

Mission & Goals

The Women's Section has been a strong presence in CCCBA for over 25 years and welcomes men and women practicing in all areas of the law who work or live in Contra Costa County.

The goal of the section is to further the advancement of women in the legal profession and the judiciary. To do so, the Section offers frequent networking opportunities, such as "Power Lunches" and happy hours, MCLE classes with notable and relevant speakers, and fundraising and community events, such as the Honorable Patricia Herron and Honorable Ellen James Scholarship, and an annual Awards Dinner.

For membership information, please contact Jennifer Comages, Membership Director for the Contra Costa County Bar Association via email at jcomages@cccba.org.



Women's Section

Contra Costa County Bar Association

SUMMER 2020 NEWSLETTER

Welcome to the Summer 2020 Women's Section Newsletter!

WOMEN'S SECTION BOARD STATEMENT ON BLACK LIVES MATTER MOVEMENT



Our communities are hurting.

Racial injustice has existed in this country since its founding. Yet, this pervasive, vicious cycle of systemic racism seems to only be in the spotlight when there is another outrageous murder of a Black person. Say their names: Breonna Taylor,

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George Floyd, Ahmaud Arbery -- all following too many others. While these killings are held out as a result of a few “bad actors”, this explanation largely ignores the fact that we all have implicit bias and that our country desperately and fundamentally needs to change how we think, approach, and address the issue of racism. Despite a few days of widespread calls for justice, the issue of racial inequality almost always seemingly fades away as people return to their normal lives.

Except racism doesn't go anywhere. While many of us have the privilege to retreat back to “business as usual” in the comfort of our safe, peaceful communities, this is not possible for countless Brown and Black people; “business as usual” in their lives consists of coping with systemic racism, bigotry, oppression, lack of opportunity, malice, and hate. Our Black and Brown sisters and brothers should not have to continue living without true support or genuine understanding, and go alone in educating others.

Not this time! Enough is enough. Let us be better. Let us do better. Let us learn, listen, and help bring change.

We are a Board committed to equality in the law. This commitment must go beyond gender equality. It must include racial equality, equality for the LGBTQ community, equality for disabled communities, and all other marginalized communities. We must speak up. We must do more. We cannot stand idly by and allow systemic inequality to continue to exist unabated in our society. If we do nothing, we are complicit. To be silent is to be complicit.

Together we say: Black lives matter.

Now is the time for action. We need to amplify the voices of Black communities and other communities of color, while simultaneously understanding that the onus is not on the marginalized to educate us. We each need to take on that responsibility - listen to the needs of others, research these crucial issues, donate to causes fighting for equality, speak out against the injustices seen everyday, and act to further justice. We must all do the work to get us to a place where we can all

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feel appreciated, loved, and most importantly, safe in our own skin.

We are committed to ensuring that the issues of racial inequality, repression, and systemic violence do not fade into the background once again.

In the coming weeks, our Board will discuss how we, and the Women’s Section more broadly, can get involved in the fight against racism in our community and country. In an effort to keep this important conversation going, we are working on organizing an implicit bias training to help hone our allyship skills. Please stay tuned for more information on this training. We are also starting a book club for our members where we will read and discuss books covering important racial issues (please see the resource list on page 11 for book suggestions for adults and children). Our first book club meeting will be in July, and we will be reading and discussing *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* by Michelle Alexander. More details to follow.

We also welcome ideas and suggestions from our members about how we can better support marginalized communities. Remember - we are in this together.

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PROTECTIONS FOR EMPLOYEES AMIDST THE COVID-19 PANDEMIC

By: Julie Ann Giammona, Ferber Law

On Wednesday, March 18, 2020, the President signed the Families First Coronavirus Response Act (“Act”) which became effective April 1, 2020. The Act contains two emergency paid leave provisions in an attempt to provide relief to employees amidst the COVID-19 pandemic: (1) the Emergency Paid Sick

Leave Act (EPSLA), and (2) the Emergency Family and Medical Leave Expansion Act (EFMLEA). Both Acts expire December 31, 2020 and provide a limited small business exemption for employers with less than 50 employees.1

EPSLA

The EPSLA requires that all businesses with less than 500 employees provide 10 days or 80 hours of paid sick time to any full-time employee (part-time employees are entitled to the typical number of hours they work in a typical two-week period) not able to work for one of the following six reasons: (1) the employee is subject to a quarantine order related to COVID-19; (2) the employee must quarantine on the advice of a health care provider because of COVID-19; (3) the employee experiences symptoms of COVID-19 and is seeking a medical diagnosis; (4) the employee is caring for an individual subject to or advised to quarantine; (5) the employee is caring for a minor child whose school or place of care is closed, or unavailable, due to COVID-19 related reasons; or (6) the employee is experiencing substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and The Treasury.

Notably, the EPSLA applies immediately upon hire to all employees, even if an employee has only worked one day. Employers may not demand that employees use other paid leave before using EPSLA. If employers already have other sick leave policies in place (for example the annual 24-hour mandated sick time under California law), an employer must provide the EPSLA on top of, or in addition to, the existing leave.

An employer's obligation to provide paid sick leave is limited to \$511 per day (\$5,110 in total) if leave is taken for reasons (1), (2), or (3) above (relating to the employee's own illness or quarantine); and \$200 per day (\$2,000 in total) if leave is taken for reasons (4), (5), or (6) above (relating to care for others or school closures).

EFMLEA

The expanded FMLA leave requirements specify that all businesses with less than 500 employees must provide 12 weeks leave to employees who have worked at least 30 days for any “qualifying need related to a public health emergency.” Notably, the “qualifying need” is defined as any situation where an employee must care for a minor child (and thus cannot work) because the child’s school has been closed or is otherwise unavailable due to a public health emergency. This language is a significant departure from earlier versions of the bill and limits the availability of the 12 weeks of partially paid leave to situations related to school and childcare closures and not the employee’s own illness.

The first 10 days of the leave is unpaid. An employee may choose, but is not required, to use accrued sick or vacation pay to cover these first 10 days. Alternatively, an employee may use the EPSLA time of 10 days or 80 hours for this initial unpaid period. The subsequent EFMLEA leave must be paid at 2/3 of the employee’s regular rate of pay with a cap of \$200 per day and a total sum of \$10,000 (or a total of \$12,000 per employee when combined with the EPSLA leave).

DEPARTMENT OF LABOR (DOL) REGULATIONS AND GUIDANCE

The DOL has issued federal regulations and provided guidance in the form of FAQ’s interpreting both above Acts. The bullet points below discuss some of the most notable DOL direction:

- An employee may not take EPSL if the employer has no work available. To qualify for EPSL, the employee must not be able to work, telework or otherwise, because the employee is affected by one of the six covered reasons listed above. Moreover, EPSL is available only if a local shelter, isolation, or quarantine order prohibits the employee from working, not if the employer is shut down pursuant to an Order, or any other COVID-19 related

reason (not enough work due to drop in business). Unemployment benefits are likely available for these employees.

- The small business exemption for employers of less than 50 employees only applies if the leave requested is for child-care purposes under either Act. The DOL has provided specific, objective criteria that an employer must demonstrate to be eligible for the exemption: a) such leave would cause the small employer's expenses and financial obligations to exceed available business revenue and cause the small employer to cease operating at a minimal capacity; b) the absence of the employee(s) requesting such leave would pose a substantial risk to the financial health or operational capacity of the small employer because of the employee(s)' specialized skills, knowledge of the business, or responsibilities; or, c) the small employer cannot find enough other workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services the employee(s) requesting leave provide, and these labor or services are needed for the small employer to operate at a minimal capacity. Even if the employer demonstrates the existence of one of the above criteria, the denial of leave under EPSLA or EFMLEA is limited to those specific employees who would fall within categories (a) – (c) above.
- The DOL has set forth detailed notice and documentation requirements for both employers and employees. First, employers must post (or provide by email if employees working remotely) a notice regarding the EPSLA. Such notice can be found at <https://www.dol.gov/agencies/whd/pandemic>. When requesting leave, an employee should provide a written, signed request to employers for a specific leave, including, when practicable, the following information: a) the employee's name, (b) the date for which leave is requested, (c) the COVID-19 qualifying reason for leave, and (d) a statement representing that the employee is unable to work or telework because of the COVID-19 qualifying reason. Where relevant, the following additional

information is required: (a) the government entity that issued the quarantine or isolation, (b) the health care provider who advised the employee to self-quarantine, or (c) the name of the child being cared for, and the name of the school or child care provider who has closed or become unavailable, and a statement that no other suitable person is available to care for the child. If an employee requests leave for the employee's own health or to care for a family member with a health condition related to COVID-19, the request must meet the requirements of an FMLA certification typically used for any other health situation unrelated to COVID-19. Lastly, business owners should maintain documentation of requests for leave for a period of 4 years, whether the leave is granted or not.

- Leave under both the EFMLEA and FMLA is limited to 12 weeks within a 12-month period. This means that if an employee had used FMLA time prior to the enactment of the Act that time will count against the employee's EFMLEA. The same is not true, however, for leave under the EPSLA. An employee can take all 80 hours of EPSLA, regardless of whether the employee has used any FMLA time. Importantly, an employer is prohibited from counting any other accrued leave, such as PTO, vacation or other sick leave against the time provided under the EPSLA or EFMLEA. Notwithstanding this limitation, an employer may force an employee to use any other leave concurrently with the EFMLEA leave, but not the EPSLA leave.
- Intermittent leave is permitted where the reason for the leave is for child-care purposes and/or the intermittent leave would not endanger another employee; allowing intermittent leave for reasons 1-3 under EPSLA for non-teleworking employees should not be allowed. DOL regulations strongly encourage employers to be flexible during the COVID-19 crisis, so long as business needs can be met. Notwithstanding, it is the employer's decision to grant the intermittent leave or not. Intermittent leave is not absolutely required in every circumstance.

- Eligible Employers are entitled to receive a credit in the full amount of the qualified leave wages, plus health plan expenses and the employer's share of Medicare tax, paid for leave during the period beginning April 1, 2020, and ending December 31, 2020. Employers claim the credit by retaining the qualified amounts as described above instead of depositing said amounts with the IRS via the employer's quarterly tax payments. Employers must retain records to support each employee's leave to justify the claim for the credits.

DISCLAIMER: The COVID-19 crisis is in a constant state of flux; given the fluid nature of the regulatory landscape that sometimes changes by the hour, please consult the DOL website <https://www.dol.gov/agencies/whd/pandemic> for the most up to date information. Because of the generality of this update, the information provided above should not be acted upon without specific legal advice.

About the Author:



With almost 30 years of experience representing employers in labor and employment matters, Julie Ann Giammona is a passionate and zealot advocate for business owners. Julie Ann defends employers against wrongful termination, harassment, discrimination and wage and hour issues in state and federal courts, at administrative hearings, and at arbitrations and mediations. In addition to defending litigation cases on behalf of employers, Julie Ann also provides advice and counsel to employers regarding leaves of absence, compliance with wage and hour issues, discipline and termination process, drug testing, and workplace violence issues.

Julie Ann is a member of the Contra Costa County Bar Association, and serves as a director for the East County Section. She is also a member of the Brentwood and Antioch

Chambers of Commerce. Julie Ann serves as a director on the Northern California Employment Roundtable Board. She is actively involved in health advocacy in her community, often assisting others in obtaining access to critical health care and medication. Education is another love of Julie Ann, and she has spent countless hours assisting families in home schooling their children due to medical illness or crisis.

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BOARD MEMBER FEATURE

- Introducing our 2020 Secretary of the Women’s Section – Janell M. Alberto.



Janell Alberto is a senior associate in WSHB’s Northern California office. Her practice encompasses a wide variety of complex civil litigation matters, including commercial litigation, products liability, professional liability, and breach of contract.

Janell has served many years on the board of the Women’s Section for the Contra Costa County Bar Association. She served as board president in 2017 and secretary in 2019 and 2020. She has also been published in Contra Costa Bar Association’s *Contra Costa Lawyer*.

While in law school at Willamette University College of Law, Janell worked as a certified law clerk at the Tillamook County District Attorney’s Office earning valuable early trial experience prior to becoming a licensed attorney. She received her Bachelor’s Degree in Integral Liberal Arts from Saint Mary’s College of California. Janell is admitted to practice in both California and Oregon.

HEALTH & WELLNESS

The COVID-19 lockdown presents many challenges for all of us, especially women and mothers. We want to share with you how some of our Board members have been keeping sane.

“While this quarantine has been difficult, it has also been the perfect time to slow down and reflect. I have found enormous comfort in nature. Taking a walk every morning and every evening has given me an outlet to unwind, and is a peaceful way to start and end each day with some routine (all while social distancing!). I am also finding joy in taking this time to explore new and existing hobbies – whether gardening, redecorating, or finally reading those books I’d been putting off. These are scary times, but hopefully we all come out of this stronger and more compassionate, both as a society and as individuals. Hang in there!” – Ingrid P. Rodriguez, Brown, Gee & Wenger LLP

“Taking care of our own wellness and mental health is so important during this shelter in place. I have always found exercise to be an outlet for stress and have been running and participating in virtual kickboxing classes as much as possible these days! Solo walks and social distance walks with friends have also been a good outlet for my well-being!” – Rachel H. Leonard, Tate & Associates

"While this time has been challenging, it has also provided time for reflection. This period has shown how as humans we can adapt quickly, even without notice. Before the shelter-in-place, it was easy to get lost in the day-to-day grind. However, the shelter-in-place forced my family and I to be in the present and be creative. I found "alone time" while cycling with my children. This provided all of us an opportunity to get the space from each other we needed and to enjoy what nature has to offer." – Mujdah Rahim, Law Office of Mujdah Rahim

“Here is what I have been doing to stay sane: mindfulness meditation through Headspace app, working out in my garage, getting out of the house for walks when I can, crafting with my Cricut for a creative outlet, and staying away from consuming too much news.” – Sasha Gray, Brown, Gee & Wenger LLP

“With two small kids to homeschool and the demands of work reacting to ever-changing news in the commercial leasing landscape, the stresses of daily life pre-COVID had increased almost ten folds for me. It wasn’t until 6 weeks into the Shelter in Place that I learned to find my groove by sticking to a routine. I found it critically important for own sanity to go out jogging, escape through books,

movies and shows, turn off social media and news at night, and stay connected with family and friends. It was also helpful to learn something new, which for me was learning how to teach common core math, learning how to bake sourdough bread from starter, how to use my sewing machine to make masks, and learn more how we can all be racially cognizant. None of these things I would have done pre-COVID, so I'm appreciative of the opportunities that these challenging times present, and hopeful of the future." – Celine Mui Simon, Strata Legal

RESOURCES LIST

Adult Book List:

- *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, by Michelle Alexander **July's Women's Section Book Club Selection**
- *White Privilege*, by Paula S. Rothenberg
- *Why Are All the Black Kids Sitting Together in the Cafeteria?: And Other Conversations About Race*, by Beverly Daniel Tatum
- *White Awake: An Honest Look at What It Means to Be White*, by Daniel Hill

Children Book List:

- *New Kid*, by Jerry Craft
- *We're Different, We're the Same*, by Bobbi Jane Kates
- *Marlon Bundo*, by Jill Twiss
- *Pink is for Boys*, by Robb Pearlman
- *The Skin You Live In*, by Michael J. Tyler
- *Mommy's Khimar*, by Jamilah Thompkins-Bigelow
- *Love Makes a Family*, by Sophie Beer

Charity Organizations:

- The African American Policy Forum - <https://aapf.org/>
- Higher Heights for America - <https://www.higherheightsforamerica.org/>
- Akonadi Foundation - <https://akonadi.org/>
- National Coalition of 100 Black Women, Oakland/East Bay Chapter - <http://www.onehundredblackwomen.com/>
- Contra Costa Racial Justice Coalition - <https://cccrcj.org/>

ODDS & ENDS



Wine glasses for sale! The Women's Section is selling our signature stemless wine glasses for the low price of \$5 each! All proceeds go to our scholarship fund. Contact us at ccbawomenssection@gmail.com to place your order today!

FEEDBACK

Please send event ideas or any information and feedback about the Section to us at ccbawomenssection@gmail.com.

We hope you have enjoyed the Summer 2020 Women's Section Quarterly Newsletter and that you will stay safe, healthy and sane.

