

## Updates

October 24, 2022

### 2022 California Labor, Employment, and Independent Contractor Legislative Update

With the 2022 California legislative year closed, it is once again time to examine the new legislation that will affect entities operating within the state. Summaries of key legislation are below, with relevant action items noted.

#### **Pay Data Reporting and Pay Transparency**

##### **Pay Disclosures: [SB 1162](#).**

- *Effective Date:* January 1, 2023.
- This bill requires California employers with more than 15 employees to include the pay scale for a position in any job posting. Further details are available [here](#).
- *Action Item:* Employers should be ready to include pay scales in job advertisements.

##### **Pay Data Reporting: [SB 1162](#).**

- *Effective Date:* May 2023.
- SB 1162 requires employers with 100 or more employees to report to the California Civil Rights Department (CRD) (formerly the Department of Fair Employment and Housing), among others, the mean and median pay of their employees by race, ethnicity, and gender on or before the second Wednesday of May 2023 and for each year thereafter on or before the second Wednesday of May. Further details are available [here](#).
- *Action item:* Employers with 100 or more employees should be prepared to provide the information needed for reporting to the CRD.

#### **COVID-19-Related Legislation**

##### **COVID-19 Supplemental Paid Sick Leave: [SB 114](#).**

- *Effective Date:* Retroactive to January 1, 2022.
- In February 2022, SB 114 provided 80 hours of COVID-19 supplemental paid sick leave for employees from January 1, 2022, until September 30, 2022. On September 29, 2022, AB 152 extended the COVID-19 Supplemental Paid Sick Leave law until December 31, 2022. Further details are available [here](#).

##### **Extension of COVID-19 Supplemental Paid Sick Leave: [AB 152](#).**

- *Effective Date:* Immediately.
- AB 152 extends California's 2022 COVID-19 Supplemental Paid Sick Leave law until December 31, 2022, but does not provide additional leave time if an employee has already taken supplemental paid sick leave this year. AB 152 also establishes the California Small Business and Nonprofit COVID-19 Relief Grant Program to assist qualified entities that incur costs for COVID-19 supplemental paid sick leave and expands permissible employer-required diagnostic testing of employees. Now, when an employee uses COVID-19 supplemental paid sick leave, the employer may require testing on the fifth day following an employee's first COVID-19-positive test. If the test on the fifth day is still positive, an employer may require the employee to submit a second test after 24 hours. An employer is not required to give additional

leave to an employee when an employee does not provide a test result five days after the initial positive COVID-19 test or does not comply with an employer's request for a test.

- *Action Items:* Employers should continue to provide COVID-19 supplemental paid sick leave and update COVID-19 testing policies.

### **Workers' Compensation for COVID-19: [AB 1751](#).**

- *Effective Date:* Extends the law through January 1, 2024.
- As discussed [here](#), existing law includes a rebuttable presumption for workers' compensation when workers contract COVID-19 under specified circumstances. The law was set to expire on January 1, 2023. AB 1751 extends the presumption until January 1, 2024.
- *Action Items:* Employers should continue monitoring federal, state, and local guidance regarding COVID-19. Moreover, employers must continue to report positive COVID-19 cases to their claims administrator, as the applicable law provides.

### **COVID-19 Notification Requirements: [AB 2693](#).**

- *Effective Date:* Amends and extends the law through January 1, 2024.
- Existing law requires employers who receive notification of potential exposure to COVID-19 to provide written notice of potential exposure within one business day to all employees at the worksite. The notification requirement was set to expire on January 1, 2023. AB 2693 extends some notification requirements until January 1, 2024.
- AB 2693 also amends the duties of an employer when notified by an employee of potential exposure to COVID-19. Employers are no longer required to report COVID-19 cases to the local public health department. Employers may elect to either provide written notifications of potential COVID-19 exposures or utilize a worksite posting with the required information.
- *Action Items:* Employers should review the new notification requirements and determine the notification plan that is best for their organization. If employers decide to use worksite postings, they should ensure that all required information is included.

### **Rights of Workers in Emergencies: [SB 1044](#).**

- *Effective Date:* January 1, 2023.
- SB 1044 prohibits an employer, in the event of a state of emergency or an emergency condition, from taking or threatening adverse action against an employee who refuses to report to, or leave, a workplace within the affected area because the employee has a "reasonable belief" that the workplace or worksite is unsafe. The law also prevents an employer from prohibiting any employee from accessing their mobile device or other communications device to seek emergency assistance, assess the safety of the situation, or communicate with another person to confirm their safety. Notably, under this legislation, an "emergency condition" does not include a health pandemic. Further details regarding the history of SB 1044 are available [here](#).
- *Action Item:* Employers should review their policies to ensure compliance.

### **Fair Employment and Housing Act (FEHA)**

#### **Prohibition of Discrimination for Off-Duty Marijuana Use: [SB 2188](#).**

- *Effective Date:* January 1, 2024.

- SB 2188 amends the FEHA to prohibit discrimination against an employee based on an employee's use of cannabis off the job and away from the workplace or if a preemployment drug test finds non-psychoactive cannabis metabolites in an applicant's hair, blood, urine, or other bodily fluids. The law exempts employees who are hired for positions that are required by federal agencies to conduct a federal government background investigation or security clearance. Also, the law does not preempt state or federal law that requires employees to be tested for controlled substances as a condition of employment, to receive federal funding, or to enter a federal contract. There is also an exemption for the building and construction trades.
- *Action Items:* Employers should update policies to ensure compliance by January 1, 2024.

### **FEHA Reproductive Health Decision-Making: [SB 523](#).**

- *Effective Date:* January 1, 2023.
- SB 523, called the Contraceptive Equity Act of 2022, contains a provision that makes it an unlawful employment practice to discriminate against an applicant or an employee based on reproductive health decision-making, as defined in the legislation.
- *Action Items:* Employers should consider updating their discrimination-related policies.

### **FEHA Name Change: [SB 189](#).**

- SB 189 changes the name of the Department of Fair Employment and Housing (DFEH) to the Civil Rights Department (CRD) and the name of the Fair Employment Housing Council (FEHC) to the Civil Rights Council (CRC).

## **CFRA Leave, Sick Leave, and Bereavement Leave**

### **California Family Rights Act (CFRA) and Healthy Workplaces, Healthy Families Act of 2014: [AB 1041](#).**

- *Effective Date:* January 1, 2023.
- This legislation allows employees to take leave to care for a "designated person." AB 1041 defines a designated person as any individual related by blood or whose association with the employee is the equivalent of a family relationship. The change applies to both CFRA leave and sick leave related to a family member. Employers are allowed to limit an employee to one designated person per 12-month period.
- *Action Items:* Employers should review their leave policies to allow employees to take leave to care for a designated person. Employers should consider creating a procedure for employees to designate a designated person.

### **Bereavement Leave: [AB 1949](#).**

- *Effective Date:* January 1, 2023.
- AB 1949 makes it an unlawful employment practice for employers to refuse an eligible employee's request to take up to five days of unpaid bereavement leave upon the death of a family member as described in the statute. While the leave can be unpaid, the employer must allow the employee to "use vacation, personal leave, accrued and available sick leave or compensatory time off that is otherwise available to the employee." Further details are available [here](#).
- *Action Items:* Employers should update their leave policies to include at least five days of unpaid bereavement leave.

### **Disability Insurance and Paid Family Leave: [SB 951](#).**

- *Effective Date:* Extends current wage replacement rates through 2023 and 2024. Beginning in January 2025, there will be an increase in the wage replacement rates.
- SB 951 revises the formulas for determining available benefits through state disability insurance programs and paid family leave, extending the formulas through 2024. It also authorizes an increase in wage replacement rates beginning on January 1, 2025.
- *Action Item:* There are no changes for employers, but organizations may want to review their policies to ensure compliance with the California Paid Family Leave (PFL) law.

## **California Worker Adjustment and Retraining Act (Cal/WARN)**

### **Call Centers May Be Subject to Cal/WARN Requirements: [AB 1601](#).**

- *Effective Date:* January 1, 2023.
- AB 1601 gives additional authority to the California Labor Commissioner's Office, allowing the labor commissioner to provide temporary relief before an investigation is complete. In addition, there are new provisions that add a new section relating to the relocation of call centers and set forth that Cal/WARN notice requirements apply to the relocation of a call center as defined in the legislation. Call centers that do not comply with Cal/WARN when relocating to a foreign country will be ineligible to be awarded state grants and state-guaranteed loans and are ineligible to claim a tax credit for five years.
- *Action Items:* Call centers should follow the notification procedures in Cal/WARN.

## **Workplace Safety: Cal/OSHA**

### **Training Requirements for Entertainment Events Vendors: [AB 1775](#).**

- *Effective Date:* January 1, 2023.
- AB 1775 requires a "contracting entity," as defined in the law, to require an "entertainment events vendor" to certify in a contract that the vendor's employees and any subcontractors' employees involved in setting up, operating, or tearing down a live event at a "public events venue," have completed prescribed training and certification, including Occupational Safety and Health Administration (OSHA) trainings. These requirements do not apply to employees of public events venues. The Division of Occupational Safety and Health (the Division) is authorized to issue a citation and notice of civil penalty for failure to comply.
- *Action Items:* Entities that contract with "entertainment events vendors," as defined in the law, should ensure contracts contain the appropriate training certifications.

### **Employee Notification Requirements After Citations: [AB 2068](#).**

- *Effective Date:* January 1, 2023.
- AB 2068 amends the California Labor Code to provide that when the Division issues a citation or special order or action, in addition to preexisting posting requirements, employers must also post an employee notification containing specified information. The law also requires the Division to make the employee notification available in English as well as the top seven non-English languages spoken by limited-English-proficient adults in California, as determined by the American Community Survey, including Punjabi, if it is not listed. The law makes a violation of the posting requirements enforceable by a civil penalty.
- *Action Items:* Employers must properly post employee notifications as required by applicable law.

## Statute of Limitations

### Sexual Assault Statute of Limitations: [AB 2777](#).

*Effective Date:* January 1, 2023.

- AB 2777 revives certain civil actions seeking the recovery of damages due to sexual assault where the applicable statute of limitations would have barred the complaint. The law revives such claims so long as the action is commenced by December 31, 2026, the underlying conduct occurred on or after January 1, 2009, and the statute of limitations would have been the sole bar to the action. The legislation also revives certain other sexual assault claims that would have been barred solely due to the statute of limitations before January 1, 2023, where an entity or entities (who are legally responsible for damages arising from the sexual assault) engaged in a "cover-up." Such actions may proceed if pending in court on January 1, 2023, or are initiated between January 1, 2023, and December 31, 2023.
- *Action Items:* In light of this new legislation, businesses should consider retaining necessary documentation to the extent they need to defend themselves based on the revival of previously lapsed sexual assault claims.

## Facility Access

### Restroom Access for Individuals With Medical Conditions: [AB 1632](#).

- *Effective Date:* January 1, 2023.
- Under AB 1632, a business that is open to the general public for the sale of goods and has a toilet facility for its employees must permit any individual who is lawfully on the premises and has an eligible medical condition to use the toilet facility during normal business hours so long as the conditions set forth in the law are satisfied.
- *Action Item:* Employers who are open to the public and have employee restroom facilities should be aware of this requirement and permit the use of their restroom facilities under specified circumstances.

## Employee Tracking

### Motor Vehicle Tracking: [AB 984](#).

- *Effective Date:* January 1, 2023.
- AB 984, among other matters, requires the Department of Motor Vehicles (DMV) to establish a program that authorizes an entity to issue devices as alternatives to traditional vehicle stickers, tabs, license plates, and registration cards under specific conditions. These so-called "alternative devices" may not include vehicle location technology except for vehicles that are registered as "fleet vehicles," "commercial vehicles," and those operating under an "occupational license." Further, employers may not use an alternative device to monitor employees (i.e., to locate, track, watch, listen to, or otherwise surveil employees) "except during working hours, and only if strictly necessary for the performance of the employee's duties." Before conducting any monitoring with an alternative device, employers must notify the employee that monitoring will occur. The notification must include specified elements. Employers cannot retaliate against employees for disabling or removing monitoring capabilities from the alternative device during nonworking hours.

- *Action Items:* Employers who utilize alternative devices equipped with monitoring technology must ensure such monitoring is necessary for the employee's job. Employers should also provide the appropriate notification to employees prior to conducting any monitoring during work hours.

## **Meal and Rest Breaks: Public Sector Healthcare Employers**

### **Meal and Rest Periods for Public Sector Healthcare Employees: [SB 1334](#).**

- *Effective Date:* January 1, 2023.
- SB 1334 establishes meal and rest period requirements for employees who provide direct patient care or support direct patient care in a general acute care hospital, clinic, or public health setting and are directly employed by the state, counties, municipalities, and the Regents of the University of California. Like the requirements for private sector employees, under the legislation, workers must receive an unpaid 30-minute meal period for shifts over five hours and a second unpaid meal period for shifts over 10 hours. Such employees also must receive a 10-minute rest period for every four hours or a major fraction thereof. Employees are entitled to an additional hour of pay at their regular compensation rate for each workday that the employer does not provide a meal or rest break.
- *Action Item:* Public healthcare employers should familiarize themselves with these meal and rest period requirements and establish policies and procedures to ensure appropriate compliance.

## **Independent Contractors**

### **Commercial Fishers: [AB 2955](#).**

- *Effective Date:* Extends existing law through January 1, 2026.
- AB 2955 extends the statutory independent contractor exemption for commercial fishers.

## **Fast Food Workers**

### **FAST Recovery Act: [AB 257](#).**

- *Effective Date:* January 1, 2023, and will become inoperative on January 1, 2029.
- The Fast Food Accountability and Standards Recovery Act (FAST Recovery Act) created the Fast Food Council, which is responsible for establishing minimum standards for fast-food industry employees, including minimum wages, working hours, and other working conditions related to health and safety in the fast-food industry. Further details are available [here](#).

## **Labor**

### **Farm Workers Voting by Mail in a Union Election: [AB 2183](#).**

- *Effective Date:* January 1, 2023, and to be repealed on January 1, 2028.
- This legislation allows farmworkers to vote by mail in a union election or to utilize authorization cards to be submitted to the California Agricultural Labor Relations Board (ALRB). Previously, elections were only allowed to be held in person.

- *Action Items:* Employers in the agricultural industry should allow for mail-in ballots and authorization cards in elections.

### **Deterring Union Membership: [SB 931](#).**

- *Effective Date:* January 1, 2023.
- SB 931 allows employee organizations to bring claims to the Public Employment Relations Board (PERB) alleging that a public employer deterred or discouraged employees from becoming members of an employee organization.
- *Action Item:* Public employers should be aware of the potential for claims to PERB.

Companies and organizations should work with experienced legal counsel to determine the best approach to ensure compliance with California's latest developments.

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