same as those set out in Section 1197.1, as appropriate.

(d) An employee may file a civil action for failure to provide an appropriate accounting or for gratuities taken or withheld in violation of this section.

353.
Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department. Such records shall be open to inspection at all reasonable hours by any employee receiving gratuities.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Margaret J. Grover, Michael Fern, Suzanne Fidler, Mark Flory, Shaun Jacobs, Sean McCoy, Jack Osborn, Ujvala Singh, Darrin Wessel, K. Martin White

STATEMENT OF REASONS

The Problem (including Existing Law):
Under California law, employers are permitted to mandate that tipped employees participate in a tip pool so long as the policy is fair and equitable.. *Leighton v. Old Heidelberg, Ltd.* (1990) 219 C.A.3d 1062 (1990). Only employees who are in the "chain of service" may partake in a mandatory tip pool. *Etheridge v. Reins International California, Inc.* (2009) 172 C.A.4th 908. The law explicitly allows the Labor Commissioner to inspect records of gratuities, but does not provide employees with similar rights. Under Labor Code section 226, employers are obligated to provide detailed information regarding wages. However, section 226 does not require the employer to provide information about tips. When tips are pooled, employees do not have information about total tip collection, nor do they have information about how the pooled tips have been allocated. This provides an opportunity for employers to allocate tips to benefit certain employees or to withhold a portion of the tips from distribution.

The Solution:
This resolution would require that employers provide tipped employees with information about the tip sharing policy, the amount of tips collected, and the distribution of those tips. It also provides employees with the right to file a civil action for failure to provide an accounting of tip pools and failure to pay tips and the right to recover attorney's fees in such an action.

IMPACT STATEMENT
This resolution may require additional statutory changes.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 08-04-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend section 970 of the Labor Code, to read as follows:

970.
No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to resign from any position of employment, or to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either:
(a) The kind, character, or existence of such work;
(b) The length of time such work will last, or the compensation therefor;
(c) The sanitary or housing conditions relating to or surrounding the work;
(d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Margaret J. Grover, Michael Fern, Suzanne Fidler, Mark Flory, Shaun Jacobs, Frank Z. Leidman, Sean McCoy, Jack Osborn, Edward Teyssier, Darrin Wessel, K. Martin White

STATEMENT OF REASONS

The Problem (including Existing Law):
Under current law, an individual who is induced to move for a job by false representations about the job is entitled to recover double damages (Lab. Code § 972). An individual who is induced to resign from existing employment by false representations about the job can suffer similar damages. The individual's prior employer may have filled the position or may not wish to rehire a worker who has resigned. As a result, the individual may be looking for work while unemployed and having to explain a gap in employment , both of which can make it more difficult to secure employment.

For many employment law claims, a prevailing worker can recover attorneys' fees. (*See*, e.g., Lab. Code § 1194 (wage claims) and Gov. Code § 12965(c)(6)(discrimination claims). Attorney's fees are not available when an individual is fraudulently induced to accept employment. This resolution would give some additional relief to that individual.

The Solution:
This resolution permit individuals who are induced to resign from an existing job to recover double damages.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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