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BKCG

BURKHALTER KESSLER CLEMENT & GEORGE LLP

AI Is Undoubtedly A Powerful Tool, But Don't Fire Your Lawyer Just Yet

Unless you have been living under a rock for the past few years, you are undoubtedly familiar with Artificial Intelligence (AI) and the many ways in which it has transformed the way we live and work. Like most industries, the legal world and lawyers are not immune from AI's powerful impacts. It is now commonplace for potential clients to inform their lawyers during initial consultations which causes of action (i.e., theories of liability) they believe would best fit the facts and what remedies they think are available to them. Further, many courts throughout the country (perhaps even most of them) use specialized legal-focused AI platforms to analyze the parties' legal filings to, among other purposes, check the accuracy of the authorities that the parties cited.

To be sure, AI is a powerful tool that has brought substantial benefits to the legal profession and to the practice of law. For example, when used properly and through an appropriate legal-focused AI platform, AI can significantly enhance and expedite legal research, it can summarize lengthy documents, assist lawyers with document review to find that "needle in the haystack" among thousands of lengthy documents, and it can even help lawyers draft motions and other legal documents. Used well, AI is changing the legal profession in many positive ways that have already and will continue to bring greater efficiency and more effective advocacy to clients.

However, AI is not a "silver bullet" that can replace your lawyer (and while that may sound self-serving given that it is coming from a law firm that provides legal services in exchange for money, we can assure you that it is very true). There are several substantial drawbacks and risks one should be aware of when nonlawyers elect to use AI to "play lawyer" instead of hiring and listening to one, as detailed below.



First, the expression that "the devil is in the details" is likely more applicable to the law than to anything else, as the law is rife with nuance and exceptions (and sometimes even exceptions to the exceptions). Those nuances are often lost on both AI and the layperson interpreting it. For example, I recently worked with an employer client that, before engaging with BKCG, relied upon a non-legal AI platform to advise her regarding how to respond to a disabled employee's request for a disability leave as an accommodation. Whether due to faulty AI prompting, an AI mistake (which happens, as detailed below), or poor interpretation of the AI's results, the employer failed to appreciate the material difference between an employee seeking a work restriction accommodation (e.g., a lifting or standing limitation) versus a disabled employee who temporarily cannot work at all. As a result of that mistake and based on the AI-provided "advice", the employer repeatedly demanded that the employee provide specific details as to the type of work limitation the employee needed, which information the employee struggled to provide because the accommodation she required was a leave permitting her to avoid working completely for a period of time, not a work restriction.

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2026 Changes To Signing Bonuses

Changes to the Business and Professions Code that became effective on January 1, 2026, impact employers and employees alike regarding signing bonuses. In competitive industries, a signing bonus is often used as an incentive to attract sought-after talent. Prior to January of this year, a signing bonus often was contingent upon extracting from the employee a commitment to staying with the company for an agreed-upon amount of time. If the employee left before that time expired, the company's agreement could allow the company to demand repayment of the entire signing bonus. Now the state of the law in California is entirely different.

On January 1, 2026, California Business and Professions Code § 16608 became effective. It is a "stay-or-pay" statute that sharply restricts an employer's ability to make an employee repay money or absorb a penalty when their employment ends.

To keep a signing-bonus repayment obligation enforceable for post-2026 agreements, the arrangement must fit a "safe harbor" provision set forth in Section 16608(b)(2)(D). That exception covers a discretionary or unearned monetary payment (including a financial bonus) at the outset of employment that is not tied to specific job performance – but only if **all five** of the following conditions are met: (continued on page 6)

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Because the employee could not satisfactorily respond to the employer's requests for more information, the employer terminated the employee, resulting in an expensive (and predictable) wrongful termination lawsuit that was both challenging and costly to defend. When I first asked the client why she terminated the employee, the client was adamant that the termination was lawful because her AI platform had advised her how to proceed (incorrectly, I can assure you). This is one of many examples in which clients who relied upon AI, rather than a lawyer, found themselves in legal hot water.

Another common problem with AI is that the standard AI platforms that non-lawyers utilize differ significantly from the types of legally focused, closed-universe AI platforms available to lawyers, and for which access lawyers pay. One of the most significant differences is that the nonlawyer AI platforms may "hallucinate" legal authorities that simply do not exist. BKCG has litigated against parties that cited authorities in legal briefs that we could not find, and which ultimately turned out to be fictional authorities hallucinated by AI. Critically, this hallucination problem does not exist in the closed universe legal-focused AI platforms that BKCG uses, but hallucinated authorities remain a significant problem that nonlawyers (and attorneys who fail to pay for legal-specific AI platforms) experience when using AI platforms that were not designed specifically for attorneys.

Third, all AI, including even legal-specific AI platforms, makes mistakes, and does so more frequently than people would suspect. Sometimes AI mis-analyzes the law, and other times it completely misses a controlling authority in its research, which can result in an incorrect analysis. When AI makes mistakes when used by a competent lawyer, that attorney often possesses sufficient knowledge and experience to recognize the error and re-prompt the AI or move forward without AI's assistance at all. However, when AI errs after receiving a prompt from a nonlawyer, most laypersons fail to recognize the error and instead rely on it, frequently to their detriment.

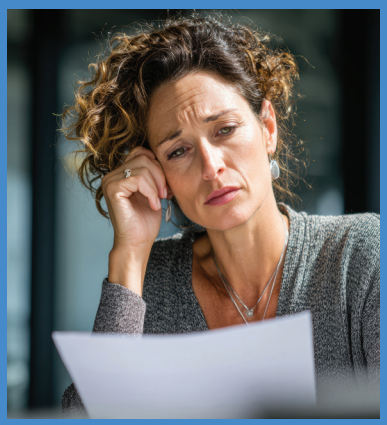


Fourth, most nonlawyers do not know or appreciate that their AI searches and prompts are not confidential. As such, if a nonlawyer contemplating litigation (or threatened with litigation) were to ask AI about the applicable law or strategy after disclosing otherwise confidential information (i.e., the "bad facts"), those inquiries would ultimately be discoverable by the other side if litigation ensued. Fortunately, AI inquiries conducted by lawyers on legal-specific AI platforms are shielded from disclosure by the attorney work product doctrine, so this concern poses no risk when the platform is used properly by an attorney.

As demonstrated above, AI is a powerful tool that can be useful to both nonlawyers and lawyers. However, its use among nonlawyers can pose significant risks, and as such, AI certainly is not a substitute for a skilled attorney.

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Wrongful Termination By Another Name? *Hearn v. PG&E* Puts Employer Investigation Reports On Trial



Every contested termination generates a paper trail: investigation reports, emails seeking authorization to terminate, and the termination letter itself. In *Hearn v. Pacific Gas & Electric Co.* (2025) 108 Cal.App.5th 301, review granted May 14, 2025, S289581, the California Supreme Court will decide whether that paper trail can support a standalone defamation verdict against the employer, or whether an employee whose only injury is the loss of his job must instead pursue a wrongful discharge claim. The stakes are illustrated by the case itself. A jury found that PG&E did not fire lineman Todd Hearn in retaliation for his safety complaints, yet awarded him $2.16 million in defamation damages based on an internal investigation report that, the jury found, contained statements that were not substantially true and were made with malice, defeating the common interest privilege that ordinarily protects internal personnel communications. A divided Court of Appeal reversed, holding that Hearn's defamation claim was wrongful termination by another name because it arose from the same conduct that produced his discharge and sought damages flowing solely from the loss of his job.

The Supreme Court granted review on that precise question, and its grant order makes the case unusually important right now. The Court ordered that the published Court of Appeal opinion may be cited pending review, not only for its persuasive value but also to establish a conflict in authority that permits trial courts to choose between sides of the conflict. The conflict runs through the Supreme Court's own employment tort precedents: the rule of *Hunter v. Up-Right, Inc.* (1993) 6 Cal.4th 1174, that a tort claim fails where the tortious act was merely the employer's means of accomplishing a termination, and the admonition in *Lazar v. Superior Court* (1996) 12 Cal.4th 631, that employers enjoy no special immunity from traditional tort liability. Until then, an employer sued for defamation by a fired employee has a ready answer: from the first motion in the case, it can point to *Hearn* and ask the court to follow it and dismiss the claim.



Whatever the outcome, *Hearn* already carries a warning. The malice finding that stripped PG&E of its privilege grew out of the investigation itself: an investigator who announced his conclusion would differ from an earlier report before finishing his work, a final report that omitted known exculpatory facts, and internal communications suggesting the result was predetermined. And the Court of Appeal all but drew the roadmap for future plaintiffs, noting the outcome may have differed had Hearn shown reputational harm independent of his discharge or publication beyond the termination process. Employers should treat every investigation report as a potential trial exhibit, keep findings tethered to documented evidence including mitigating facts, and confine statements about departed employees to what the evidence supports. We are tracking the case and will report when the Court rules.

Please contact Tesleem Azeez at tazeez@bkcglaw.com or (949) 975-7500 if you have any questions about this article, or any other related matter.

California's "Captive Audience" Ban Is On The Books – And On Hold

If you have ever gathered your employees for a mandatory meeting to share the company's views – on a ballot measure, a piece of legislation, or a union-organizing drive – a California law passed in 2024 was designed to change how you can do that. But the story has a twist: as of this summer, a federal court has blocked the state from enforcing it. Here is what the law says, why it is currently on hold, and what a cautious employer should do in the meantime.





What SB 399 does

Effective January 1, 2025, SB 399 – the "California Worker Freedom from Employer Intimidation Act" – was added to the Labor Code as Section 1137. It targets what are commonly called "captive audience" meetings.

The core rule: an employer may not discharge, discipline, retaliate against, or take any other adverse action against an employee – or threaten to – because the employee declines to attend an employer-sponsored meeting, or declines to listen to employer communications, whose purpose is to convey the employer's opinion on **religious or political matters**. An employee who is on the clock but chooses not to attend must still be paid during the meeting.

The definitions are what make this broad. "Political matters" is defined to include not just elections, political parties, legislation, and regulation, but also "the decision to join or support any political party or political **or labor organization**." That language sweeps in mandatory anti-union meetings. "Religious matters" covers religious affiliation and practice and the decision to join or support any religious organization. "Employer" and "employee" are defined broadly, reaching businesses of essentially any size along with their agents and representatives. There is no small-business exemption based on headcount.

Penalties and enforcement

The law carries real teeth. An employer that violates it faces a civil penalty of **$500 per employee, per violation**. The Labor Commissioner can investigate and issue citations, and – importantly – an employee who suffers a violation can file their own lawsuit for damages, including punitive damages, and seek injunctive relief. That private right of action is what most exposes employers to litigation.

What is still allowed

SB 399 does not muzzle ordinary workplace communication. It expressly permits employers to communicate information they are legally required to share, and information employees need to do their jobs. It also does not apply to legally mandated training – for example, civil-rights or workplace-safety training. Narrow exemptions exist for certain religious organizations, political parties and organizations (as to their own political message), educational institutions delivering coursework, and nonprofit training programs.

The catch: the law is currently enjoined

Here is the development every employer needs to know. On September 30, 2025, the U.S. District Court for the Eastern District of California issued a preliminary injunction in *California Chamber of Commerce v. Bonta*, blocking the state from enforcing SB 399. The court found the business groups likely to succeed on two theories: that the National Labor Relations Act preempts the law by regulating conduct the federal labor board alone may address, and that the law is a content-based restriction on employer speech that likely violates the First Amendment.

The state appealed. As of early July 2026, the injunction remains in place, so SB 399 **cannot currently be enforced against California employers.** The Ninth Circuit heard oral argument on July 8, 2026, with the state arguing the law regulates conduct rather than speech, and a decision from the Ninth Circuit will likely take several months.

Practical takeaways

- **Do not treat the law as dead.** The injunction is preliminary, and the Ninth Circuit could reverse it and revive enforcement – potentially on short notice. Build your practices to comply, so a ruling does not catch you flat-footed.
- **Know which meetings are at risk.** Mandatory meetings expressing company views on unionization, ballot measures, legislation, or religious matters are the target. Meetings covering job duties, legally required information, and compliance training are not.



- **Consider making sensitive meetings voluntary.** If SB 399 is ultimately upheld, the safest course is to avoid disciplining anyone for skipping a political or religious-topic meeting – and to keep paying on-the-clock employees who opt out.
- **Loop us in before a union campaign or political-issue meeting.** These situations carry overlapping federal and state rules, and the legal landscape is shifting month to month.

The rules governing mandatory workplace meetings are in flux, and the exposure – a per-employee penalty plus the risk of an employee lawsuit – is significant if the law is upheld. If you are planning any meeting where the company intends to share its views on political, labor, or religious topics, contact our office first.

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California Initiates Legal Action Against State Farm For Mishandling Of LA Wildfire Claims



It has been about 22 months since the January 2025 fires ravaged the Palisades, Altadena, and surrounding communities. Despite the amount of time that has elapsed, many property owners who submitted claims to their first-party property carriers are still waiting for proper resolution of their claims. In many instances, the benefits due under their insurance policies simply have not been paid. It is a nightmare for those who lost their homes or had damage to their homes from the smoke/soot/ash/chemical contamination from the fires. The additional living expense coverage, which picks up the cost of a rental home while the damaged home is being repaired, has likely been depleted by now. Complaints from policyholders led the California Department of Insurance through the Office of County Counsel for Los Angeles County ("LAC") to investigate. Based on their findings, LAC filed a lawsuit against one carrier, State Farm, on August 31, 2026. Other investigations are ongoing. The lawsuit alleges, among other things, violation of California's unfair competition and false advertising laws. LAC seeks millions of dollars in penalties and corrective action by State Farm.

In fashioning its lawsuit, LAC's allegations compare State Farm's pre-fire advertising claims to California consumers with what its investigation found as to how claims were actually handled. For instance, in its advertising, State Farm says it will provide timely, thorough, full value coverage, claims handling, and rebuild support to its customers. It will also investigate claims promptly and fairly and cover the costs for smoke remediation and hygienist testing to determine the proper scope of loss. There is even a 2024 Super Bowl commercial with Arnold Schwarzenegger rescuing puppies and a pregnant woman from a fire and delivering the signature "like a good neighbor" line. State Farm advertises these commitments when selling and renewing coverage with its customers. And, of course, there is the policy language that specifically provides coverage for fire as well as smoke.

In the lawsuit, LAC alleges that the advertisements do not match up with the claims handling of the January 2025 wildfire claims. According to the Complaint, the LAC investigation found a pattern of violations of the California Insurance Code. The violations include: 1) slow and inadequate investigations; 2) systematic underpayment of claims; 3) serial reassignment of adjusters to insureds; 4) suppression of smoke damage claims including failure to conduct proper investigations; 5) delayed and inadequate communications; and 6) misrepresentations of the statute of limitations. As a result, LAC alleges violations of California's Unfair Competition Law, Section 17200 of the Business & Professions Code, which provides that "unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."



LAC's lawsuit contends that the statements in State Farm's advertising are untrue or misleading. Further, that the statements were made with the intent that consumers rely on those representations when deciding whether to purchase a policy from them. Given that State Farm allegedly has 11,300 policyholders in the fire areas who filed claims after the fires and, after reviewing a sample of 220 claims that had 398 violations of state law, the lawsuit could have a profound impact for insureds in their fight to get the policy benefits they purchased.

In the event you are pursuing a first-party property claim against your insurer for your home or business, it is important to keep in mind the insurance code requirements including how quickly carriers must respond to claimants, a carrier's responsibility to conduct a full and thorough investigation, and a carrier's obligation to accurately disclose all coverage benefits.

Please contact Keith Butler at kbutler@bkcglaw.com or (949) 975-7500 if you have any questions about this article, or any other related matter.

Introducing BKCG's Newest Associate



BKCG is pleased to announce the addition of Vivian Tran as an associate attorney to our expanding team. Vivian earned her B.A. in Criminal Justice with a minor in Philosophy from Cal State University, Fullerton and her J.D. from Chapman University's Dale E. Fowler School of Law. She is admitted to practice law in the State of California.

Vivian brings three years of experience representing clients in employment matters and various tort claims. She is excited to join the firm and eager to utilize her skills and experience to support BKCG's clients with their business and employment needs.

Closing The CIPA Loophole: New Law Curbs The Website Lawsuit Boom



For years, a decades-old privacy statute has fueled a wave of lawsuits against California businesses that do little more than run a website. A new law changes that. If your company operates online, you should understand what shifts on January 1, 2027.

The California Invasion of Privacy Act, or CIPA, dates to 1967. The Legislature passed it to stop unauthorized eavesdropping and surveillance of private communications. It bars wiretapping, recording confidential conversations without the consent of every party, and using pen registers or trap and trace devices without a court order. These rules live in Penal Code sections 630 through 638.55.

The pen register provisions became the problem. Section 638.50 defines a pen register as a device or process that captures dialing, routing, addressing, or signaling information, but not the content of a message. The word "process" carried the weight. Though the internet did not exist when CIPA was created, opportunistic plaintiffs have since successfully argued that ordinary website software fit the definition.

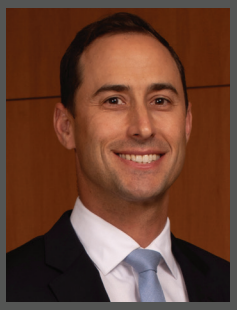
That reading opened the floodgates. Section 637.2 lets any injured person recover the greater of $5,000 per violation or three times actual damages. Courts held that a plaintiff need not prove any real harm to collect the $5,000 minimum. Serial plaintiffs seized on this. They filed thousands of lawsuits and demand letters against companies using common tools such as the Meta Pixel, Google Analytics, chat widgets and other tracking technologies. Many businesses settled to avoid the risk, whatever the merits of the claim.

Senate Bill 690 is the Legislature's response. It was signed into law on August 28, 2026, and becomes operative on January 1, 2027. While it was introduced as a broad reform and would have provided sweeping relief, it, like many other bills, was reduced to a narrow fix before being signed into law. SB 690 operates through a single mechanism: it amends CIPA's civil-remedy section, Penal Code § 637.2, to eliminate the private right of action for pen-register and trap-and-trace claims that arise from conduct on a website, online application, or mobile application. By shifting enforcement of certain website and app claims from private plaintiffs to the Attorney General, SB 690 effectively shuts the door for private, serial plaintiffs.



Importantly, SB 690 is retroactive and most beneficial for those businesses now engaged in such litigation. The amendment applies to any pending claim in an action commenced within the two years preceding the operative date, meaning it could reach actions filed on or after January 1, 2025.

The landscape is better, but it is not risk-free. SB 690 targets the pen register provisions and leaves the rest of CIPA intact, including the wiretapping and eavesdropping sections. Expect private plaintiffs to pivot to those theories and to other privacy laws. The reform closes the easiest path to a quick payout. It does not end privacy litigation.



Businesses should act now. Audit your website and inventory every tracking tool in use. Update your privacy policy to disclose each one. Add a consent mechanism that captures affirmative user consent before tracking begins. If a pre-suit notice arrives, assess the technology used and the notices provided, and document your response.

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2026 Changes To Signing Bonuses (continued from page 1)

1. Separate agreement – the repayment terms are set out in a document separate from any primary employment contract.

2. Right to counsel – the employee is notified of the right to consult an attorney and given at least five business days to do so before signing.

3. Interest-free, prorated, less than 2-year retention – any early-separation repayment bears no interest and is prorated over the remaining term of a retention period that cannot exceed two years from receipt of the payment.

4. Deferral option – the worker may elect to defer receipt until the end of a fully served retention period, with no repayment obligation.

5. Qualifying separation – the early separation was at the employee's sole election or was "for cause" due to the employee's misconduct.

The newly enacted Code section makes it clear that repayment of a signing bonus can never be accelerated or be demanded in full if the employee leaves partway.

Under the new law, a signing-bonus repayment or clawback provision that does not fit the above statutory exception is **void and unenforceable** if entered into on or after January 1, 2026. And requiring the employee to agree to such a provision triggers liability under Labor Code Section 926 (a companion to Section 16608), which creates a private right of action for the employee to pursue individual claims or a representative claim on behalf of "similarly situated" employees. The penalty for violating Section 16608 is actual damages suffered by the employee or $5,000 per employee (whichever is greater) along with injunctive relief and reasonable attorney's fees and costs.



In sum, if your business extends signing bonuses to new hires, have legal counsel immediately review the written agreement so you can ensure compliance with new and restrictive laws in California.

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