

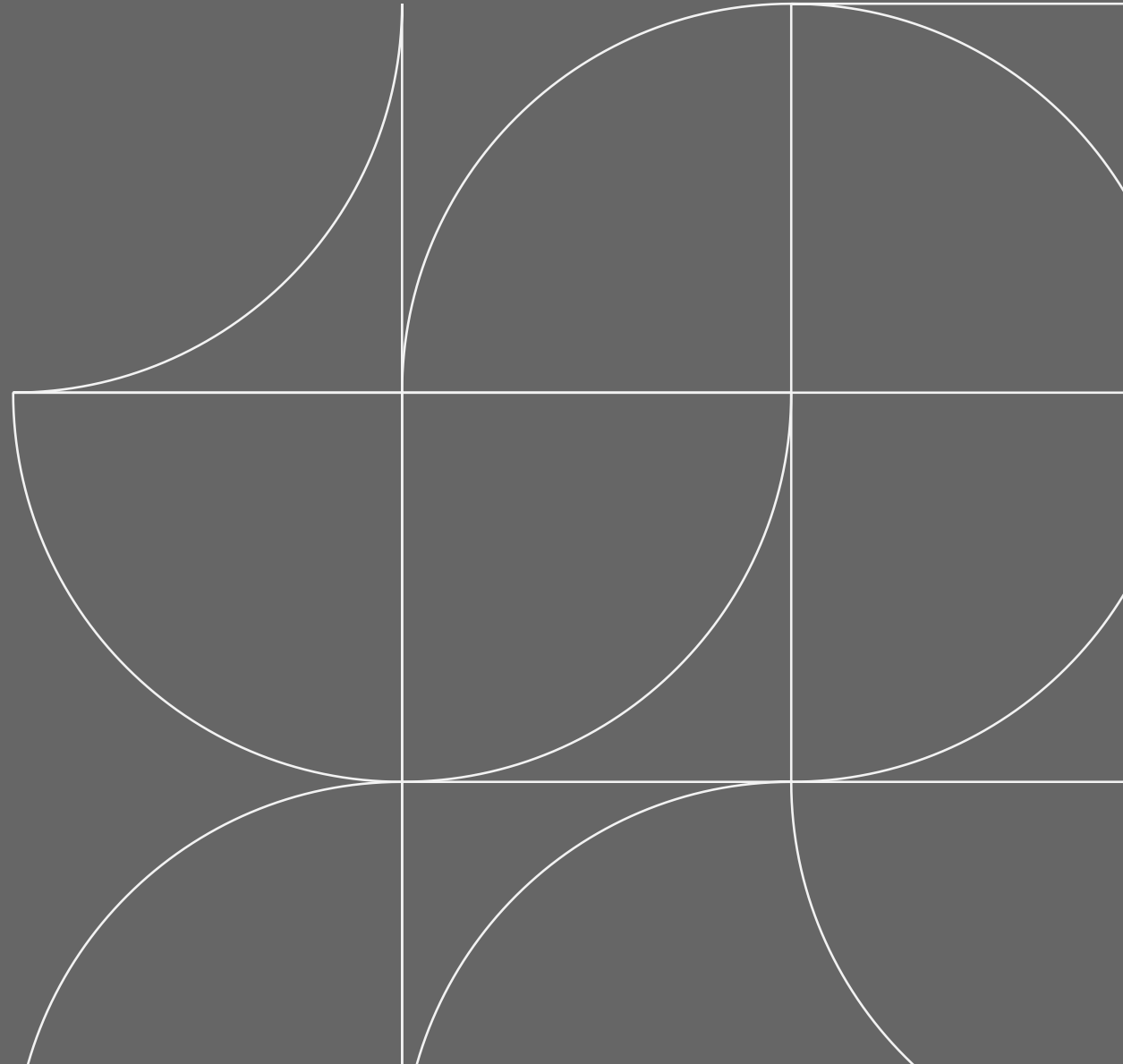


When Legal Claims Hit Close to Home

How to Avoid Serious Legal, Privacy and Other Risks in the Employment of Nannies, Personal Assistants, Gardeners, and other Domestic Workers

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential





Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2021 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

Joining You Today



Christian Rowley
Partner
San Francisco
crowley@seyfarth.com

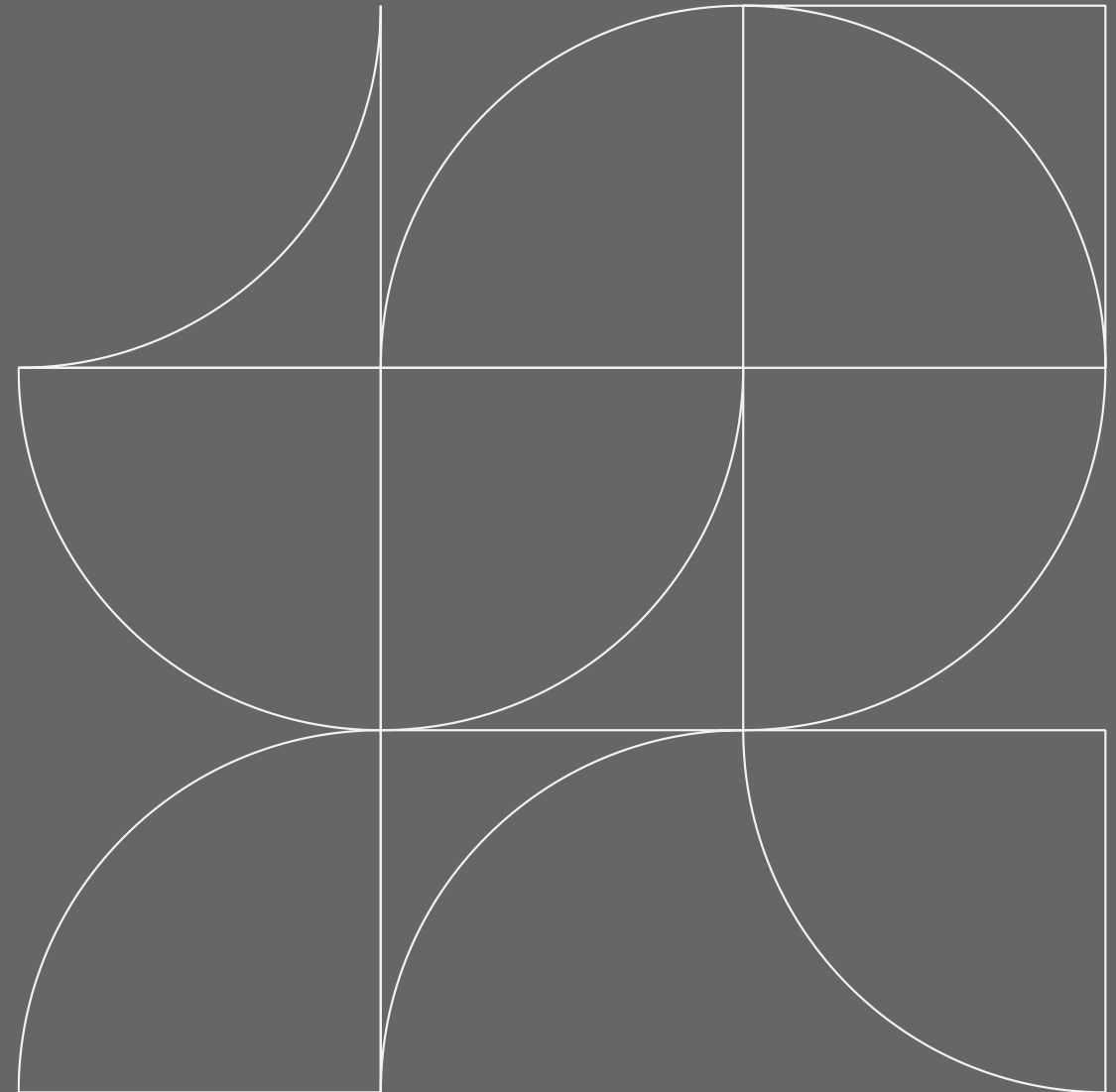


Jennifer Mora
Senior Counsel
San Francisco
jmora@seyfarth.com

Agenda

- 01** Background – Why Are We Here?
- 02** Classification and Wage and Hour Issues
- 03** Leave, Benefits and Other Considerations
- 04** Employment and Confidentiality Agreements
- 05** Closing Thoughts

Why Are We Here?



Households as Employers

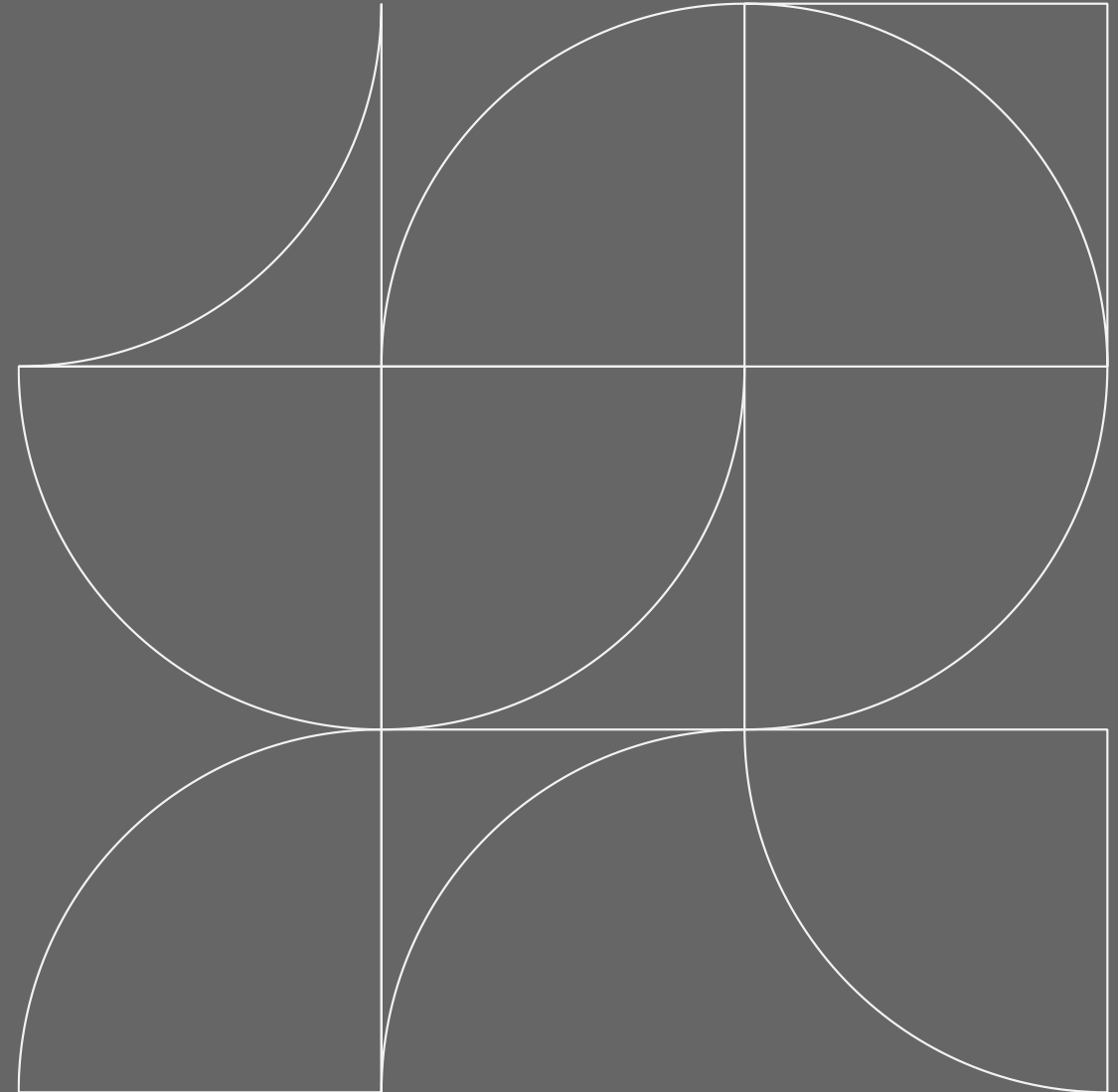
- National Domestic Workers Alliance says there are 2.5 million domestic workers in the U.S.
- States and localities starting to view families as employers
 - Nannies; chefs; security personnel; personal assistants; and personal caregivers
 - Some exclusions:
 - Casual babysitters
 - Family members
- Claims are on the rise
 - Stressful and time consuming
 - Expensive
- Privacy considerations



State and Local Laws

- California
- Connecticut (families with 3 or more employees)
- Hawaii
- Illinois
- Nevada
- New Mexico
- New York
 - Protects undocumented workers regardless of status
- Oregon
 - Excludes in-home caregivers for seniors and persons with disabilities
- Philadelphia, Pennsylvania
- Seattle, Washington

Classification and Wage and Hour Issues



Federal Laws

- Fair Labor Standards Act
 - Live-in domestic workers employed by a third-party agency
 - Minimum wage
 - Overtime after 40
 - Others
 - Look to state and local requirements
- Other federal laws
 - Typically will not apply due to coverage requirements



Misclassification Issues

- California
 - Fraught with legal risk
 - AB 5
 - Penalties are steep: meal and rest period, paystub and, overtime violations; taxes; waiting time penalties; etc.
- Possible changes at the federal level (FLSA)
- Consider nationwide movement towards a California-like model

Overtime

- California
 - Distinguishes between personal attendants and other domestic workers
 - Personal attendants: typically, nannies, nurses and caretakers
 - 20% duties rule
 - Overtime over 9 or 45; no double time



Overtime

- California

- Other domestic workers (live in and live out): butlers, chefs, gardeners, drivers, tutors, housekeepers, guards, assistants, etc.

- Live out:

- overtime (1.5 times the regular rate of pay) for hours worked over eight in a day or 40 regular hours in a workweek;
 - overtime for the first eight hours worked on the seventh consecutive day of the workweek (depending on the hours spread over the workweek);
 - double time (2 times the regular rate of pay) for hours worked over 12 in a day; and
 - double time for hours worked over eight on the seventh consecutive day of the workweek.

- Live in:

- overtime for hours worked over nine in a day;
 - overtime for the first nine hours worked on the sixth and seventh consecutive day of the workweek; and
 - double time for hours worked over nine hours on the sixth and seventh consecutive day of workweek.

Minimum Wage and Overtime

- Hawaii
 - Overtime after 40 hours in a work week (44 for live-in)
- Illinois
 - Minimum wage and overtime over 40
- Massachusetts
 - Overtime after 40 in a work week
- Nevada
 - Minimum wage including for sleep time and meal breaks if on duty
 - Overtime after 40 in a work week
 - Excludes live-in employees
- New York
 - Minimum wage plus overtime after 40 in a workweek (44 for live-in employees)
- Oregon
 - Minimum wage plus overtime after 40 in a workweek (44 for live-in employees)

Meal Breaks and Rest Periods

- California
 - Personal attendants
 - Not mandated (optional)
 - Other domestic workers
 - Apply general state rules (30-minute meal breaks and 10-minute rest periods)
- Illinois
 - 20-minute meal break for every 7 ½ hours worked



Day(s) of Rest

- Illinois
 - 24 hours of rest in a work week which should coincide with their regular day of worship (part-time employees (20 hours or less) excluded)
 - Overtime if they voluntarily agree to work on their day of rest
- Massachusetts
 - 24 consecutive hours if work at least 40 hours per week (overtime if they voluntarily agree to work on their day of rest)
- Nevada
 - 24 hours each week and 48 hours each month if work at least 40 hours per week
 - Can waive in writing

Day(s) or Hours of Rest

- California
- New York
 - At least one day of rest per week, which can be waived (must pay overtime)
 - Should coincide with regular day of worship, if there is one
- Oregon
 - One day of rest, but pay overtime if they work
 - Eight hours time off during a 24-hour period if live-in employee
 - Space with adequate conditions for uninterrupted sleep



Pay Stubs and Recordkeeping

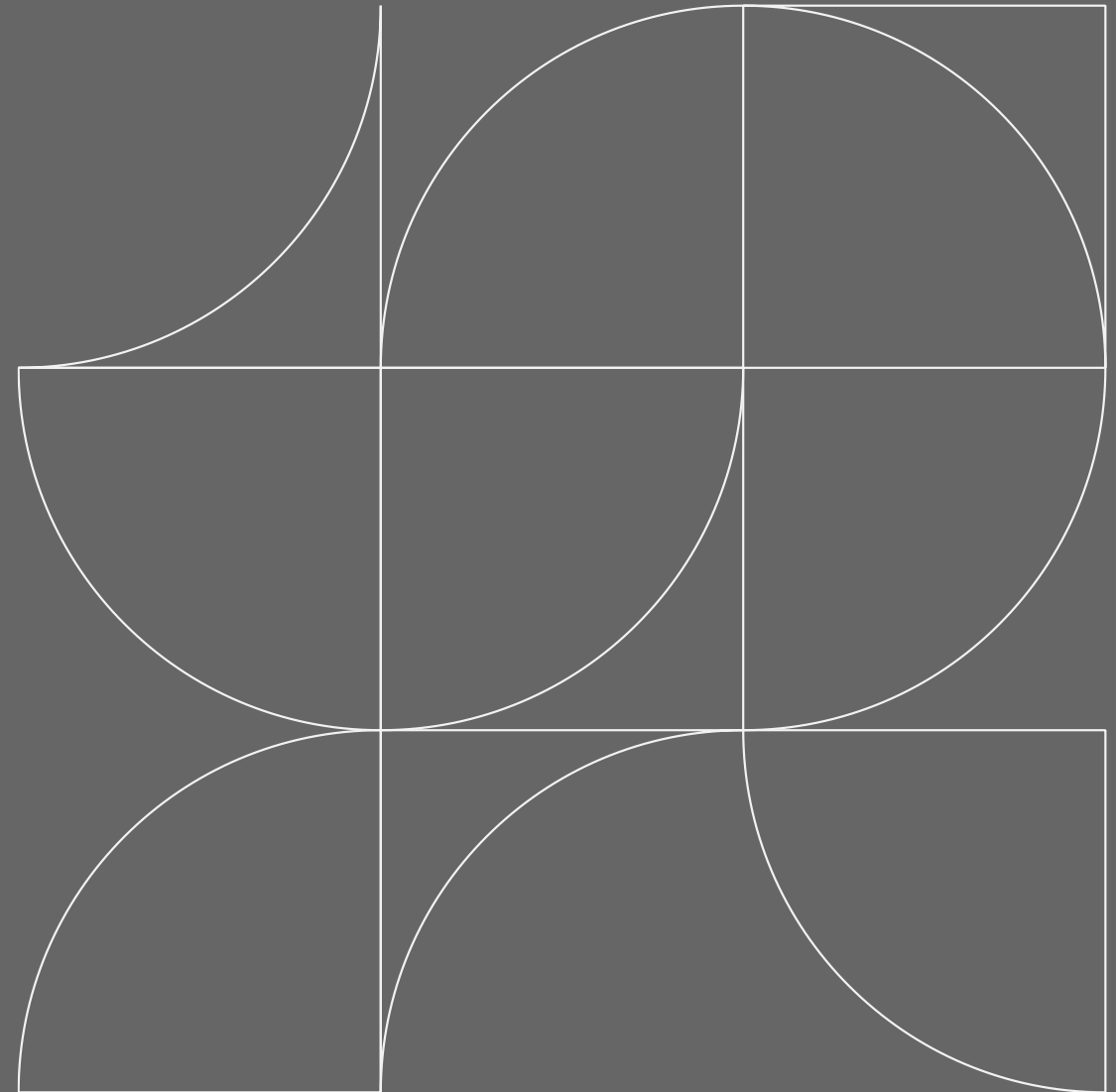
- California
- Hawaii
 - Rates of pay; total hours; employer name and address
- All families should maintain accurate and timely wage and hour records
 - Massachusetts
 - 3-year records retention

Overall Wage and Hour Best Practices

- Implement proper time keeping and final pay practices
- Ensure legally compliant wage statements
 - a payroll services provider typically will not do that for the employer
- Paying properly for travel
- Meal breaks and rest periods



Leaves, Benefits and Other Legal Considerations



Leave, Paid Sick and Other Protected Benefits

- California
 - Paid sick (consider local ordinances)
 - Pregnancy disability leave
 - Unemployment and workers compensation insurance
- Illinois
 - Pregnancy disability leave
- Massachusetts
 - 8 weeks of maternity leave for the birth of adoption of a child
- New York
 - Three paid days off after one year of employment
 - Unemployment and workers compensation insurance
- Oregon
 - Three personal leave days each year if work an average of at least 30 hours per week during previous year

Terminating Employees

- California
 - State mandated requirements
- Nevada
 - Live in employees – if without cause, must written notice and a minimum of 30 days of lodging at the employer's home or an off-site location

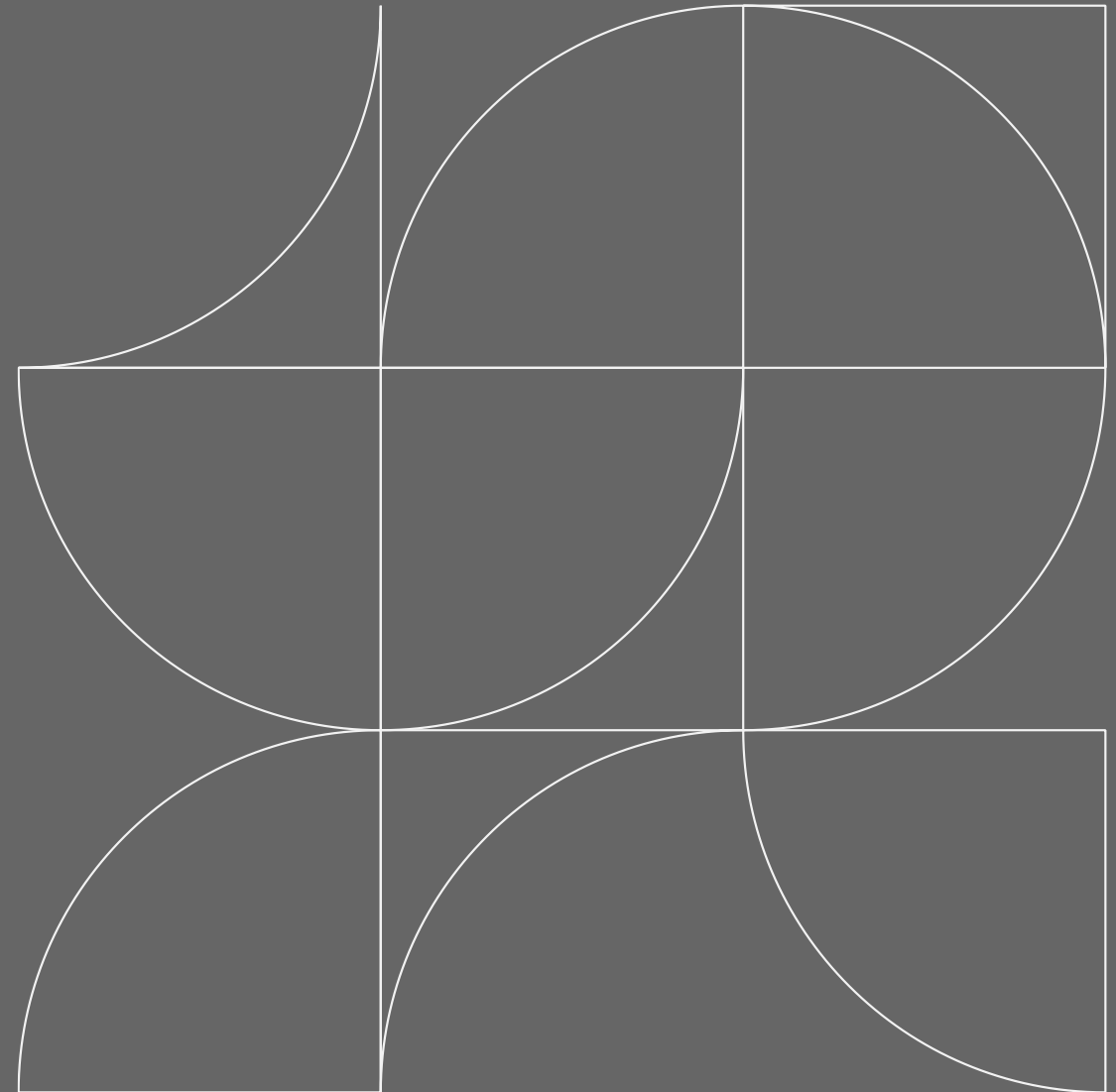


Harassment, Discrimination and Retaliation

- Protections against harassment, retaliation and/or discrimination
 - California
 - Connecticut
 - Hawaii
 - Illinois
 - Massachusetts
 - Oregon
- Policy
- Investigation



Employment and Confidentiality Agreements



Unique Privacy and Safety Interests

- Property, children and privacy
- Consider
 - Criminal history background checks
 - Strongly worded and carefully crafted confidentiality agreements
 - Arbitration agreements
 - Automobile insurance and other protections if the employee will drive while working



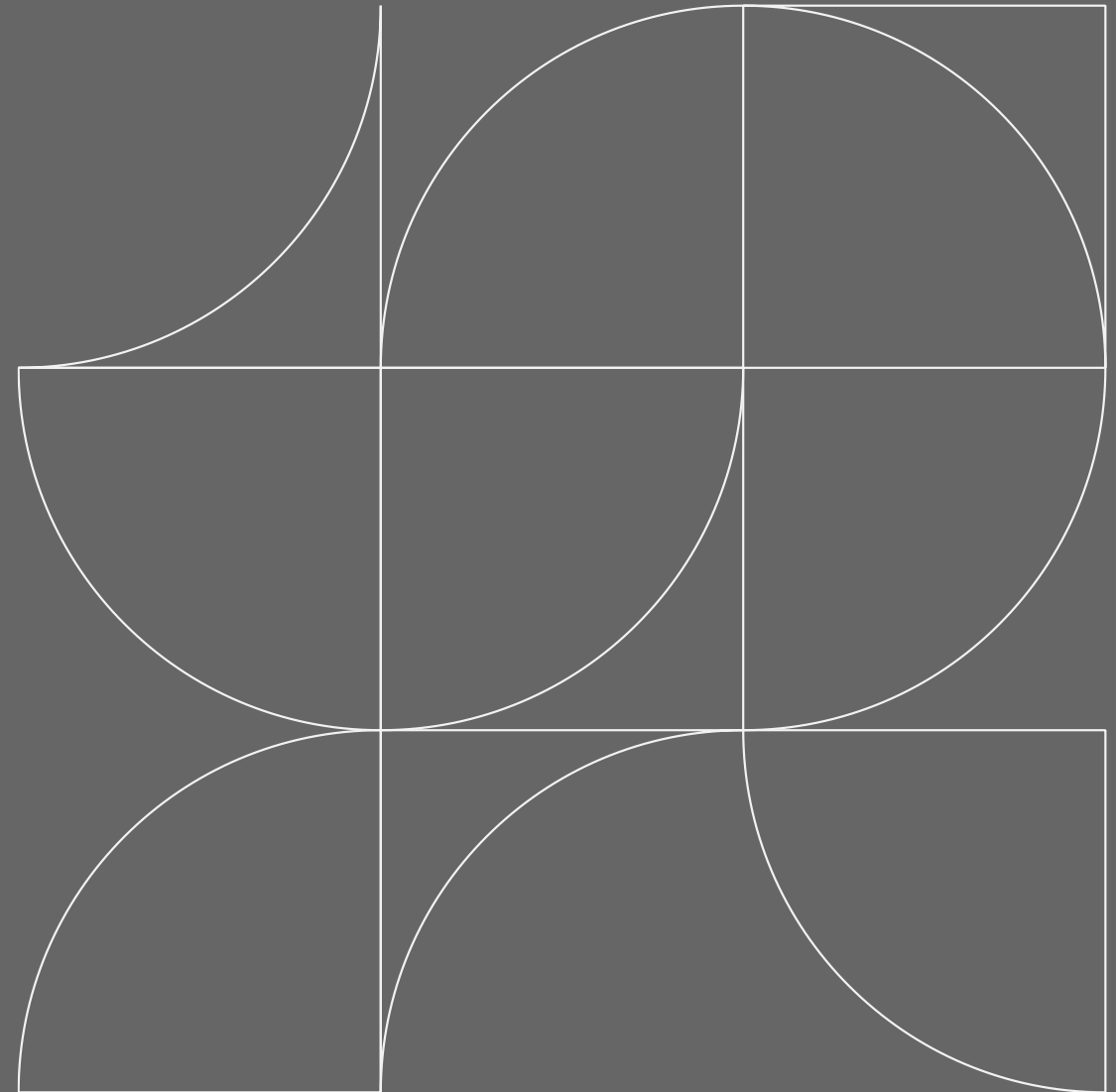
Employment Agreements and Notices

- Always consider an offer letter outlining key terms
- California's Wage Theft Notice and other onboarding requirements
- Massachusetts
 - Must have a written employment agreement that includes specific items of information (e.g., rate of pay, job duties, benefits, process for addressing grievances, right to workers compensation, etc.)
- Nevada
 - English or other language understood by the employee
 - Must include specific items, including job duties, notice of all federal and state laws that apply to them, workdays, hours of work, and break times, rates of pay, applicable live-in employment conditions, etc.
- New York
 - Written notice on workplace policies including sick leave, vacation, holidays, hours of work, among others

What Should Families Do Next?

- Manage issues as to the homeowner's general liability policy and coverage for use of vehicles by domestic staff
- Ensure the security of video, network and financial systems and records (and potential bonding of the worker)
- Maintain control over family photographs, videos, images, and information
- Manage issues related to health screening and drug testing of caregivers
- Consider arbitration and other employment agreements
- Consider bonding
- Check insurance and workers compensation coverage

Closing Thoughts



Closing Thoughts

- Know the law(s) of the state where the employee will perform any duties (e.g., consider travel)
 - Wage and hour, meal and rest periods, benefits, and other employment laws
 - Tenant laws (for anyone living on site)
- Ensure compliance with immigration laws
- Pay records and other recordkeeping requirements
- Secure the appropriate insurance coverages (e.g., liability, workers compensation, unemployment, automobile, etc.)
- Implement key policies and procedures (e.g., harassment, leave, etc.)
- Appropriate agreements to protect interests (e.g., confidentiality, arbitration)

**thank
you**

contact information

For more information please contact:

Christian Rowley

email: crowley@seyfarth.com

Jennifer Mora

email: jmora@Seyfarth.com