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# New Year, New Employment Laws for 2023!

January 2023 Newsletter

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## **Carrera Workplace Solutions!**

**VC Workplace Solutions is now Carrera Workplace Solutions! Yes, we changed our name, website, and email address. For information on how we can help you with workplace investigations and trainings, see [www.carreraworkplace.com](http://www.carreraworkplace.com). Or email us at [karen@carreraworkplace.com](mailto:karen@carreraworkplace.com).**



For over 30 years, Karen Carrera has put her clients first. Before becoming an investigator and trainer, Ms. Carrera was a career Plaintiffs' side employment law litigator at Villegas Carrera, Inc. She is a decorated civil servant and professional. Last year, she was honored by the County of Marin with the Spirit of Marin Award for Business Professional of the Year and by The Hon. Jared Huffman for the Certificate of Special Congressional Recognition.

A frequent commentator on the Bay Area Spanish language news affiliate, Telemundo, Karen is a tireless, caring, and compassionate professional with a passion for doing what's right. As a Bilingual Attorney, Investigator, Trainer, and DEI Consultant, she is uniquely qualified to determine risk and see where employers are vulnerable to being sued by employees. Ms. Carrera has facilitated community outreach meetings with the Latino community and service agencies, as well as conducted bilingual trainings and drafted Spanish and English policy and self-help manuals. Before her longtime litigation employment law practice with Villegas Carrera, Ms. Carrera was a Deputy City Attorney and litigator with the San Francisco City Attorney's Office, where she filed lawsuits against property owners who violated San Francisco's housing, health, fire, and police codes. Ms. Carrera also formerly worked as the supervising attorney at Legal Aid of Marin and La Raza Centro Legal where she litigated employment and housing cases, and managed a diverse staff, including volunteers.

Ms. Carrera conducts workplace investigations for both public and private

employers in response to employee complaints of harassment, discrimination, retaliation, bullying, and other alleged employee misconduct. Ms. Carrera also provides diversity, equity, and inclusion (DEI), and harassment prevention trainings and consultations for corporations, government agencies, and individuals, in both English and Spanish. She holds a certificate from the Association of Workplace Investigators (AWI), and is an active member. She also holds a Diversity, Equity, and Inclusion Certificate from Cornell University School of Industrial and Labor Relations.



## **Telemundo 48 interviews Karen Carrera regarding possible WARN Act violations by Twitter.**

## **How to implement proper DEI programs**

In November 2022, I was fortunate to be asked to participate in a panel sponsored by the Bar Association of San Francisco along with Zoe De Geer from Rudy, Axelrod, Nieff, and Theodora Lee from Littler Mendelson. We discussed the risks associated with DEI programs.

Here are some key takeaways from that presentation:

To communicate inclusiveness to new hires, a manager of the workplace must take steps to dismantle any cognitive biases related to diversity. DEI strategies correct stereotypes or assumptions so employee recruitment, hiring, and retention can progress with equity and inclusivity in mind. Identifying these unconscious biases is crucial because, in our history, some members of traditionally non-marginalized groups have been perceived as more competent than those of marginalized groups who are equally competent and entitled to fair treatment.

A common subversive device is the use of microaggressions. Microaggressions can be difficult to identify if one has not experienced similar instances of discriminatory treatment, such as subtle comments linking one's identity to their ability, whether that be ethnic, racial, sexual orientation-based, etc. Microaggressions are indirect, subtle expressions of bias directed at an individual due to their racial group or other characteristics, and while not always intentional, the single and cumulative psychological effect of pervasive microaggression usage can be devastating. However, not all biases are unconscious, and explicit bias is sometimes manifested deliberately also through microaggressions, as well as through comments, jokes, or other improper conduct in the workplace.

In our current day and age, change is inevitable, and, in the workplace, it demands a broader understanding of inclusion and the perception of self. Understanding identity is crucial for effective DEI management, and the risks involved in improper workplace management must be accounted for in promoting a modern desirable workplace environment for your employees. Thus, leadership by example is pivotal in this sense — a lack of follow-through on the part of the manager is a pitfall of many DEI plans.

The manager must promote an environment of inclusivity in the workplace, and

lack of support can lead to feelings of isolation and poor performance among workers. Thus, a properly implemented plan of action must be established by leadership to maintain policies of diversity, equity, and inclusion consistently and comprehensively, and to promote a shared feeling of belonging in the workplace.

To promote a shared feeling of belonging among all workers, it is important to rethink which groups you are addressing and which you are leaving out. For example, a baseline policy should reflect equitable pay for members of traditionally marginalized groups.

Understanding your workforce of current and potential employees and ensuring that all groups have a say in creating and implementing diversity plans also demonstrates a level of commitment on the part of leadership. Age, Gender, Gender Identity, Gender Expression, Ethnicity, Race, Social Class, Income Level, Cultural/Religious Background, Sexual Orientation, and Disability are all examples of potentially marginalized identity factors that could be impacted in the workplace.

Also, of note, it is important to be aware of reverse discrimination claims in which a member of a non-minority group states they have been discriminated against. Keep in mind that employers cannot make employment decisions based on a protected characteristic, such as an individual's accent.



Below, you will find a list of DEI Do's and Don'ts to properly manage the workplace and to promote an environment of inclusivity:

### **Things to Consider for Proper DEI Management:**

- Tailor DEI program to your organization
- Make employment decisions based on skill, qualifications, and experience
- Evaluate hiring and compensation policies and procedures
- Understand that one size does not fit all
- Expand talent pool considered
- Encourage diverse referrals
- Protect individual employee self-identification information from wide access and use
- Analyze job posting language
- Select applicants for consideration without regard to protected characteristics
- Hire and promote based solely on business-related criteria
- Analyze areas of opportunity and track changes over time
- Include a focus on inclusion and ensure your diverse workforce has a voice and can make an impact
- Consider conducting a Climate Assessment of the entire staff
- Consult Legal Counsel
- Allow employees to create affinity and support groups

### **Things to Avoid - Improper DEI Management; Do not:**

- Screen candidates based on a protected class
- Exclude applicants from the pool because of their protected characteristics
- Make any employment decision based on protected characteristics
- Replace a qualified non-diverse candidate with a diverse candidate
- Implement a racial quota system
- Offer monetary incentives to hiring managers or leadership

- Alter business-related criteria to match a candidate
- Focus on just diversity
- Rush a DEI Program
- Overstate commitment to DEI
- Inadvertently communicate an unlawful intent or practice

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## Happy New Year from Carrera Workplace Solutions! Why Carrera Workplace Solutions?

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Bilingual services in Spanish including interviewing, counseling, and training  
Certified by the Association for Workplace Investigators  
Certified in DEI by Cornell University School of Industrial and Labor Relations.  
Actual litigation experience in matters involving workplace harassment  
Dedicated and responsive client relations.

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## What's new for 2023. Here is a preview of new California Employment Laws for 2023

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### 1.) SB 523 Reproductive Health Decision Making

SB 523 is intended to increase the ability of Californians to exercise full control over their reproductive decisions and to expand coverage and decrease access barriers to reproductive health services. SB 523 expands the Fair Employment and Housing Act (FEHA) to include "reproductive health decision-making" in the list of classifications protected by the FEHA. Reproductive health decision-making means, without limitation, "a decision to use or access a particular drug, device, product, or medical service for reproductive health."

As a result, beginning January 1, 2023, the FEHA will prohibit employment-related discrimination, harassment, and retaliation based on employees' reproductive health decision-making. SB 523 also makes it unlawful for an employer to require, as a condition of employment, continued employment, or a benefit of employment, the disclosure of information relating to an applicant's or employee's reproductive health decision-making.

### 2.) AB 1041 & AB 1949: Leaves of Absence - What it means for you and your loved ones

Under the California Family Rights Act (CFRA) and California's own paid sick leave

law, AB 1041 expands the basis for whom an employee is entitled to take a leave of absence. An employee is entitled to take CFRA leave or paid sick leave for one "designated person" per 12-month period.

Also signed by Governor Newsom was AB 1949, which qualifies bereavement leave as a protected leave of absence. Employees may take up to five days of bereavement leave upon the death of a family member, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. The law applies to all private employers with five or more employees and all public employers.

Employers can require documentation to support the leave, and the leave must be completed within three months of the family member's death. Bereavement leave may be unpaid, but employees can use their existing available leave (e.g., vacation, PTO, sick leave, etc.).

### 3.) AB 2188 – Cannabis use discrimination under California's Fair Employment and Housing Act (FEHA)

AB 2188 adds cannabis protection to California's discrimination law. Employers are now prohibited from discriminating against an employee or job applicant who chooses to use cannabis away from the workplace and while off the job. Employers are still entitled to conduct pre-employment drug testing and to refuse the hiring of a job candidate based on a valid pre-employment drug screening that does not screen for non-psychoactive cannabis metabolites. **This new law does not permit an employee to possess, be impaired by, or use cannabis while on the job.** This new law also does not affect the rights or obligations of an employer to maintain a drug-free workplace.

### 4.) SB 1162 - Available and Accountable Pay

SB 1162 requires employers to make and provide their employees and job applicants with adequate pay scale information, as well as expands the reporting requirements for California's pay data. Under this law, employers must provide a pay scale to an employee if requested by the employee for the position the employee is working. Additionally, employers with 15 or more employees must include pay scale information in any job posting for all open positions.

This new law will also revise and expand the state of California's pay data reporting requirements applying to employers with 100 or more employees. Employers must report the median and mean hourly rate within each job category for each combination of race, ethnicity, and sex in the report, in addition to reporting the number of employees by race, ethnicity, and sex by job-title categories and pay bands.

### 5.) SB 1044 - Guarantees for Workplace Safety

In the event of an "emergency condition" as defined in the law, this new law prohibits an employer from taking or threatening adverse action against the employee for refusing to report to or leaving a workplace due to the employee's reasonable belief in the unsafety of the employee's workplace.

SB 1044 prohibits the employer from preventing any employee from accessing their mobile device or other communications device to request emergency assistance or communicate with someone to verify their safety or to assess the safety of a given situation.

### 6.) COVID-19 Related Laws

AB 2693 extended the notice requirements for COVID-19-related exposure to

January 1, 2024, as well as made several changes to California's current notice requirements, previously set to expire on January 1, 2023. Employers may now satisfy the notice requirements by publicly displaying a notice in the workplace of the potential exposure. This notice must remain posted for 15 days and contain the dates on which the COVID-19 case was first at the worksite within the infectious period. Finally, AB 2693 also removes the requirement for employers to report COVID-19 cases to their local health departments.

Additionally, AB 152 also extended the employee's eligibility to use 2022 COVID-19 Supplemental Paid Sick leave through December 31, 2022.

Along with the COVID-19 notice requirements, SB 1159 required employers to report COVID-19 cases to their workers' compensation carriers. This law also established a rebuttal workers' compensation presumption for workers that contracted COVID-19 under certain conditions, requiring that employers report COVID-19 cases to their workers' compensation carriers. Originally set to expire on January 1, 2023, AB 1751 extended the presumption to January 1, 2024.

On December 15, 2022, Cal/OSHA's Board adopted slightly more flexible COVID-19 Non-Emergency Standards ("CNS") to replace the current Emergency Temporary Standards. Although Cal/OSHA originally intended the CNS to be effective on January 1, 2023, the actual effective date depends on how quickly the CNS is filed with the Secretary of State (likely in January 2023). Until that happens, the current Cal/OSHA Emergency Temporary Standards ("ETS") remain operative.

#### 7.) Updated Consumer Privacy Regulations - How they impact you and your Workplace

The expiration of the California Privacy Rights Act (CPRA) (formerly the California Consumer Privacy Act (CCPA)) employment information exemption from most of the law's requirements will notably affect all covered employers. Effective January 1, 2023, CPRA-covered employers will have new obligations, including notice and disclosure requirements for employees and job applicants, including for employees to view, access, correct, and delete their personal information. Covered employers are advised to consult with their legal counsel to ensure that compliance policies and procedures are in place for 2023.

#### 8.) AB 257 & AB 1601 - Industry-Specific Measures

California has continued its practice of enacting employment laws specific to certain industries and sectors. AB 257 creates the Fast-Food Council within the Department of Industrial Relations. Composed of 10 members appointed by the Governor, the Speaker of the Assembly, and the Senate Rules Committee, the unelected Council will work to establish minimum wages, working hours, and satisfactory working conditions for fast food restaurants.

AB 1601 includes new requirements for call center employers, mandating that they follow the requirements of the California Worker Adjustment and Retraining Act (Cal/WARN) prior to relocating a call center to a foreign country. This law applies to call centers that employ or have employed within the preceding 12 months 75 or more persons.

#### Works Cited

Ward, James W. "New 2023 California Employment Laws." *HR Watchdog*, October 3, 2022. <https://hrwatchdog.calchamber.com/2022/10/new-2023-california-employment-laws/>.

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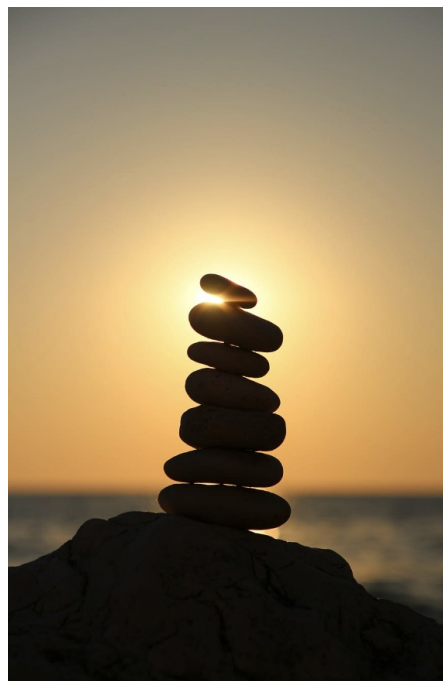
## Tips for Staying Centered in the New Year

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Here are some lifestyle tips to start the new year:

1. Stay connected. Prioritize staying connected with the people that ground you, whether it be your partner, friends, or family. If it is not possible to see them in person, give them a call or Facetime when you need to vent.
2. Practice gratitude. Try to be grateful for the little things, whether it be your health, time with family (physically or virtually), or having a safe place to lay your head. Make gratitude a daily practice by beginning every morning journaling or simply thinking about the top three things you are thankful for.
3. Take breaks. Do not be afraid to excuse yourself in the middle of the bustle to take a moment for yourself. A few easy ways to tune out and decompress include scribbling on an adult coloring book, reading a novel, or simply going for a walk. After a long workday, I will have a glass of wine and cuddle with my Maltipoo puppy. Something about caring and providing for her gives me a sense of comfort, and I cannot get enough of the constant snuggles. You might also benefit from taking a social media break for a day or two.
4. Schedule time for yourself. It can be easy to get wrapped up in the holiday whirlwind, especially if you are traveling or hosting. Remember that you cannot show up for others if you are not showing up for yourself. Identify a few activities that make you feel your best and keep them in mind, build them into your day. For example, I like to wake up nice and early in the mornings to read the newspaper and enjoy a cup of coffee, and in the evenings, I cannot wait to curl up in a blanket and watch Netflix with my husband.
5. Breathe. If you feel the pangs of anxiety upon you, remember to take deep breaths. I inhale, hold for the count of six, then exhale. I repeat this ten times. Sometimes, I repeat the words "thank you" as I breathe.
6. Exercise. Do not give up your exercise routine. Or if you do not have an exercise routine, start one! Begin with 15 minutes of walking outdoors, or on the treadmill at your gym. Then increase to 20, then 30 minutes. Also, do 5 minutes of weights, and gradually increase to 15 minutes. Stretch for 5-10 minutes. Your total routine is done in 50 minutes! Believe me, you will feel more relaxed, centered, and ready to take on your day. If you cannot spend 50 minutes out of your day exercising, then walk for 20 minutes. You will feel good about yourself.



Partially adapted from [Tips for Staying Centered Through the Holidays – Toat](https://toat.com/blogs/wellness/staying-centered-holidays), [toat.com/blogs/wellness/staying-centered-holidays](https://toat.com/blogs/wellness/staying-centered-holidays).

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## ~Karen's Delicious Latin Kitchen~

### Peruvian-Style Roast Chicken with Cilantro Lime Sauce (Pollo a la brasa con salsa de cilantro)

Mmmm. Here's a family favorite from my recipe book: Peruvian-Style Roast Chicken with Cilantro Lime Sauce (Pollo a la brasa con salsa de cilantro)

This cumin- and paprika-spiced Peruvian-inspired chicken gets added punch from a spicy cilantro and lime sauce and a crisp, bright avocado and cucumber salad.

## Ingredients:

Serves 4

### For the chicken:

- 3 garlic cloves, finely chopped
- 1 tablespoon ground cumin
- 1 tablespoon olive oil
- 1 tablespoon paprika
- ½ teaspoon freshly ground black pepper
- ½ teaspoon dried oregano
- 1½ teaspoons kosher salt, divided
- 2 lemons
- Chicken thighs, legs, and breasts (or whole chicken)

### For the green sauce:

- 1 cup (packed) cilantro leaves with tender stems
- 1–2 medium jalapeños, coarsely chopped
- 1 garlic clove, finely chopped
- 1 tablespoon extra-virgin olive oil
- 2½ teaspoons fresh lime juice
- ¼ teaspoon kosher salt
- ⅓ cup mayonnaise

### For the salad:

- 1 English or 2 Persian cucumbers, cubed
- 1 firm-ripe avocado, cubed
- 3 scallions, thinly sliced
- 1 tablespoon plus 1 teaspoon fresh lime juice
- 1 tablespoon extra-virgin olive oil
- ¾ teaspoon kosher salt
- ½ cup cilantro leaves with stems, coarsely chopped, plus more for serving



## Instructions

### Roast the chicken:

#### Step 1

Arrange rack in middle of oven; preheat to 400°F. Mix garlic, cumin, oil, paprika, pepper, oregano, 1/2 tsp. salt, and finely grated zest from 1 lemon in a medium bowl. Quarter zested lemon; set aside 2 quarters. Squeeze juice from 1 whole lemon and remaining 2 quarters to yield 2 Tbsp. juice; stir into spice mixture.

#### Step 2

Pat chicken dry with paper towels. Rub chicken all over with 2 reserved lemon quarters. Squeeze juice over bird, then rub skin all over with inside of rinds.

#### Step 3

Using your fingers, gently spread 2 heaping Tbsp. spice mixture under and over skin (reserve remaining spice mixture), then season chicken all over with remaining 1 tsp. salt. Transfer chicken, spread flat and skin side up, to a roasting pan or large skillet.

#### Step 4

Roast chicken 15 minutes, then brush with spice mixture and pan juices. Continue roasting, basting with spice mixture and pan juices every 10 minutes, until juices run clear when thigh is pierced with a fork or an instant-read thermometer inserted into thickest part of thigh registers 165°F, 45-50 minutes. Set aside.

### Make the green sauce:



**Step 6**

Purée cilantro, jalapeños, garlic, oil, lime juice, and salt in a blender until combined. Add mayonnaise and purée until well blended. Transfer to a small bowl, cover, and chill until ready to use.

**Make the salad:****Step 7**

Gently toss cucumbers, avocado, scallions, lime juice, oil, salt, and 1/2 cup cilantro in a large bowl. Sprinkle with more cilantro.

**Step 8**

Place chicken on a platter; baste with reserved pan juices. Serve with green sauce and salad alongside.

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Carrera Workplace Solutions specializes in Spanish language and bi-lingual trainings and investigations with Spanish-speaking employees. Topics of trainings include diversity and inclusion, and the prevention of harassment, discrimination, retaliation, and abusive conduct (bullying).

Contact us at [www.carreraworkplace.com](http://www.carreraworkplace.com) or by emailing [karen@carreraworkplace.com](mailto:karen@carreraworkplace.com). Karen Carrera, Esq. is a member of the Association of Workplace Investigators (AWI).

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