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CALSHRM LEGISLATIVE REPORT

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2024 CALIFORNIA LEGISLATIVE UPDATE

October 3, 2024

The 2024 California Legislative session ended on September 30, 2024, when the deadline for Governor Gavin Newsom to sign or veto pending bills expired. While California will once again likely lead the nation in new employment laws, this session appeared to involve fewer major changes compared to prior years. Some of the more significant new employment laws of general application include laws:

- Expanding protections for **time off to victims of crime and violence** (AB 2499)
- Prohibiting **mandatory employee attendance** at certain employer-sponsored meetings (SB 399)
- Eliminating employers' ability to require employees to use **PTO before paid family leave** (AB 2123)
- Increasing protection for certain independent contractors (**freelance workers**) (SB 988)
- Preventing discrimination based on the **intersection of protected bases** (SB 1137)
- Prohibiting advertising that a job **requires a driver's license** unless driving is part of the job (SB 1100)
- Imposing expanded **notice requirements** when **grocery stores and pharmacies** close (SB 1089)

Read on for details regarding the Top Ten New Employment Laws all California Employers and Human Resources Professionals should know about, as well as additional laws with more limited application or narrower scope that are nonetheless worthy of attention and enacted in 2024 and several notable new local ordinances and new state and federal regulations. Unless otherwise noted, these laws will take effect January 1, 2025.

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TOP TEN NEW CALIFORNIA EMPLOYMENT LAWS

Substantial Changes to PAGA (AB 2288 and SB 92)

As California employers know too well, the Private Attorneys General Act of 2004 (PAGA) allows employees to sue their employers on behalf of the State of California to collect civil penalties for Labor Code violations. Although PAGA was designed to alleviate the burden of overworked governmental agencies who oversaw California's Labor Code compliance, PAGA has been subject to abuse in recent years by unscrupulous plaintiffs' attorneys.

On July 1, 2024, Governor Gavin Newsom signed into law two bills that completely overhaul the PAGA statute (by amending Labor Code sections 2699, 2699.3, and 2699.5) to balance the interests of the State, workers, and employers. This compromise also removes from the November 2024 ballot the initiative that sought to repeal PAGA. While the PAGA amendment does not fully eliminate PAGA, it does provide much-needed protections for employers and substantial benefits to those who diligently comply with the Labor Code. Among the key takeaways for employers are the following:

KEY TAKEAWAYS

- PAGA standing limited to employees who personally suffered violations.
- Court can limit evidence and scope of claims to ensure manageability.
- PAGA penalties reduced in some circumstances.
- Penalties capped if employers take "all reasonable steps" to comply with Labor Code.
- Expanded right to "cure" to avoid or reduce penalties, but requirements for cure are onerous.

- **Retroactivity** – The PAGA amendment will not apply to any PAGA notice received, or PAGA action commenced, **before June 19, 2024**. Thus, if you have an existing PAGA action or received a PAGA notice before June 19, 2024, these new changes will not apply to that matter.

- **Standing** – To bring a PAGA claim now, an employee must have personally suffered the same Labor Code violation as the employees they claim are aggrieved within the one-year statute of limitations period. Previously, an aggrieved employee was allowed to bring claims for Labor Code violations they had never suffered, leading to unmanageable and overly expansive lawsuits.

- **Penalties Capped for Diligent Corrections** –

    - Employers who have taken "all reasonable steps to be in compliance" with the Labor Code *before a PAGA notice is received* will not have to pay more than **15%** of the normal penalty, and those who take "all reasonable steps" to prospectively be in compliance within *60 days after a PAGA notice is received* will not have to pay more than **30%** of the normal penalty (unless the employer has been found to have engaged in the same violations within the past 5 years or is found to be malicious, fraudulent, or oppressive).

        - Employers are not currently required to provide additional paid sick days if they have a paid leave or paid time off policy (usable for the same purposes as paid sick leave) that satisfies the accrual, carryover, and use requirements of the law (or, for plans that were in place prior to January 1, 2015, a policy that provides for accrual of 5 days/40 hours within 6 months of employment).

        - Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer and the nature, severity, and duration of the alleged violations.

        - The existence of a violation is not sufficient to establish that an employer failed to take all reasonable steps.

    - An employer who satisfies either of the "reasonable steps" provisions *and* cures a violation shall not be required to pay a civil penalty for that violation.

- **Right To Cure** – The new law significantly expands the list of Labor Code violations that may be cured and creates new processes for cure depending on the defendant's number of employees:

    - **Fewer than 100 employees**: *Starting on October 1, 2024*: Within 33 days of receiving a notice of a PAGA violation, an employer can submit a confidential proposal to cure one or more of certain alleged violations to the Labor and Workforce Development Agency (LWDA). The LWDA will then evaluate the sufficiency of the proposed cure within a certain period of time. If the LWDA determines the proposed cure is sufficient and has been properly implemented, then a PAGA-based civil action cannot be brought; but if the LWDA determines the cure is insufficient or was not properly completed, then an action may be filed. Additionally, if the aggrieved employee disagrees with the LWDA's determination, the employee has a right to file an action in court challenging the *LWDA's* determination related to the cure.

- **100 or more employees (or smaller employers who wish to use this procedure)**: Employer can seek an "early evaluation conference" at the beginning stages of PAGA litigation. The evaluation would be conducted by a judge or other neutral and would assess whether any alleged violations occurred and, if so, whether the defendant has cured the alleged violations; the strengths and weaknesses of the plaintiff's claims and the defendant's defenses; whether plaintiff's claims can be settled; and whether the parties should share any information that may facilitate early evaluation and resolution of the dispute. Generally, the court would stay the court case during the early evaluation. The law sets out various deadlines for the process. If the neutral evaluator accepts the employer's cure proposal, and the employer proves the cure has been made, the PAGA penalties may be reduced to $15 per aggrieved employee per pay period (or, if the employer also took "all reasonable steps" to come into compliance, there may be no PAGA penalties).

- **Definition of "Cure"**

  - An employer will be found to have "cured" a violation when it has:

    - Corrected the violation;

    - Come into compliance with the underlying statutes specified in the PAGA notice; and

    - Each aggrieved employee is made whole. Any employee who is owed wages is made whole when they have received:

      - Unpaid wages dating back *three years* from the date of the notice,

      - 7% interest,

      - Any liquidated damages as required by statute, and

      - Reasonable lodestar attorney's fees and costs to be determined by the LWDA or the court.

  - A violation of pay stub-related laws is cured only when the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period during which the violation occurred for *three years* prior to the date of the PAGA notice.

- **Clarity and Reduction of Penalties** –

  - The default civil penalty for most PAGA claims is now $100 per each aggrieved employee per pay period. Employers may owe $200 per pay period in two limited scenarios: (1) when, within the last 5 years, the LWDA or any court found an employer violated the same labor code provision; or (2) when a court determines the employer's conduct in this instance was malicious, fraudulent, or oppressive.

  - The penalty for pay stub violations under Labor Code section 226(a)(1) - (a)(9) will be $25 for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by Labor Code section 226(a).

  - The penalty is $50 for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

  - Employers who pay weekly (versus bi-weekly or bi-monthly) will now only be liable for 50% of the penalties.

  - The bill limits "stacking" of waiting time penalties and wage statement penalties on top of the civil penalty for the underlying unpaid wage violation under certain circumstances.

- **Injunctive Relief** – Courts may now award injunctive relief in PAGA actions to the same extent the LWDA has discretion to seek injunctive relief (which was not previously permitted under PAGA).

- **Manageability** – PAGA now has an express "manageability" requirement, something previously rejected by the California Supreme Court. After a PAGA lawsuit has been filed, employers may now petition the court to limit the evidence presented, as well as the scope of any claim to ensure that the claim can be effectively tried.

- **Employees Receive Larger Share of Penalties** – under the old law, employees received 25% of any recovered civil penalties, while 75% went to the LWDA. Under the new amendments, employees receive 35% of any penalties.

Extension of Small Employer Family Leave Mediation Program to Include Reproductive Loss Leave and Eliminate Sunset Date (AB 2011)

This law amends Government Code Section 12945.21, which required the Civil Rights Department to create a mediation pilot program for California Family Rights Act ("CFRA") violations against smaller employers (i.e., with between five and 19 employees). It expands the pilot program to now include resolution of alleged violations of the reproductive loss leave law (Government Code Section 12945.6). The law also expands the specified events under which the mediation is deemed complete. An employee is prohibited from pursuing a civil action until the mediation is complete or deemed unsuccessful. This amendment adds the mediation is deemed complete if the mediator determines that the employer does not have between five or nineteen employees.

KEY TAKEAWAYS

- Small Employer Family Leave Mediation Program extended indefinitely.
- Mediation Program now includes violations of reproductive loss leave law.

Finally, this law deletes the repeal date of the pilot program (currently January 1, 2025), thereby extending operation of the program indefinitely.

New Minimum Wage

The California statewide minimum wage will increase to **$16.50** on January 1, 2025, pursuant to Labor Code Section 1182.12, which mandates increases in the minimum wage if the Consumer Price Index exceeds certain enumerated levels, which it has over the last several years. The minimum salary threshold necessary to maintain an employee's exempt status under the Executive, Administrative and Professional exemptions will also increase to $68,640 annually and $5,720 per month on January 1, 2025.

As of January 1, 2025, a number of California cities or counties will increase their minimum wage to even higher levels. A complete list of these city and county-level minimum wage increases in California will be available at https://laborcenter.berkeley.edu/inventory-of-us-city-and-county-minimum-wage-ordinances/#s-2.

KEY TAKEAWAYS

- California statewide minimum wage increases to $16.50 on January 1, 2025.
- Salary threshold for exemption status increases to $68,640 /year and $5,720 per month.
- If it passes, Proposition 32 will increase the statewide minimum wage to $18.00 per hour (with effective dates varying based on the size of the employer).

There is also a **ballot initiative** that will appear on the November 2024 ballot (as Proposition 32) that seeks to increase the minimum wage. If it passes, employers with 26 or more employees would pay $17 per hour for the remainder of 2024 and $18.00 per hour beginning on January 1, 2025; and employers with 25 or fewer employees would pay $17.00 per hour beginning January 1, 2025, and $18.00 per hour beginning January 1, 2026. Thereafter, the minimum wage would adjust annually for inflation.

Changes and Expansion to Prohibition on Discrimination re: Time off for Victims of Crime and Violence (AB 2499) Violence Restraining Orders and Prevention Plans (SB 428 and SB 553)

Presently, sections 230 and 230.1 of the Labor Code prohibit employers from discharging or discriminating against an employee for taking time off for specified purposes that include serving on a jury, appearing in court if the employee is a victim of a crime, or obtaining or attempting to obtain certain victim relief; and prohibit discrimination because an employee is a victim of a crime or abuse. The existing law imposes additional requirements on employers with 25 or more employees, prohibiting them from discharging or discriminating against victims who take time off to seek medical attention, obtain services related to crime or abuse, or participate in safety planning and other actions to increase safety from future crime or abuse. Additionally, the existing law requires employers to provide reasonable accommodations to certain victims.

AB 2499 repeals Labor Code Sections 230 and 230.1 and recasts these rules as unlawful employment practices within the California Fair Employment and Housing Act (FEHA) as new Government Code section 12945.8, making violations of these rules a violation of FEHA, and placing enforcement in the jurisdiction of the Civil Rights Division (rather than the Division of Labor Standards Enforcement) thus changing the procedures and remedies available for a violation.

KEY TAKEAWAYS

- Expanded definitions of "victim" and "qualifying act of violence" mean broader protections for more employees.
- Expanded list of protected reasons for time off, including to employees who have a family member who is a victim.
- Expanded obligation to provide reasonable accommodations to employees who are victims or have family members who are victims.
- New obligation to notify employees of rights under the bill.

In addition, this law substantially expands the employee protections in many ways.

- While the existing law provides rights and protections to any employee who is a victim of stalking, domestic violence, sexual assault, or a crime that caused physical injury or death, this law redefines "victim" to be a person against whom a qualifying act of violence is committed (or, solely with respect to the right to take time off to appear in court, a person against whom a crime is committed). A "qualifying act of violence" is now defined to include domestic violence, sexual assault, stalking, *or* an act, conduct or pattern of conduct including any in which an individual causes bodily injury or death; a dangerous weapon is exhibited, drawn, brandished, or used; or an individual uses, or makes a reasonably perceived or actual threat to use force against another individual to cause injury or death. Thus, this law now applies to a much broader category of "victims."

- Existing law (Labor Code section 230.1) requires employers with 25 or more employees to not discharge or discriminate or retaliate against an employee who is a victim for taking time off for certain purposes. AB 2499 expands that rule in numerous ways.

    - First, it applies to the broadened definition of "victim" discussed above.

    - Second, it prohibits employers from taking these actions against an employee who *has a family member who is a victim* and who takes time off to assist that family member in various ways. "Family member" is defined to mean a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person. A "designated person" is any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer can limit an employee to one designated person per 12-month period for this type of leave.

    - Third, it expands the list of protected reasons for time off to include:

        - obtain or attempt to obtain any relief for the family member. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the family member of the victim;

        - seek or assist a family member to seek medical attention;

        - seek or assist a family member to seek various victim services;

        - seek or assist a family member to seek mental health services;

        - participate in safety planning;

        - relocate or find new housing;

        - provide care to a family member who is recovering from injuries;

        - seek or assist a family member to seek civil or criminal legal services;

        - prepare for, participate in or attend civil, criminal, or administrative legal proceedings; or

        - seek, obtain, or provide childcare or care to a dependent adult;

        - (all in connection with a qualifying act of violence).

- While existing law specifies that an employer shall not take action against an employee in connection with an unscheduled absence if the employee, within a reasonable time after the absence, provides a specified certification, this law will only require the certification to be provided *upon the employer's request*.

- Prior law allowed employees to use vacation, personal leave, or compensatory time off for any of the time taken off under the law; this law also confirms that employees may use paid sick leave, but specifies that the law does not create a right of an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act (FMLA).

- The law permits an employer to limit the total leave taken pursuant to these provisions to 12 weeks and specifies that the leave taken by an employee pursuant to these provisions shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) if the employee would have been eligible for that leave and is a victim of a crime or abuse. If the leave is for an employee who is not a victim, but whose family member is a victim (and not deceased as a result of a crime), employers can limit the total leave taken pursuant to these provisions to 10 days. Additionally, employers can limit the total leave taken to 5 days if the leave is for an employee who is not a victim, to assist a family member who is a victim (and not deceased as a result of a crime) in relocating or finding new housing.

- The law also expands the employer's obligation to provide reasonable accommodations to include not only employees who are victims but also employees who are the family members of victims of a qualifying act of violence who request an accommodation for safety at work. In addition, the definition of reasonable accommodations expands to include – in addition to the previously listed accommodations – permission to carry a telephone at work.

- The law requires an employer to inform each employee of their rights under the bill, to be provided to new employees upon hire, to all employees annually, at any time upon request, and any time an employee informs an employer that the employee or the employee's family member is a victim. Finally, the law would require the department to develop and post, on or before January 1, 2025, a form, as prescribed, that an employer may use to comply with this requirement.

Prohibiting Mandatory Employee Attendance at Certain Employer-Sponsored Meetings (SB 399)

Entitled the "California Worker Freedom from Employer Intimidation Act," this law enacts new Labor Code section 1137 to preclude an employer from discharging, discriminating against, retaliating against, or taking adverse action (or threatening to take any such action) against an employee because the employee declines to attend an employer-sponsored meeting or declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinions about religious or political matters.

"Political matters" is defined as "matters relating to elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political or **labor organization**." "Religious matters" is be defined as "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."

KEY TAKEAWAYS

- Prohibits adverse employment action against employee who refuses to attend employer-sponsored meeting re: religious or political matters.
- Exemptions for religious, political, and educational entities, among others.
- Employees who decline to attend meeting must be paid while meeting is held.

SB 399 does not prohibit: (1) employers from communicating to employees information the employer is required by law to convey, but only to the extent of that legal requirement; (2) employers from communicating information that is necessary for employees to perform their job duties; (3) higher education institutions or their agents from meeting with or participating in communications with employees that are part of coursework, any symposia or an academic program at that institution; or (4) public entities from communicating to employees any information related to a policy of the public entity or any law or regulation that the public entity is responsible for administering.

It also does not apply to: (1) religious entities (as enumerated) with respect to speech on religious matters to employees who perform work connected with the activities of the religious entity; (2) a political organization or party with respect to communication of the employer's political tenets or purposes; (3) an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the institution's regular coursework; (4) non-profit, tax-exempt training programs requiring a student or instructor to attend classroom instruction, complete fieldwork or perform community service hours on political or religious matters as it relates to the mission of the training program or sponsor; (5) an employer requiring employees to undergo training to comply with the employer's legal obligations, including obligations under civil rights laws and occupational safety and health laws; or (6) a public employer holding a new employee orientation, as defined in Government Code section 3555.5 or Welfare and Institutions Code section 12301.24.

An employee who is working at the time of the meeting and elects not to attend a meeting covered by this new law must continue to be paid while the meeting is held.

The Division of Labor Standards Enforcement will enforce this section, including investigating alleged violations and ordering appropriate temporary relief to maintain the status quo pending a full investigation or hearing, issuing a citation and filing a civil action. Alternatively, employees who have been subjected or threatened to be subjected to discharge, discrimination or retaliation or other adverse action for refusing to attend a prohibited employer-sponsored meeting may bring a civil action for damages and punitive damages. In such actions, an employee or their exclusive representative may also petition for injunctive relief. In addition to any other remedy, an employer who violates these new protections shall be subject to a civil penalty of $500 per employee for each violation.

Eliminate Authorization to Require Employees to Use Vacation Before Paid Family Leave (AB 2123)

Existing law authorizes an employer to require an employee to take up to two weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of family temporary disability insurance benefits (Paid Family Leave program) during any twelve-month period in which the employee is eligible for these benefits. This law would make the authorization and related provisions *inapplicable* to any disability commencing on or after January 1, 2025.

KEY TAKEAWAYS

- Employers can no longer require employees to use accrued vacation/PTO before receiving temporary disability benefits.

Increased Protection for Certain Independent Contractors (Freelance Workers) (SB 988)

Existing California law specifies various tests to determine whether a worker is an independent contractor or an employee (codified at Labor Code sections 2775 through 2787). This law does not change the tests but creates new Business and Professions Code sections 18100 to 18107 to add protections for certain independent contractors characterized as "freelance workers." The change was motivated by concerns that freelance workers do not have the same protection against wage theft as employees, and it is similar to recent laws enacted in New York and Illinois and Los Angeles's Freelance Worker Protections Ordinance.

KEY TAKEAWAYS

- Written contracts required when hiring "Freelance Workers" (i.e., certain professional workers) as independent contractors.
- Payment required by date specified in contract or within 30 days of completion of services.
- Potential damages, including $1,000 for failure to enter contract and twice the amount outstanding for late payment.

As noted, this law applies to "Freelance Workers," defined as persons or organizations with only one person (whether or not incorporated or employing a trade name) who are hired as independent contractors to provide professional services (as defined in Labor Code section 2778(b)) for at least $250. The test for "professional services" in Labor Code section 2778(b) is complex, but it includes certain marketing, human resources, travel agent, graphic design, and fine arts work, among others. The law only applies to contracts entered into or renewed on or after January 1, 2025.

If a hiring entity hires a Freelance Worker, the hiring party is required to:

- Have a contract in writing, furnish a signed copy to the Freelance Worker, and retain a copy for four years. The contract must include:
    - The name and mailing address of each party;
    - An itemized list of all services to be provided, the value of services, and the rate and method of compensation;
    - The date on which the contracted compensation shall be paid or the mechanism to determine such date; and
    - The date by which the Freelance Worker shall submit a list of services rendered to meet the hiring party's internal processing deadlines for purposes of timely payment.
- Pay the Freelance Worker on the date specified in the contract, or no later than 30 days after the completion of the Freelance Worker's services.
- Not require that the Freelance Worker accept less compensation than specified in the contract or provide more goods or services or grant more intellectual property rights than agreed to in the contract after commencement of services.

The hiring entity is prohibited from discriminating or taking adverse action against a Freelance Worker for opposing any practice prohibited by the law, participating in proceedings related to enforcement of the law, seeking to enforce the law, or otherwise asserting or attempting to assert rights provided. The hiring entity is also prohibited from taking any action that is reasonably likely to deter a Freelance Worker from doing any of these things.

An aggrieved worker or a public prosecutor can bring a civil action to enforce the law, and may recover attorneys' fees and costs, injunctive relief, and damages including: $1,000 if the worker requested a written contract and the hiring entity refused; twice the amount unpaid if the hiring entity failed to timely pay contracted compensation; or the value of the contract or work performed for any other violation.

This new law does not apply to the federal or state government or a foreign government or to an individual hiring services for the personal benefit of themselves, their family members, or their homestead.

Preventing Discrimination Based on the "Intersection" of Protected Bases (SB 1137)

SB 1137 amends the Fair Employment and Housing Act (FEHA, codified at Government Code § 12900 *et seq.*), the Unruh Civil Rights Act (Civil Code § 51 *et seq.*), and the California Education Code to prohibit discrimination not only because of one protected trait, but also the "combination of those characteristics." Drawing upon the concept of "intersectionality" which proposes that different forms of inequality operate together but uniquely (i.e., the discrimination and harassment faced by Black women compared to Black men), it recognizes that harassment or discrimination may occur because of the combination of protected factors, as opposed to any single one. Accordingly, it revises the definition of these protected characteristics in Government Code section 12926(o) [for FEHA purposes] to include (1) any combination of those characteristics; (2) a perception the person has any of those characteristics or any combination of those characteristics; or (3) a perception that the person is associated with a person who has, or is perceived to have any of those characteristics or any combination of those characteristics.

KEY TAKEAWAYS

- Clarifies that FEHA prohibits discrimination or harassment on the basis of any combination of protected characteristics.
- Makes similar changes to the Unruh Act and the Education Code.

This law essentially affirms the decision of the Ninth Circuit Court of Appeals in Lam v. University of Hawai'i (9th Cir. 1994) 40 F.3d 1551, and states its provisions are declaratory of existing law, meaning its protections apply retroactively.

Prohibition on Advertising that Job Requires Driver's License Unless Driving is Part of the Job (SB 1100)

The Fair Employment and Housing Act ("FEHA") prohibits various forms of employment and housing discrimination, including discrimination on the basis of national origin. The implementing regulations clarify that it is unlawful for an employer to discriminate against an applicant or employee because they hold a driver's license issued under Section 12801.9 of the Vehicle Code (which permits the Department of Motor Vehicles to issue a driver's license to a person who is not able to submit satisfactory proof that their presence in the United States is authorized under federal law).

This law amends Government Code section 12940 and makes it an unlawful employment practice for employers to state in a job advertisement, posting, application or other material that an applicant must have a driver's license unless the employer reasonably expects driving to be one of the job functions for the position *and* the employer reasonably believes that satisfying the job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. "Alternative form of transportation" includes but is not limited to using a ride hailing service or taxi, carpooling, bicycling, or walking.

KEY TAKEAWAYS

- Prohibits employer from stating job applicant must have driver's license unless:
  - Driving is a job function of the position *and*
  - Alternative form of transportation (such as biking, carpooling, using ride hailing services) is not comparable in travel time or cost to the employer.

New Requirements re: Closure of Grocery Stores and Pharmacies (SB 1089)

While California presently has its version of the federal Worker Adjustment and Retraining Notification Act (CalWARN, Labor Code section 1400, *et seq.*) and "grocery establishment"-specific worker retention requirements (Labor Code section 2500, *et seq.*), SB 1089 creates additional requirements similar to (and broader than) Cal-WARN for "grocery establishments" and "pharmacy establishments" and requires notice to affected communities prior to a store closure (codified at Business and Professions Code sections 22949.92 - 22949.92.2). This law arises from concern with lack of access to grocery stores, supermarkets, and healthy food in low-income neighborhoods.

The law applies to "grocery establishments" and "pharmacy establishments." "Grocery establishment" is defined to mean a retail store that sells primarily household foodstuffs for offsite consumption, including but not limited to fresh produce, meats, poultry, beverages, baked foods, or prepared foods, and in which the sale of other household supplies or other products is secondary to the primary purpose of food sales. (The definition does not limit applicability to stores of any particular size or number of employees and is thus broader than the worker retention requirements in Labor Code section 2500, *et seq.* and is broader than CalWARN.) "Pharmacy establishment" means a pharmacy as defined in Business and Professions Code section 4037 that is a chain or independent pharmacy (as defined) and is open to the public. The law clarifies that it does not apply to pharmacies owned by a health facility or part of a fully integrated delivery system, as defined.

KEY TAKEAWAYS

- Grocery and pharmacy establishments must give advance written notice of store closures to employees and the public.
- All except the smallest grocery and pharmacy establishments must give advance written notice of store closures to various government agencies.
- Grocery and pharmacy establishments mast transmit information received from government agencies to employees prior to store closures.
- The new notice requirements are broader than the federal WARN Act or CalWARN.

New Business and Professions Code section 22949.92.1 requires a covered establishment to take the following actions no later than 45 days before a "closure" (the cessation or substantial cessation of industrial or commercial operations):

- Provide written notice to employees affected by the closure and their authorized representatives if the covered establishment employs more than 5 employees. (If a covered establishment employs 5 or fewer employees, it shall provide written notice to the affected employees no later than 30 days before the closure.)
- Provide written notice to the Employment Development Department, the State Department of Social Services, the local workforce development board and chief elected official of the city and county, the local human services department in the county in which the covered establishment is located, and the California State Board of Pharmacy, if the covered establishment is a pharmacy establishment.
    - There are limited exceptions from the obligation to provide notice to certain public agencies/entities for covered establishments that are owned by a person or entity who owns 15 or fewer establishments nationwide and that are not covered by CalWARN (Labor Code section 1400.5), although these small entities would still be required to provide notice to their employees and authorized representatives.
    - The law provides that if a covered establishment is covered by CalWARN (Labor Code section 1400.5), it shall only be considered in compliance with this new notice rule regarding notice to the public agencies/entities if it provides notice as required and pursuant to the timeframe specified in CalWARN (Labor Code section 1401).
- Post a written notice of closure in a conspicuous location at the entrance of the covered establishment's premises that includes the planned closure date. If the covered establishment is a pharmacy establishment, the notice shall include the name, address, and contact information of the pharmacy where any prescriptions will be transferred, and the phone number, email address, or website where patients may obtain information regarding the process of transferring a prescription to another pharmacy.
- Take reasonable steps to provide written notice of closure in at least one additional form in which the covered establishment regularly communicates or advertises to consumers or patients.

The only exceptions to the notice requirement would be if a closure is necessitated by a physical calamity or an act of war or the closure is caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required.

Violations of this section are subject to a civil penalty up to $10,000 for each closure. The law creates a private right of action for any person injured by the violation or the Attorney General, district attorney, or city attorney; and a prevailing plaintiff may collect attorneys' fees and costs. An employee that does not receive written notice is entitled to recover an *additional* sum of $100 per day for each day their rights are violated and continuing until the violation is cured. (An employee is entitled to recover these liquidated damages or to enforce a civil penalty under CalWARN (Labor Code section 1403), but not both.) There is no private cause of action for failure to provide written notice in any form in which the establishment regularly communicates to its customers.

In addition, new Business and Professions Code section 22949.92.2 requires the county and local workforce development board to provide certain information to the covered establishment about safety net programs and workforce training services after receiving the notice described above. The covered establishment is then required to provide that information to its employees no later than 30 days before the closure.

ADDITIONAL NEW CALIFORNIA LAWS

HARASSMENT/DISCRIMINATION/RETALIATION

CROWN Act Protections Extended to the Unruh Act (AB 1815)

In 2022, California enacted the CROWN (Create a Respectful and Open World for Natural Hair) Act (SB 188), preventing discrimination based on hair style and hair texture under the FEHA and the California Education Code. This law amends the existing definition of race in those provisions to eliminate the requirement that a trait must be "historically" associated with race for it to be protected from racial discrimination.

It also amends the Unruh Act (Civil Code section 51 *et seq.*), which prohibits businesses from discriminating based upon a customer's protected classifications (including race), to include similar definitions and protections within the Unruh Act. Accordingly, businesses offering services or accommodations to the public are prohibited from discriminating against any person on the basis of race, including traits associated with race, including hair texture and protective hairstyles (e.g., braids, locks and twists). Drawing upon SB 1137 (discussed above), AB 1815 also amends the Unruh Act to preclude discrimination based upon the "intersectionality" of any two protected classifications.

AB 1815 also states it is declarative of existing law meaning it will apply retroactively.

Local Agency Enforcement of FEHA Protections and Expanded CRD Powers Regarding Infrastructure Projects (SB 1340)

In 2023, the California Legislature enacted AB 594 expanding the entities (beyond the Division of Labor Standards Enforcement [DLSE]) able to pursue civil or criminal actions for Labor Code violations. This law requires the Civil Rights Department (CRD) to collaborate with the DLSE to develop partnerships with local agencies to assist with preventing and eliminating unlawful practices under the FEHA. Via procedures outlined in new Government Code sections 12978 *et seq.* a complainant when filing a verified complaint can request a local agency pursue the complaint, and this initial complaint and request will satisfy any exhaustion requirement. The CRD will have 30 days to determine whether to pursue the complaint or to issue a letter authorizing the complaint to be pursued by local agency or through a civil action. A local agency handling the complaint must receive, investigate and adjudicate the complaint using procedures substantially similar to those used by the CRD. SB 1340 further outlines the procedures applicable to these local agency claims, including the procedures for appealing, the applicable time periods for appealing or pursuing civil action, and the interplay between claims handled by the local agency and the CRD.

SB 1340 also amends Government Code section 12993 to clarify that commencing January 1, 2026, the FEHA's general occupation of regulations regarding employment and housing discrimination do not preclude local agency enforcement of the FEHA.

It also amends the FEHA relating to infrastructure projects. For instance, it authorizes the CRD to handle complaints alleging unlawful practices by a contractor or subcontractor in connection with an agreement with a state agency for an infrastructure project. In such actions, the court will have the authority to cancel the agreement. It also requires the CRD to maintain a comprehensive database tracking infrastructure contracting and procurement activities by state agencies, including the demographic data of employees by contractors and subcontractors utilized by state agencies, as well as the total straight time and overtime hours ad wages paid to each individual employed by the contractor or subcontractor. It also requires – commencing July 1, 2025 and thereafter as determined by the DFEH – for a contractor or subcontractor under a state agency-issued infrastructure project funded in whole or in part by certain federal laws to report demographic information enumerated in the statute, and provide employees the option to participate in an optional survey to obtain this demographic information. It also imposes civil penalties upon contractors or subcontractors who fail to comply with these provisions and requires state agencies to utilize its database with this collected information to enforce employee demographic requirements in any project labor agreement.

LEAVES OF ABSENCE/TIME OFF/ACCOMMODATION REQUESTS

Expanding Paid Sick Leave to Cover Farmworkers During State or Local Emergencies (SB 1105)

The Healthy Workplaces, Healthy Families Act of 2014 (HWHFA), entitles an employee to paid sick days if the employee works in California for the same employer for thirty or more days within a year from the commencement of employment. This law expands the specified purposes for which an employee can use accrued paid sick days upon oral or written request. Specifically, it allows the use of accrued paid sick days by agricultural employees (as defined in Labor Code Section 9110) who work outside to avoid smoke, heat, or flooding conditions created by a local or state emergency (as defined) that prevent agricultural employees from working. The law also declares that these provisions are declarative of existing law to the extent that the sick days are necessary for preventive care, as provided.

HUMAN RESOURCES/WORKPLACE POLICIES

Labor Commissioner to Develop a "Model List" of Employee Rights and Responsibilities (AB 2299)

Labor Code section 1102.8 presently requires employers to prominently display a list of employees' rights and responsibilities under California's whistleblowing statute (Labor Code section 1102.5), including the telephone number of the Attorney General's whistleblowing hotline. AB 2299 creates Labor Code section 98.11, which requires the Labor Commissioner to develop a "model list" of employees' rights and responsibilities under these whistleblowing protections and to make the list accessible on the Labor Commissioner's internet website (although it does not set a deadline by which these actions must be taken). The law also amends Section 1102.8 to provide that if the model list is posted by the employer, it will satisfy the current posting requirement.

Social Compliance Audits (AB 3234)

Existing law regulates the employment of minors in California. This law responds to the proliferation of non-governmental audits conducted by private companies, often in response to negative press or to help consumers gain confidence in a business. This law creates Labor Code sections 1250 and 1251 to require transparency about the results of such an audit. The law defines "social compliance audit" as a voluntary, nongovernmental inspection or assessment of an employer's operations or practices to evaluate whether the operations or practices are compliant with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor. The law requires that if an employer has voluntarily subjected itself to a social compliance audit conducted in whole or in part to determine if child labor is involved in the employer's operations or

practices, it shall post a clear and conspicuous link on its internet website to a report detailing the findings of the employer's compliance with child labor laws. The report shall contain certain information, including the date and time the audit was conducted, and whether the audit was conducted during a day shift or night shift; whether the employer did or did not engage in or support the use of child labor; whether the business exposed children to any hazardous or unsafe situations; whether children worked within or outside regular school hours; and a statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

Increased Reporting re: State Agency Call Center Contracts (AB 2068)

In 2022, AB 1601 became law, prohibiting call center employers from relocating a call center or one or more facilities or operating units within a call center unless they provide advance notice to the affected employees, the EDD, the local workforce investment board, and the chief elected official of each city and county government within which the relocation/mass layoff occurs.

This law created section 10299.5 in the Public Contract Code, which requires each state agency that enters into a contract with a private entity solely for call center work to provide public or customer service on or after January 1, 2025, to provide a report to the Department of General Services containing certain information about the total number and percentage of jobs that will be located within California and outside the state. The Department of General Services will maintain a master list of contracts and an aggregate number of call center jobs, including how many are located in another state. The list will be made available, upon request, to any member of the public. The law will not apply to a contract or subcontract reached between a private entity and the State of California or other authority of the State of California where call center services are secondary and the services to be provided are related to state employee benefits.

Expansion of Joint Liability re: Client Employers and Labor Contractors (AB 2754)

Existing law (Labor Code section 2810) specifies that a person or entity shall not enter into a contract or agreement for labor or services with a contractor in certain industries (including, for example, construction, farm labor, janitorial, security guard, etc.) if they know or should know that the contract does not include funds sufficient to allow the contractor to comply with all applicable laws and regulations governing the labor or services to be provided. This law extends that rule to apply to port drayage motor carrier contractors. "Port drayage motor carrier" is defined in Section 2810.4 to mean, among other things, entities that operate in the port drayage industry, which involves movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has an origin or destination at a port.

Existing law (Labor Code section 2810.4) requires the Division of Labor Standards Enforcement to post on its web page information on port drayage motor carriers with unsatisfied final court judgments, tax assessments, or tax liens relating to, among other things, the misclassification of employees as independent contractors. Existing law requires a customer that engages or uses a port drayage motor carrier that is on the list to share with the motor carrier or its successor all civil legal responsibility and civil liability owed to a port drayage driver or to the state for port drayage services obtained after the date the motor carrier appeared on the list.

This law amends Section 2810.4 to require a customer to share with the motor carrier all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor, regardless of whether or not the port drayage motor carrier is on the division's list.

Study Regarding Janitorial Standards and Increase in Cost of Training for Janitorial Employees (AB 2364)

This law requires the Division of Labor Standards Enforcement (DLSE) to contract with the University of California, Los Angeles Labor Center to conduct a study evaluating opportunities to improve worker safety and safeguard employment rights in the janitorial industry and requires the University of California, Los Angeles Labor Center and its subcontractors, if any, conduct the study and issue a report no later than May 1, 2026. The report shall include, but not be limited to, a number of specified topics, including typical production rates in the janitorial industry, and production rates before, during, and after the Covid-19 public health emergency; assessment of the risk of ergonomic and other injuries; the prevalence of wage theft in the janitorial industry; and whether production rates and the prevalence of wage theft differ between unionized employees and non-unionized employees.

Under new Labor Code section 1429.6, the DLSE to convene an advisory committee that includes representatives from, among others, the University of California, the Civil Rights Department, a collective bargaining agent that represents janitorial workers throughout the state, and employers and labor management groups in the janitorial industry. The advisory committee would have the opportunity to make recommendations regarding the scope of the study by August 15, 2025 (and if it does not, the University of California, Los Angeles Labor Center would complete the study pursuant to the factors listed in the statute).

The University of California report must be forwarded to the advisory committee and certain legislative committees on or before May 15, 2025. Although this new law does not immediately change any rules or regulations regarding janitorial employees, the study and report may lead to changes in the future.

In 2016 and 2019, California enacted several bills (AB 1978 (2016) and AB 547 (2019)) requiring sexual harassment training and violence prevention training for janitorial employees (codified at Labor Code 1429.5). This law amends the law to increase the costs of paying a qualified organization to provide sexual violence and harassment prevention training. Presently, employers are required to pay $65 per participant. The new law will require the employer, until January 1, 2026, to pay the qualified organization $200 per participant for training sessions having less than 10 participants, and $80 per participant for training sessions with 10 or more participants, except as specified. Each year thereafter, the employer will be required to increase the rate of payment, as specified.

OCCUPATIONAL SAFETY AND HEALTH

Workplace First Aid Kit Rulemaking re: Narcan (AB 1976)

Under existing regulations, employers are required to have adequate first-aid materials readily available for employees on every job. (8 Cal. Code Regs. § 3400.) This law creates Labor Code section 6723, which requires the Occupational Safety and Health Standards Board to submit a draft rulemaking proposal before December 1, 2027 to revise applicable regulations and require all first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the U.S. Food and Drug Administration to reverse opioid overdose and instructions for using the opioid antagonist. The division is instructed to consider, and provide guidance to employers on, the proper storage of the opioid antagonist in accordance with the manufacturer's instructions. The Board is required to adopt revised standards on or December 1, 2028.

Separate and apart from any rulemaking requiring storage of opioid antagonists, the law also limits civil liability of individuals who administer naloxone hydrochloride or another opioid antagonist if certain conditions are met.

Changes to Hospital Workplace Violence Prevention Plans (AB 2975)

Existing law requires all employers to establish an Injury and Illness Prevention Plan. Existing law also requires employers to establish and implement a Workplace Violence Prevention Plan, although there is one set of requirements for specified hospitals (Labor Code section 6401.8) and a separate set of requirements for most other employers (Labor Code section 6401.9).

This law amends Section 6401.8 – the Workplace Violent Prevention Plan requirements applicable to *hospitals*. It requires the Occupational Safety and Health Standards Board to amend the applicable standards by March 1, 2027, to require that a hospital must implement a weapons detection screening policy at the hospital's main public entrance, at the entrance to the emergency department, and at the hospital's labor and delivery entrance if separately accessible to the public. For purposes of this standard, a "weapons detection screening policy" includes security mechanisms, devices, or technology designed to screen and identify instruments capable of inflicting death of serious bodily injury. Handheld metal detector wands alone would *not* be sufficient, except at small and rural hospitals, or at entrances with space limitations, or at hospitals that exclusively provided extended hospital care to patients with complex medical and rehabilitative needs. The law also requires the standards to direct that a hospital assign appropriate personnel, other than a health care provider, who meet specified training standards, to implement the weapon detection screening policy.

Under the new standard, Hospitals will be required to implement training for personnel responsible for implementing the weapons detection screening policy that includes a minimum of eight hours of training on specified policies, including de-escalation and implicit bias.

A weapons detection screening policy will need to include reasonable protocols addressing how the hospital will respond if a dangerous weapon is detected and reasonable protocols for alternative search and screening for people who refuse to undergo weapons detection device screening.

Hospitals will be required to post a notice advising that the hospital conducts screenings for weapons, but that no person shall be refused medical care, pursuant to the federal Emergency Medical Treatment and Active Labor Act.

The new standard will be effective no later than 90 days after the standard is adopted (with the specific date to be set by CalOSHA).

Hospitals operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation are exempted from these new requirements.

Alternative Enforcement of Occupational Safety Rules (AB 2738)

In 2023, California enacted AB 594, authorizing public prosecutors (as defined) to prosecute an action through alternative enforcement procedures for violations of specified Labor Code provisions, or to enforce those provisions independently. As often happens with newly enacted laws, this law amends Labor Code section 181 (which just took effect on January 1, 2024) in several respects. First, it slightly amends the recipients of any moneys recovered by these public prosecutors, specifying the moneys be applied first to workers to cover any unpaid wages, damages or penalties owed to those workers, and any remaining civil penalties to go to the state's General Fund. It also provides that a public prosecutor may enforce any other Labor Code provision as specifically authorized. Lastly, it requires (instead of just permits) a court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under these provisions.

In 2022, California enacted AB 1775 mandating contracting entities (as defined) to require entertainment sports vendors to certify its employees and any subcontractor employees have complied with specified training, certification, and workforce requirements, including for setting up live events. Citing concerns that the transitory nature of most live entertainment events prevents adequate enforcement, AB 2738 expands the enforcement of safety protections for public events. Accordingly, it amends Labor Code section 9251 to require that any contract subject to these requirements will provide in writing that the entertainment events vendor will furnish, upon hiring for the live event pursuant to the contract, the contracting entity with specified information about those vendor's and subcontractor's employees' trainings. It also subjects the contract to a provision of the California Public Records Act (CPRA) that makes any executed contract for the purchase of goods or services by a state or local agency a public record subject to disclosure under the CPRA.

It also authorizes the contracting party to use or disclose to third parties the specified information for purposes of carrying out the contracting party's duties under the contract but prohibits the use or disclosure for unrelated purposes. Finally, it also expands the categories of entities subject to penalties for violations to also include a public events venue or contracting entity and enable "public prosecutors" (discussed above) to enforce these procedures.

WAGE AND HOUR

Narrowing of Exemption Definition for Faculty at Private Institutions of Higher Education (AB 3105)

Existing law exempts an employee from certain provisions of the law (including the minimum wage and overtime) if the employee meets certain requirements. One exemption – the "professional exemption" includes certain employees employed to provide instruction for a course or laboratory at an independent institution of higher education, as currently defined in Labor Code section 515.7. This law narrows the definition of an "independent institution of higher education" by excluding those institutions formed as a nonprofit corporation *on or after January 1, 2023*. This law also declares that these provisions are declaratory of existing law.

New Health Care Work Minimum Wage Delayed (SB 159)

Signed by Governor Gavin Newsom on June 29, 2024, this immediately effective law delays the annual health care workers minimum wage phase-in schedule. Last year, Governor Newsom signed SB 525 (later codified at Labor Code sections 1182.14 and 1182.15), which established a new healthcare-specific minimum wage with various phase-in schedules based upon a classification system using factors such as health care facility size, type of facility and the governmental payor mix percentage. The original law increased the minimum wage annually (beginning June 1, 2024) until it reached $25.00 per hour by 2026, 2028, or 2033 (depending on hospital type). The newly enacted amendment delays the effective date of the minimum wage increases.

- The effective date will be October 15, 2024, if state agency cash receipts for July through September 2204 are at least 3% higher than projected in the 2024 budget.

- The effective date will be the earlier of January 1, 2025, or 15 days after the California Department of Health Care Services notifies the Legislature that it has initiated the data retrieval related to hospital quality assurance fees for the program period commencing January 1, 2025.

Covered employers may not get much advance notice of the effective date and are encouraged to track developments at https://www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-FAQ.htm.

PUBLIC CONTRACTS/PREVAILING WAGE

Enforcement Changes Regarding Violations on Public Work Projects (SB 1303)

Presently, an awarding body may withhold contract payments from a public works contractor for alleged violations, including when payroll records are delinquent or inadequate, or related to worker classification and scope of work, amongst other things. This law restructures the process prior to funds being withheld, including requiring a private labor compliance entity to confer with the negotiating parties to review relevant public works law and prohibits the entity from withholding an amount that exceeds the alleged underpayments and penalty assessments. It also requires a private labor compliance entity seeking to withhold funds to provide a venue for a public works contractor or subcontractor to review and respond to alleged violations.

It also establishes new conflict of interest rules related to so-called "private labor compliance entities" hired by an awarding party to perform labor compliance and enforcement activities on public works projects on behalf of an awarding body. Amongst other things, the private labor compliance entity must that it has no conflicts of interest (as defined) and allow the contract to be voided if the conflict of interest provisions is violated.

Requiring Subcontractors to Ensure Usage of Skilled and Trained Workforces on Public Contracts (SB 1162)

Public Contract Code section 2600 outlines the circumstances and requirements of a public entity to ensure that a bidder, contractor or other entity will use a skilled and trained workforce to complete a contract or project and requires the enforceable commitment that the contractor will provide to the public entity a monthly report demonstrating its compliance with these requirements. SB 1162 also requires the enforceable commitment that these monthly reports include the full name of, and identify the apprenticeship program name, location, and graduate date of, all workers relied upon to satisfy the apprenticeship graduation percentage requirement.

PUBLIC SECTOR/LABOR RELATIONS

Local Public Employee Organizations Recouping Representation Fees (AB 1941)

Existing law provides that public employees who are members of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations are not required to join or financially support an employee organization as a condition of employment. But existing law authorizes a recognized employee organization to charge an employee covered by the Firefighters Procedural Bill of Rights Act for the reasonable cost of representation when the employee holds a conscientious objection or declines membership in the organization and then requests individual representation in a discipline, grievance, arbitration or administrative hearing from the organization. This new law (Gov. Code 3503.2) extends this rule to employees covered by the Public Safety Officers Procedural Bill of Rights.

Expanding Labor-Management Cooperation Committee's Ability to Sue for Unpaid Wages and Benefits (AB 2696)

Existing law (Labor Code section 218.8) requires that direct contractors making or taking a contract on or after January 1, 2022 for certain specified construction projects must assume and be liable for any debts related to wages incurred by a subcontractor acting under the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. Existing law extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor.

Existing law also authorizes a joint labor-management cooperation committee to bring an action against a direct contractor or subcontractor to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the **subcontractor** on account of the performance of the labor on a private work.

This law amends Section 218.8 to allow a joint labor-management cooperation committee to bring an action against a direct contractor to enforce liability for any unpaid wages, fringe or other benefit payments or contributions, penalties, or liquidated damages or interest owed by the **direct contractor** on account of the performance of labor on private work.

STATE PROVIDED BENEFITS

Notifying Employees of Legal Rights for Workers' Compensation Purposes (AB 1870)

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Employers who are subject to the workers' compensation system are generally required to keep posted in a conspicuous location frequented by employees and easily read by employees during the hours of the workday a notice that includes, among other information, to whom injuries should be reported, the rights of an employee to select and change a treating physician, and certain employee protections against discrimination. Existing law requires the administrative director to make the form and content of this notice available to self-insured employers and insurers.

The amended law will now require the notice to include information concerning an injured employee's ability to consult a licensed attorney to advise them of their rights under workers' compensations laws, as specified.

Authorizing Electronic Signatures for Workers' Compensation (AB 2337)

This law defines "signature" for purposes of a proceeding before the Workers' Compensation Appeals Board to include electronic record or electronic signature. An electronic record or electronic signature is defined as an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

This law also authorizes the signature requirement of every compromise and release agreement to be satisfied by an electronic signature and authorize the notary public acknowledgment requirement to be satisfied by electronic signature provided an electronic record includes specified information.

MISCELLANEOUS

Labor Trafficking Unit within the DLSE (AB 1888)

This law establishes a Labor Trafficking Unit (LTU) withing the Department of Justice to serve as the centralized enforcement, referral and investigative unit to combat labor trafficking in coordination with other state entities. The LTU will have the authority to receive labor trafficking reports from law enforcement agencies and refer them to appropriate agencies for investigation, prosecution or other remedies. The LTU is also authorized to coordinate with state and local law enforcement agencies (including the CRD and the DIR), tribal law enforcement agencies and district attorneys' offices when investigating criminal actions related to labor trafficking. The LTU will also annually submit a report to the Legislature regarding its activities, including the number of complaints received and the number of complaints referred.

NEW LOCAL ORDINANCES

Los Angeles County Predictable Scheduling Ordinance

On April 23, 2024, Los Angeles County approved a fair workweek predictable scheduling ordinance, which went into effect July 1, 2025. The ordinance is similar to an ordinance already in effect in the City of Los Angeles. It applies to retail employers with at least 300 employees nationwide who work in the unincorporated areas of Los Angeles County at least two hours per workweek. Employers would need to provide work schedules 14 days in advance, give good faith estimates of schedules, allow rest between shifts, and offer extra hours to current employees before hiring new workers. The full ordinance is available here.

NEW STATE REGULATIONS AND GUIDANCE

Indoor Heat Regulations

Only July 23, 2024, California's new indoor heat protections went into effect. Employers are required to adopt safety measures in most cases when indoor temperatures reach 82 degrees Fahrenheit. If the temperature reaches 82 degrees indoors, employers must take steps to protect employees from heat illness, including providing water, rest, cool-down areas, and training. There are additional requirements applicable when temperatures reach 87 degrees. More information is available here.

Proposed Regulations re: AI and Automated-Decision Systems

On May 7, 2024, the Civil Rights Council issued proposed modified regulations under FEHA related to the use of artificial intelligence (AI) and automated-decision systems (ADSs). The Council announced a 45-day public comment period and set a public hearing for July 18, 2024. The draft regulations and additional information are available here. If the proposed amendments are finalized and accepted, employers will need to carefully assess their use of automated-decision systems in connection with applicants and employees.

The amendments would define an "Automated-Decision System" as a computational process that screens, evaluates, categorizes, recommends, or otherwise makes a decision or facilitates human decision making that impacts applicants or employees. It would include, for example, computer-based tests, puzzles, or games that make predictive assessments about an applicant or employee; direct job advertisements to targeted groups; screen resumes; or analyze facial expression, word choice, and/or voice in online interviews.

The regulation would specify that it is unlawful for an employer or other covered entity to use selection criteria (including a qualification standard, employment test, automated-decision system, or proxy) if such use has an adverse impact on or constitutes disparate treatment of an applicant or employee or a class of applicants or employees on a basis protected by the Fair Employment and Housing Act.

"Adverse impact" would be defined to include the use of a facially neutral practice that negatively limits, screens out, tends to limit or screens out, ranks, or prioritizes applicants or employees on a basis protected by the Act. "Adverse impact" would be synonymous with "disparate impact."

The employer would have a defense if it could show that the selection criteria, as used by the employer or other covered entity, is job-related for the position in question and consistent with business necessity and there is no less discriminatory policy or practice that serves the employer's goals as effectively as the challenged policy or practice. The regulation would specify that evidence of anti-bias testing or similar proactive efforts to avoid unlawful discrimination would be relevant to the inquiry. (Notably, this anti-bias testing is not *required*, but neither would it provide a complete defense to a claim of adverse impact.)

Employers are subject to significant limits on the use of medical and psychological examinations of applicants and employees. The amendment would specify that medical or psychological examinations include puzzles or games that evaluate physical or mental abilities and personality-based questions, including but not limited to those included in an automated-decision system. These would include questions that measure optimism and/or positive attitudes, personal or emotional stability, extroversion or introversion, and/or intensity.

The amendment would extend the period for which personnel or other employment records must be preserved from two years to four years, and would include all automated-decision system data in that preservation requirement.

The amendment would also provide that if an employer's preliminary decision to withdraw a conditional job offer involved the use of an automated-decision system, the employer must provide a copy or description of any report or information from the system, related data, and assessment criteria used as part of the automated-decision system.

Updated California Paid Sick and Safe Leave FAQs Address January 1, 2024 Changes

On December 12, 2023, California's Labor Commissioner revised its FAQs to address changes that went into effect on January 1, 2024, to the Healthy Workplaces Healthy Families Act (HWHFA). Although revisions for many FAQs are minor and simply account for the increased amount of leave employees can accumulate, carry over, or use as of January 1, 2024, certain new FAQs provide insight into practical challenges some employers will face, shed light on issues the Labor Commissioner did not address in previous FAQ iterations, and make known the agency's position on its interpretation of amended provisions applicable to companies with employees covered by collective bargaining agreements.

California Department of Industrial Relations Issues New Wage Theft Prevention Act Notice

The California Department of Industrial Relations (DIR) issued a new template Wage Theft Prevention Act Notice that reflects the new Paid Sick Leave requirement that went into effect January 1, 2024 and has a section for emergency or disaster declarations. You can access the new template here: NOTICE TO EMPLOYEE (ca.gov). The template indicates that employers must identify applicable emergency or disaster declarations *and* state how such declarations may affect health or safety. You can access our Special Alert here.

Certain FEHA Protections Extended to California Workers Who Use Cannabis

As of January 1, 2024, most employers with 5 or more employees are prohibited, under the FEHA, from unlawfully discriminating against prospective or current employees for their use of cannabis under certain circumstances. In general, employers cannot fire, penalize, or otherwise discriminate against an employee based on the person's use and/or possession of cannabis off the job and away from the workplace, or if they test positively for non-psychoactive cannabis metabolites, unless the employer does not meet the employee threshold, the position involves a federal background investigation or security clearance, or the employee is in the building or construction trades. The CRD issued a 2024 FAQ Handout to assist employers on how to comply.

FEHA Protections for California Employees Subject to Reproductive Loss

The CRD published a Fact Sheet on the right of California employees to take up to 5 days of leave within a three-month period following the employee, or the employee's spouse or partner, suffering a reproductive loss, which the FEHA defines as a miscarriage, stillbirth, failed adoption, failed surrogacy, or unsuccessful assisted reproduction. The fact sheet outlines the types of employers subject to the law, who is eligible to take the leave, when the leave can be taken, how much leave is available, and whether an employee can be entitled to pay while they are out. It also covers protections against retaliation.

NEW FEDERAL REGULATIONS AND GUIDANCE

New Regulations re: the Pregnant Workers Fairness Act (PWFA)

The U.S. Equal Employment Opportunity Commission (EEOC) published final regulations implementing the federal PWFA, which went into effect on June 18, 2024. The PWFA requires **employers with at least 15 employees** to make reasonable accommodations for the known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions of a qualified employee or applicant, unless the employer can demonstrate the accommodation would pose an undue hardship.

While California already protects pregnant workers via its Fair Employment and Housing Act (FEHA) and Pregnancy Disability Leave statute, the PWFA is *more protective of employees* in certain important ways. California employers must comply with both laws, and if they conflict, should follow the law that is more protective of employees.

One significant difference between California law and the PWFA is that the PWFA states an individual may be qualified for a job even if they cannot perform one or more of its essential functions. The regulations explain that the PWFA requires an employer to suspend a job's essential functions if the qualified employee's

inability to perform the essential functions is temporary, the employee can perform the essential functions in the "near future" (generally forty weeks from the start of the temporary suspension), and the inability to perform the essential functions can be reasonably accommodated without an "undue hardship."

The regulations also provide numerous examples of potential reasonable accommodations, and lists certain accommodations that are almost always reasonable, called "predictable assessments": carrying water and drink as needed during the workday; additional restroom breaks; sitting; standing; and breaks as needed to eat and drink.

Another key difference between California law and the PWFA is that under the federal law, employers can only request documentation supporting an accommodation if it is reasonably needed for the employer to determine whether to grant the requested accommodation. The regulations list several instances in which requiring documentation is not reasonable, including when the limitation and need for reasonable accommodation is obvious, the employer already has sufficient information to support a known limitation related to pregnancy, or the request is for one of the four "predictable assessment" accommodations listed above.

California employers may be accustomed to requesting medical documentation for every pregnancy-related accommodation. However, given the PWFA's strict limits on when an employer may request medical documentation, California employers may want to stop asking for medical documentation as a matter of course. Best practice is to simply ask the employee for a description of their requested accommodation and an estimated timeline for the accommodation. When a California employer does request documentation, it should be careful to comply with limits imposed by both the PWFA and California law.

For more information, see WTK's Special Alert and the EEOC's summary materials explaining the PWFA and its regulations, which can be found here.

New DOL Rule Increases Salary Exemption Threshold

Both federal law (the Fair Labor Standards Act) and California state law require that employers must pay most employees a minimum wage and overtime. There are several exemptions from both state and federal law, including the executive, administrative, and professional exemptions. Employees may be exempt from the minimum wage and overtime requirements if they are paid a salary, if that salary exceeds a certain level, and if they meet the specific "duties" test for one of the exemptions.

On April 23, 2024, the federal Department of Labor (DOL) announced a new update to the regulations implementing the federal overtime pay requirements. The full new rule is available here, and the DOL has published updated FAQs about the rule here.

The new regulations do *not* change the duties test, but they *do* increase the salary threshold for the federal executive, administrative, and professional exemptions and the highly compensated employee exemption, with two new effective dates: the first new salary threshold went into effect July 1, 2024, and the second will be effective on January 1, 2025. The regulations also provide that the earnings thresholds will be automatically updated every 3 years based on then-current wage data.

	Executive, Administrative, and Professional Exemptions	
Effective Date	**Weekly Salary Threshold**	**Annual Salary Threshold**
Before July 1, 2024	$684	$35,568
July 1, 2024	$844	$43,888
January 1, 2025	$1,128	$58,656
July 1, 2027 and every three years thereafter	To be determined by applying to available data the methodology in the rule.	

	Highly Compensated Employee Exemption
Effective Date	**Annual Salary Threshold**
Before July 1, 2024	$107,432
July 1, 2024	$132,964
January 1, 2025	$151,164
July 1, 2027 and every three years thereafter	To be determined by applying to available data the methodology in the rule.

Note that the salary threshold for the overtime exemption in *California* is still higher than the new federal salary threshold: as of January 1, 2025, an employee in California must earn at least $68,640 per year and $5,720 per month to qualify for the executive, administrative, or professional exemptions. Further, there is no "highly compensated employee exemption" in California. Therefore, the new federal rule should not affect employees in California.

EEOC Harassment Guidance

The EEOC recently issued new enforcement guidance on harassment in the workplace. Employers are encouraged to review the complete guidance here. The EEOC has also published a summary of key provisions here. Federal law already bans workplace harassment based on protected characteristics, including race, color, religion, sex (including sexual orientation; gender identity; and pregnancy, childbirth, or related medical conditions), national origin, disability, age (40 or older), and genetic information (including family medical history). Existing law also makes it clear that to violate the law, harassment must either create a hostile work environment or involve a change to the victim's employment (such as termination, demotion, etc.).

This new guidance provides more than 70 specific examples of harassment the EEOC deems unlawful. Among other things, the guidance explains a cause of action for harassment under federal law could be supported by intrusive questions about sexual orientation, gender identity, gender transition, or intimate body parts, as well as outing or repeatedly misgendering a co-worker or denying access to a bathroom consistent with their gender identity.

The guidance also provides examples of potential harassment in report work environments, including sexist comments made during a video meeting, racist imagery visible in an employee's workspace when the employee participates in a video meeting, and sexual comments made during a video meeting about a bed being near an employee in the video image.

DOL Principles re: Artificial Intelligence

The DOL recently published principles and best practices regarding artificial intelligence (AI) and a Field Assistance Bulletin regarding AI and automated systems in the workplace related to the Fair Labor Standards Act (FLSA). Among other things, the DOL cautions:

- Employees must be paid for all hours worked; and if automated timekeeping and monitoring systems are used without proper human oversight, they might incorrectly categorize time as non-compensable based on analysis of worker activity, productivity, or performance.
- Systems that automatically deduct times for breaks could lead to FLSA violations.
- Use of AI scheduling and task assignment programs could create potential issues regarding hours worked in connection with "waiting time."
- AI systems or other technologies used to calculate wage rates must be used with caution and with proper human oversight to ensure employees are paid the applicable minimum wage, and to ensure the employee's regular rate and overtime premium are accurately calculated.

The Bulletin also provides guidance about the risks of using AI in connection with FMLA leave, Nursing employee protections, and Employee Polygraph Protection Act, and prohibited retaliation.

Court Halts FTC Regulation Banning Nearly All Employment Non-Competes Nationwide

The Federal Trade Commission (FTC) had issued a rule that would have effectively banned all employment non-compete agreements nationwide as of September 4, 2024. However, on August 20, 2024, a federal district court issued an order stopping the FTC from enforcing the rule. The FTC may appeal, but in the meantime, the rule will *not* go into effect. For more details about the rule as it was originally written, see WTK's Special Alert. In addition, you can read the complete rule here.

DOL Finalizes Independent Contractor Regulation

On January 10, 2024, the DOL published a final rule applying a six-factor test focused on the "economic reality" of the relationship between a potential employer and a worker to determine if an individual is an "independent contractor" under the FLSA. The final rule becomes effective March 11, 2024, and officially rescinds a 2021 rule defining the same term. The test generally asks whether, as a matter of economic realities, the worker depends on the potential employer for continued employment or is operating an independent business. The definition matters because the FLSA only applies to "employees" – it does not apply to "independent contractors." In California, most jobs are governed by the so-called "ABC Test," which is stricter than the new federal test. Therefore, the new federal test may not have much of an impact on most California jobs. However, and particularly if a California job falls within one of the exceptions to the ABC Test, employers should consider both whether they can satisfy the California test and whether they can satisfy the new federal test. Click here to learn further details on the DOL website or visit the WTK Special Alert article.

If you have questions about how these new laws and regulations may affect your business, please contact us.

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