As the legal landscape continues to evolve in terms of labor and employment, the Los Angeles Business Journal once again turned to some of the leading employment attorneys and experts in the region to get their assessments regarding the current state of labor legislation, the new rules of hiring and firing, and the various trends that they have been observing, and in some cases, driving. Below is a series of questions the Business Journal posed to these experts and the unique responses they provided – offering a glimpse into the state of business employment in 2016 – from the perspectives of those in the trenches of our region today.
What are the most significant new employment laws taking effect in 2016?

SCHERWIN: The new piece rate legislation (AB 1513) and the California Fair Pay Act are two of the most significant laws. Between these two laws, just about every business in California and Los Angeles are affected. For AB 1513, Employers need to be aware of how they are paying all employees who are compensated based on the job they are performing (even if the employees are not typically considered piece-rate workers) and under the Fair Pay Act employers should conduct a pay practices audit to ensure that there are no obvious discrepancies in pay based on sex.

RANEN: Assembly Bill 1522 created California’s paid sick leave (PSL) obligations for most California employers. Some fixes made this year. An employer must work for the same employer for 30 or more days within a year of beginning employment to be eligible to use PSL, and the law allows employers with unlimited or undefined leave banks to indicate “unlimited” on the employee’s itemized wage statement. The Labor Code’s Private Attorneys General Act of 2004 has been amended to provide an employer with a limited right to cure a violation of failing to provide its employees with a wage statement containing the inclusive dates of the pay period and the name and address of the legal entity that is the employer. California’s equal pay statute was significantly modified to lower the burden of proof for plaintiff’s claims, to greatly increase the burden of proof for an employer’s defenses, and to allow employees to ask other employers about the amount of their wages to ascertain whether there may be a factual basis for an equal pay claim.

ROSENBERG: My top four: (1) California employers now face fines of up to $10,000 if they use the federal E-Verify system to check the employment authorization status of existing employees or applicants who have not yet received an offer of employment; (2) California’s Family-School Partnership Act (requiring 40 hours of job protected time off for parents each year) was greatly expanded; (3) California’s Equal Pay Act requiring pay for men and women who do the same job in the same location now also requires the employee to inquire about their co-workers’ pay; and (4) new and more onerous pay obligations for the many thousands of employers that utilize a piece rate pay system.

Which of California’s new employment laws are most likely to land employers in court?

BEAUMONT: The Legislature and courts are constantly churning out legal decisions affecting employers’ businesses. I expect the 2016 amendments to California’s Fair Pay Act will result in a wave of new litigation. They impose a strict new standard for equal pay by gender, an issue that employers may not be monitoring closely. California’s decade-old Private Attorney General Act (“PAGA”) remains a challenging litigation trend for employers on a piece-rate system, the Legislature has enacted new provisions that substantialize impact compensation for rest periods and non-productive time. Updates to California’s regulatory framework surrounding pregnancy and disability leaves and accommodation are also likely to land employers in court, especially those not up to date with the standards.

BABIAIN: The California Fair Pay Act, which puts the burden of proof on the employer to demonstrate that a wage differential is based on one or more factors unrelated to gender, may lead to more lawsuits. That is, the employer bears the burden of proving that a factor (e.g., seniority, merit, regional pay differences, to name a few) relied upon was applied “reasonably” and serves to account for the entire pay difference. Beyond the foregoing, the new law forbids employer policies that prohibit employees from discussing their own wages, the wages of others, or inquiring about others’ wages. Employers must be aware of this new law and its impact on the workplace. An audit of the gender pay data for similar job classifications to ensure compliance with the new law would be beneficial for all employers.

ROSENBURG: Without a doubt, the changes to our pay equity law are most likely to land employers in court. It’s rife with ambiguity and employer ‘gotchas.’ While no one can rationally argue against equal pay for equal work, the new law expands the definition of comparable work. Also, by also requiring the same pay if the work is “substantially similar,” allowing employee suing for gender-based pay discrimination to compare themselves with employers holding different job titles and with different responsibilities who are working in different locations of the company. Job one for every employer should be to proactively examine pay practices for gender inequities in “substantially similar” jobs and evaluate whether those differences can be legally justified.

What can employers expect from the California legislature this year?

RANEN: The California legislature is considering many significant employment-related bills this year. Of note are bills that would require almost all employers provide 12 weeks of job-protected parental leave, expand the recent Equal Pay Act to target race and ethnicity-related differentials in wages, and amend the Private Attorneys General Act (PAGA). The proposed PAGA amendments would be particularly significant to employers, as they would severely limit the types of Labor Code violations that could give rise to a PAGA claim, allow employers the opportunity to cure any violations before a civil suit is brought, and allow for dismissal of PAGA suits where technical violations exist without any appreciable harm to the aggrieved employee, among other things. Finally, over the next 1-3 years we expect to see hundreds of challenges to companies websites based on claims that they are not accessible to the visually disabled.

ROSENBERG: Vigorous enforcement of labor law scotlaws and even more job protections. The prevailing view in Sacramento is that too many workers still aren’t able to enjoy the benefits of the state’s labor regulations. One the biggest reasons is the misclassification of workers as independent contractors. According to the law, most workers are employees and independent contractor status is the rare exception. Employers who misclassify workers as contractors face stiff fines and compliance lawsuits. In addition, competitors who shoulder the full economic burden of employment compliance are suing those who don’t in an effort to level the playing field. And, unions seeking to expand their ranks are doing the same.

How can employers remain current on the ever-evolving employment law trends?

SCHERWIN: It is important to stay up to date by attending seminars and reading the various law firm blogs and email blasts that update business on the latest changes in the employment law landscape. Fisher & Phillips Los Angeles, for example, has free monthly breakfast roundtable meetings/seminars where we discuss a different topic every month.

BEAUMONT: Employee-employer issues can be so varied that companies are struggling to keep up to date from in house. Having a knowledgeable Human Resources representative is the first step. Labor, HR, associations, and chambers of commerce also hold seminars on new employment laws. However, HR advice is not legal advice. Many employee issues are fact specific, so the legal outcome can change from one case to the next. A “form” HR provider cannot give advice customized to the business and specific issues at hand. My clients regularly call me for counsel when employer issues arise. An experienced employee litigation attorney will be aware of current courtroom trends, and how legal matters actually play out in practice. Also, an attorney can identify problem legal areas that the company may not have detected. Sometimes a quick call to legal counsel is all it takes to sidestep enormous financial exposure.

How important is sensitivity training in the workplace – and should it be something for management or for all employees?

BABIAIN: Sensitivity training is, frankly, more important now than it ever has been. I have seen countless labor and employment lawsuits that could have been prevented with proper sensitivity training. Often times, the aggrieved employee/plaintiff is bitter about how he/she was treated, and that resentment was the motivating factor behind initiating litigation.
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‘Employee handbooks are absolutely critical for the modern employer as a strategy for both prevention and defense. Handbooks inform employees about company policies, from leave to safety issues. Having a uniform, centralized resource on company policy is key. Handbooks also serve as an employee relations vehicle by informing employees how to raise small problems before they become big ones.’

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ROSENBERG: In my opinion, it’s vital for any business seriously interested in lawsuit avoidance and morale building, and should be done throughout the organization. Experience shows that a great many employee lawsuits begin with employees believing that management supports (or at least tolerates) behavior they view as discriminatory or hostile towards them on account of a legally protected characteristic such as their race, gender, religion, sexual orientation or ancestry, to name a few. Letting everyone know exactly where the company stands on these issues and then proactively managing complaints whenever they arise is the most effective insurance policy to keep the company out of court.

How has the sexual harassment training mandate worked in your experience, and how will it change with the new requirement to include the topics of abuse and bullying?

BABAIAN: The training mandate has had a positive impact on employers. At a minimum, the training educated managers on how simple, every-day interactions can lead to claims of sexual harassment if not addressed immediately. I have found many managers to be ignorant of what truly is and is not deemed harassment nowadays, and those very same managers thanked me months after our training because they were now better equipped to spot, and eliminate, harassing behavior. The positive effects will only increase with the added topics of abuse and bullying.

ROSENBERG: It’s hard to accurately measure the effects on many HR issues, success in this endeavor is measured by the absence of something bad happening. I can tell you this. I have trained thousands of managers and the awareness level is much higher in 2016 than even just five years ago. So, to the extent that these educated managers change their behavior, then I have to think that the law is doing exactly what the lawmakers intended in terms of providing a greater percentage of the State’s workers with a harassment free work environment. I suspect that the exact same thing will happen with workplace bullying now that this important subject is part of the training dialog for larger companies (50+ employees). This is terribly important because numerous studies have shown that abusive work environments can have serious effects on targeted employees and drive up workers compensation and other costs.

How can employers (especially those with smaller companies and facilities) meet the needs of, or accommodate, a growing transgender workforce?

ROSENBERG: It starts with education about what is a very complex and emotionally charged topic. And, dialogue with employees in that community to understand their needs and concerns. Sometimes, one of the challenges when the AIDS epidemic first hit and most employers didn’t have a clue how they were supposed to handle the matter. Many acted out of fear and ignorance. The LBGT community, and the transgender community in particular, has seen a tremendous boost in awareness with the media attention given to the subject in the past two years. Employers are going to have to proactively engage this issue as they would any other diversity matter. The most immediate issues are likely to be co-worker harassment and facilities usage.

Would you say that a company’s employee handbook is still vital in this day and age or have they become a thing of the past?

RANEN: Employee Handbooks remain a vital aspect of employment law because they provide employees with notice of the employer’s policies. Further, the Employee Handbook, in conjunction with a signed acknowledgement of receipt from the employee serves as evidence that the employee was aware of and understood the employer’s policies, something that can then be in turn used in defending against employee claims. This is especially true in wage and hour class actions. If the Employee Handbook contains a meal and rest break policy that is facially compliant with California law, then it may be more difficult for an employee to argue that he was not provided with the proper breaks, it may create difficulty in establishing a policy that is non-compliant in practice on a class wide basis. The Employee Handbook remains the easiest and most comprehensive way to provide employees with the employer’s written policies.

SCHERWIN: The first line of defense in any employment dispute is an employee handbook. I think it is vital for every employer to have a comprehensive employee handbook where the company mandates the requirements/discrimination policies, its meal/rest periods policies, and other important policies such as leaves of absence, accommodations, and drug testing, just to name a few.

BEAUMONT: Employee handbooks are absolutely critical for the modern employer as a strategy for both prevention and defense. Handbooks inform employees about company policies, from leave to safety issues. Having a uniform, centralized resource on company policy is key. Handbooks also serve as an employee relations vehicle by informing employees how to raise small problems before they become big ones. When an employer is sued in a class action, written company policies are often key evidence regarding the employer’s wage-and-hour practices and whether they are legally compliant. The same is true in individual discrimination and leave lawsuits - a handbook that accurately (or inaccurately) reflects the law can be a smoking gun. It is critical that handbooks are regularly updated to reflect adjustments in California’s ever-changing laws. For example, the Legislature just enacted a requirement that employers disseminate written materials communicating an anti-discrimination, harassment, and retaliation policy, including reporting and investigation procedures. Babaian: Employee handbooks remain important and vital, provided the employer and its management understand and abide by its terms. The biggest problem I have found is when employers cease to follow the very rules they initiated by virtue of the handbook. When properly instituted, the handbook can provide a framework for addressing potential claims before it is too late, and can be a useful tool in asserting several defenses on behalf of the employer in the event of litigation.

In light of recent events in San Bernardino and a Planned Parenthood clinic in Colorado, what can employers do to keep their employees safer?

ROSENBERG: Every employer ought to consider adopting a formal workplace violence prevention plan containing five key components: (1) a workplace violence policy; (2) crisis management team; (3) supervisor training; (4) customer/client/vendor compliance; and (5) an “Active Violence” plan. Sadly, after virtually every one of these unfortunate incidents, employees come forward to say that they saw something, but didn’t put the pieces together. A coordinated approach can save lives. Consult with your labor attorney about finding the resources to develop your program.

What accommodations must an employer offer to employees who are parents of school age children if there is a school closure due to a terrorist threat?

ROSENBERG: If the recent LAUSD school closure had occurred after January 1st, the amendments to California’s Family-School Partnership Act would have required employers to allow employees leave to work to pick up their kids or not come in at all that day if they had to care for their kids. In recognition of the exigencies of parenting, the new law added an emergency leave provision requiring employers to allow parents time off to address child care provider or school emergency situations such as whenever an employee’s child cannot remain in a school or with a child care provider because the school or child care provider has requested that the child be picked up. In such cases, usage rules (e.g. eight hours a month) don’t apply, allowing the employee to use as many of the 40 hours per year granted by law for these purposes. The same is true with the law’s advance notice requirement due to the unplanned nature of the event.

What should employers know about employee arbitration and PAGA?

BEAUMONT: California’s Private Attorney General Act (“PAGA”) permits an employee to seek penalties for Labor Code violations on behalf of other employees. California’s Supreme Court has approved class action waivers in arbitration agreements, but denied such waivers for PAGA claims. As a result, arbitration agreements will not prevent a PAGA lawsuit on behalf of many employees, depending on the alleged violations and employee population. PAGA penalties can be more expensive than the underlying claims – a case of the tail wagging the dog. A PAGA claim-
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ant need not meet class certification require-
ments, but the courts are still creating law defini-
ing discovery and trial burdens. I expect signifi-
cant legal developments as plaintiffs’ attorneys seek to push PAGA’s limits and defense attorneys push back. For example, our firm recently secured bifurcation of a PAGA case, requiring the plaintiff to prove her claims before proceeding to discovery and trial as to other employees.

RANEN: The California Supreme Court’s decision in Iskianian v. CLS Transportation brought California in line with what had already been the norm in many other state courts and federal courts, namely that arbitration agreements that included waivers of the employee’s right to bring putative class actions against the employer were unenforceable. However, Iskianian did so with one major exception: PAGA claims. As a result, waivers of the right to bring a representative action under PAGA in arbitration agreements are unenforceable. As you can imagine, the impact of Iskianian has helped contribute to the surge in PAGA representative actions, especially stand-alone PAGA claims, which are a particularly attractive claim for plaintiffs’ attorneys to bring against employers who began to utilize mandatory arbitration agreements. Consequently, employers should ensure that their arbitration agreements track the latest developments in the law and are enforceable.

SCHERWIN: Employee arbitration agreements are something I recommend every employer in California have. While an arbitration agreement won’t provide protection from a PAGA claim in light of the California Supreme Court’s ruling, a well-written and comprehensive arbitration agreement will typically save a company from a wage-hour class action and make handling those types of claims much more manageable.

• When should employers make accommod-
ations?

RANEN: The FEHA generally requires that employers: (1) provide reasonable accommodation for employees who, because of their disability, are unable to perform the essential functions of their job and (2) engage in a timely, good faith interactive process with applicants or employees in need of reasonable accommodation. Generally, an employer must grant a reasonable accommodation request absent an undue hardship, which is a very high threshold to meet. If, after thorough consideration, an employer rejects an employee’s accommodation request, it must continue the interactive process with the employee and discuss alternative accommodations. In the event that no reasonable accommodation exists to allow the employee to perform the essential functions of his or her current position, employers must also consider reassigning the employee to a vacant position for which the employee is qualified as a possible accommodation. As a last resort, a leave of absence may also be evaluated as a reasonable accommodation.

BABAJAN: There is a big difference between the duty to make an accommodation and the duty to conduct an interactive process. When an employer becomes aware of a disability, injury, etc., affecting the employee, it would serve the employer’s best interest to conduct an interactive process with the employee even if the employee failed to request one. That process will allow the employer to determine what accommodations might be needed, whether they are reasonable under the circumstances, and the level of hardship (if any) it will place upon the employer.

SCHERWIN: The need to engage in the interac-
tive process and provide accommodations to employees is still one of the most common ways that gets an employer into trouble. Employers should have discussions with employees (and follow-up in a letter or email) about what the employee needs in terms of an accommodation. An employer should make an accommodation for an employee with a disability or medical condition whenever it can financially afford to do so. If the main objective is to avoid litigation, an employer would be wise to do everything it feasibly can to accommodate an employee.

BEAUMONT: Disability accommodation issues get many employers into trouble. Managers are often unaware that employees are not necessarily required to ask for an accommodation to trigger the duty, or that a duty to accommodate may exist even if the employee does not qualify for FMLA. Companies sometimes also overlook the interactive process requirements. It is not enough to evaluate accommodations options within manage-
ment alone. In California, an employer can be sued for failure to engage in an interactive pro-
cess with the employee to seek and vet potential accommodations. Only accommodations that are “reasonable” under the law must be provided, but employers forget that they need to look at all avail-
able options before deciding. However, the duty to accommodate is not unlimited. If the employee cannot perform the essential functions of the job with or without a reasonable accommodation, then an employer is not required to keep the job open.

• What are the implications of SB 358, the California Fair Pay Act, which pro-
hibits an employer from paying an employee at a wage rate less than that paid to employees of the opposite sex for doing substantially similar work?

SCHERWIN: The implications are enormous. SB 358 creates a lot of uncertainty as currently written. As of now, employers should audit their pay practices to ensure that there are no dis-
crepancies in pay between males and females. I anticipate that employers will see a lot of claims where employers tack on a Fair Pay Act claim to a discrimination claim in the coming years.

BEAUMONT: Employers in California now face the nation’s toughest fair pay law. The Legislature has allowed apples-to-oranges comparisons of jobs when assessing whether a company pays its male and female employees equally. Employees can now be compared from different geographic locations and job titles if their positions are argu-
ably “substantially similar.” The amendments to the California Fair Pay Act are a massive shift in employer obligations as well. Employers now bear the burden to prove that any differences in pay are attributable to a bona fide, non-gender-re-
lated reason consistent with business necessity.

RANEN: The California legislature is considering many significant employment-related bills this year. Of note are bills that would require almost all employers provide 12 weeks of job-protected parental leave, expand the recent Equal Pay Act to target race and ethnicity-related differentials in wages, and amend the Private Attorneys General Act (PAGA).

Jeffrey S. Ranen

‘The California legislature is considering many significant employment-related bills this year. Of note are bills that would require almost all employers provide 12 weeks of job-protected parental leave, expand the recent Equal Pay Act to target race and ethnicity-related differentials in wages, and amend the Private Attorneys General Act (PAGA).’
While such a salary would not automatically classify an employee as exempt, employers should also be aware that the U.S. Department of Labor may also revise the related job duties test along with the salary threshold increase when the final rule goes into effect.

◆ With the NLRB continuing to prosecute employers who have employees sign mandatory arbitration agreements, what should an employer do?

ROSENBERG: This is a huge problem and there is no good answer. We have a federal agency (the NLRB) pushing its own enforcement agenda in the face of federal court decisions saying they are dead wrong. So, employers with mandatory arbitration agreements have two Faustian choices: either abandon the practice altogether even though several federal courts have OK’d it or keep the policy until the U.S. Supreme Court weighs in on the subject and risk an NLRB prosecution. While this seems terribly unfair, the National Labor Relations Act permits the NLRB to push on with prosecuting employers until the U.S. Supreme Court says otherwise.

◆ Assuming employees actually qualify as independent contractors, are there any issues businesses need to be aware of in drafting agreements with them?

BEAUMONT: The assumption that a worker qualifies as an independent contractor is a dangerous one – courts and the EDD have increasingly found “contractors” to be employees if they are under the employer’s control. A well-drafted independent contractor agreement will include information about the nature of the work that is helpful to showing a true independent contractor relationship under the law. It is important to consider protections for trade secret and confidential information, and to ensure that such protections are not drafted overzealously or they may be thrown out. There are also other sub-issues to consider. For example, a clause stating that creative work is a “work made for hire” under the Copyright Act carries legal consequences that deem the contractor a “statutory employee” for workers’ compensation, state disability, and unemployment insurance purposes. Each agreement should be reviewed individually.

◆ Which pay practices are most likely to result in a company being sued in a wage-hour class action?

BABIAN: In the simplest form, not paying employees for time in the control of the employer. Far too often, employers believe that the employee does not need to be paid if he/she is not actively “working,” even though the employer is still controlling the employee. For example, if a restaurant owner requires his employees to be prepared for work 15 minutes before they open the doors, the failure to pay for that time will prove problematic. Beyond this, the obvious meal break and overtime mishaps are the most common of class hour cases.

SCHERWIN: The three biggest issues are off the clock claims/rounding of time, failure to...
properly document meal periods, and pay stub violations. Companies should ensure that they are keeping accurate time records of all hourly/ non-exempt employees and ensure that the pay stubs comply with Labor Code Section 226.

RANEN: Many common practices that lead to wage and hour class actions include the failure of supervisors to follow meal and rest period requirements, failure to include certain types of bonuses in an employee’s regular rate of pay for computing overtime compensation, wage statements that fail to comply with one or more of the nine information requirements, improper time rounding or off-the-clock work, and the improper classification of employees as exempt. Another added layer of wage and hour complexity comes from recent city ordinances affecting minimum wage compensation. For example, some employers who meet the size threshold may not realize they must soon comply with the higher minimum wage standards of the City of Los Angeles, which increases to $10.50 per hour on July 1, 2016, rather than the $10.00 state minimum wage. Again, a properly drafted arbitration agreement with a waiver of putative class action claims can help reduce significant wage and hour exposure, except as they relate to PAGA claims.

¢ Does it make sense for businesses to combine their vacation and sick time into a single PTO policy?

ROSENBERG: Under the new paid sick leave law, the usage rules only apply to actual paid sick days. That’s a good reason to segregate them from PTO. Otherwise, all of the company’s PTO benefits will be subject to the sick pay law’s onerous carryover, pay stub reporting and usage rules. Also, if the company’s PTO includes vacation, then the entire PTO balance must be paid when the employee leaves paid the employee can collect stiff penalties for late payment. In contrast, accrued sick pay does not have to be paid out when the employee leaves the employment. This is yet another reason to separate the sick pay benefits from other PTO.

¢ What are some of the practical challenges employers face when implementing California’s paid sick leave law?

SCHERWIN: The practical challenges are first and foremost determining whether it makes the most sense for your business to frontload the sick leave days or simply allow employees to accrue. Additionally, it is important to realize that requiring employees to bring in a doctor’s note or other excuse when they call in sick is not something that should be a part of your policy based on the way the statute is written.

¢ What are your thoughts on AB 1017, which proposed that employers may not request compensation history from applicants?

ROSENBERG: If AB 1017 had passed, it would have outlawed the practice of asking a job applicant for their salary history and prohibited employers from pegging an applicant’s salary offer to what he or she made in their last position(s). Proponents of gender pay equity argue that the law was necessary because the market is rigged against women and that setting wages to past salary simply locks in the previous pay inequity. The other side argues that ignoring the market makes no sense at all and that a current prospective employer can’t
Can an employer legally impose a rule barring the employment of job applicants with criminal records?

ROSENBERG: Yes, but employers have to use extreme caution whenever inquiring into criminal background. California law prohibits employers from asking about (or using) arrest and certain conviction records when evaluating job applicants. Employers must know these rules and scrub employment application forms for prohibited inquiries. The simple question found on many job application forms: ‘Have you ever been convicted of a crime?’ is illegal in California. Further, EEOC has stated that a ban on the hiring all convicted criminals is illegal. Rather, EEOC demands a more nuanced process that requires an employer to show that there is a real connection between the criminal offense and the applicant's intended job duties. Finally, the answer may vary well depend on which city the employee will be working in or the type of job. Several municipalities have passed their own restrictive ordinances working in or the type of job. Several municipalities have passed their own restrictive ordinances on the subject. On the other hand, certain jobs - like law enforcement, teachers, nurses, and those on the subject. On the other hand, certain jobs - like law enforcement, teachers, nurses, and those involving minors or the mentally impaired may by law be restricted. Therefore some jobs have passed their own restrictive ordinances well depend on which city the employee will be working in or the type of job. Several municipalities have passed their own restrictive ordinances on the subject. On the other hand, certain jobs like law enforcement, teachers, nurses, and those involving minors or the mentally impaired may by law be restricted.

What are some legal issues that companies often overlook during a layoff or termination process?

BABAIA: The effect of potential retaliation or discrimination claims. That is, if the employee has complained (especially recently) of a legal right, the employer should be extra cautious in subsequent termination.

SCHERWIN: Companies often fail to ensure that they are making the decisions consistently across the board. When performing a layoff, first a company should absolutely make sure that it is a layoff and not a performance-based termination. If it is a termination, call it a termination, and not a layoff. As far as performance-based terminations, the number one thing employers should ensure, is consistency. If you didn't terminate the last person who engaged in the same behavior/attendance/performance issue, then you should have a reason as to why you are terminating this person.

BEAUMONT: In a business downturn, employers often overlook creative options to retain employees, including job transfers, work-sharing, and a partial benefit unemployment program for temporary hours reductions. In certain layoffs, employers must provide 60 days' notice to affected employees under the federal and California WARN Acts. The selection criteria used in a layoff are frequently based on legitimate business reasons, but unfortunately employers sometimes neglect to properly document them. This creates exposure to future lawsuits and makes them more difficult to defend. When conducting a reduction in force, I recommend employers analyze personnel data for possible disparate impacts on protected classes. Severance agreements offered to workers over 40 must be reviewed for legal compliance. When terminating employees individually, employers create risk when they don't internally bring all decision-makers together - business, HR, and legal - to ensure that all information regarding the business and legal aspects of a termination is assessed.

How does a law firm specializing in labor and employment differentiate itself from the competition in 2016?

BEAUMONT: Employee litigation is on the rise. Businesses today are being required to devote more attention and resources to employee legal issues. Increasingly, businesses are choosing to move to smaller firms that specialize in employment law and can litigate more nimblly. My firm is a litigation boutique – all of our attorneys are trial lawyers in addition to being knowledgeable in the subject matter. Plaintiffs’ lawyers have been pushing the stakes further in lawsuits. Our clients want attorneys that will defend their cases strategically and creatively, but go all the way to trial if necessary. Not every firm has that breadth of experience. My firm’s structure and philosophy also focuses on more customization of the defense of a case, so that we are truly partnering with our client to craft a strategy that works for their business goals and needs in every matter that comes to us.

BABAIA: Employment cases are stressful for employers. An early and efficient analysis of the realistic exposure to ensure the optimal result in litigation is key. Beyond this, providing constant, timely, and sage advice for risk management tends to provide value added and is appreciated.

SCHERWIN: I think responsiveness and the ability to understand the client’s business. We take pride in being available to our clients and partnering with our clients because we understand their business objectives and goals.