New California Employment Laws for 2024

It's that time of year again — the trees are changing color, fall décor adorns front porches (and sometimes workspaces), and brand-new labor and employment laws are heading your way.

As it usually does, this year's legislative session ended with hundreds of bills hitting Governor Gavin Newsom's desk, many of which will impact employers' compliance efforts. Here's a quick look at some of the newly signed laws of which employers should be aware.

Unless otherwise stated, they're effective starting January 1, 2024.

Leaves of Absence

When Governor Newsom signed SB 616, he enacted a major expansion of the state's paid sick leave (PSL) law, called the Healthy Workplaces, Healthy Families Act of 2014; while the law's basic framework remains the same, the amount of leave will increase.

Currently, employers are required to provide at least three days or 24 hours of PSL — with SB 616, that number increases to **five days or 40 hours**. The bill also raises the cap employers can place on PSL accrual from six days (48 hours) to 10 days (80 hours) and increases the number of sick days an employee can roll over to the next year from three days to five days. SB 616 also extends existing PSL procedural and anti-retaliation provisions to employees covered by a valid collective bargaining agreement.

Employers will need to update their PSL policies and also should note that where local PSL ordinances are applicable, the state's PSL expansion may provide more generous benefits than the local ordinances come January 1. If the two laws differ, you must follow whichever is more generous to employees.

Also of note is SB 848, which creates a new leave of absence for an employee's reproductive loss, requiring employers to provide up to five days of leave for certain reproductive loss events defined in the law, including a miscarriage, failed adoption, failed surrogacy, stillbirth or an unsuccessful assisted reproduction.

Like bereavement leave, this law applies to employers with five or more employees and covers employees that have worked for the employer for at least 30 days prior to the start of the leave. This leave must be taken within three months of the event unless the employee is on or chooses to take leave under another leave entitlement, such as the California Family Rights Act (CFRA), in which case the reproductive loss leave must be taken within three months of the other leave's end date. The law provides that if an employee experiences more than one qualifying event, employers are not obligated to grant more than 20 days of leave within a 12-month period.

Employers cannot discriminate or retaliate against employees seeking to exercise their rights under the law and must maintain employee confidentiality related to reproductive loss leave. The law also clarifies that leave for reproductive loss is separate and distinct from other leaves like CFRA leave, pregnancy disability leave or bereavement leave.

Notably, unlike the state's bereavement leave law, this law **doesn't** allow employers to request documentation supporting the need to take reproductive loss leave.

Workplace Safety

When Governor Newsom signed SB 553 on September 30, 2023, California enacted general industry workplace violence safety requirements that will be applicable to nearly all California employers and is under the California Division of Occupational Safety and Health's (Cal/OSHA) jurisdiction. Under the new law, which takes effect **July 1, 2024**, covered employers will have a number of new obligations, including developing and implementing a workplace violence prevention plan (WVPP) either as a standalone document or as part of their required Injury and Illness Prevention Plan (IIPP), training employees on the plan, creating workplace violence incidence logs, and various recordkeeping requirements.

The law applies to most employers, but not all. Notably, it doesn't apply to:

- Employees teleworking from a location of the employee's choice;
- Places of employment where fewer than 10 employees are working at the place at any given time and are not accessible to the public;
- Health care facilities operating under Cal/OSHA's Violence Prevention in Health Care regulation; and
- Law enforcement agencies.

Under this new law, workplace violence is defined as any act of violence or threat of violence that occurs in a place of employment, including the threat or use of physical force against an employee, an incident involving a threat or use of a firearm or other dangerous weapon. Actual injury is **not** required. Workplace violence doesn't include a lawful act of self defense or defense of others.

The WVPP requirements are comprehensive and will probably look familiar to employers who had COVID-19 prevention programs under Cal/OSHA's COVID-19 emergency temporary standards. Employers' WVPP must include information that addresses the following 13 topics:

- Individuals responsible for implementing the plan.
- Effective procedures for obtaining employees' and authorized representatives' active involvement in developing and implementing the plan.
- Methods the employer will use to coordinate implementing the plan with other employers, when applicable, to ensure that those employers and employees understand their respective roles.
- Effective procedures for the employer to accept and respond to reports of workplace violence.
- Effective procedures to ensure that employees comply with the plan consistent with safe and healthy work practices.
- Effective procedures to communicate with employees regarding workplace violence matters, including how to report an incident, how employee concerns will be investigated and how employees will be informed of investigation results.
- Effective procedures for responding to actual or potential workplace violence emergencies, including means to alert employees of emergencies, evacuation or sheltering plans, and how to obtain help from staff assigned to respond to workplace violence emergencies.
- Procedures to develop and provide the training required by the law.

- Procedures to identify and evaluate workplace violence hazards, including scheduled periodic inspections to identify unsafe conditions and work practices, and employee reports and concerns.
- Procedures to correct identified workplace violence hazards in a timely manner.
- Procedures for post-incident response and investigation.
- Procedures to review the plan's effectiveness and revise the plan as needed, including procedures to obtain active involvement of employees and representatives in reviewing the plan. The plan must be reviewed at least annually when a deficiency is observed or apparent, and after a workplace violence incident has occurred.
- Procedures or other information required by Cal/OSHA.

The plan must be in writing, and it must be available and easily accessible to employees, authorized employee representatives and representatives of Cal/OSHA at all times.

Employers are required to create a detailed violence incidence log for each instance of workplace violence, containing information such as the date and location of the incident, description of the incident and workplace violence type (as defined), classifications of who committed the violence and the circumstances at the time, where the incident occurred and the type of incident (e.g., physical attack, attack with weapon, threat of force, etc.), and other information.

Employers must also keep certain records under the new law, including:

- Records of workplace violence hazard identification, evaluation and correction (five years).
- Training records (one year).
- Violence incident logs (five years).
- Records of workplace violence incident investigations (five years).

SB 553's WVPP and related requirements have a delayed implementation date, taking effect on **July 1, 2024**. This provides employers with some much-needed time to create and implement their plan.

In addition to the new WVPP requirements, SB 553, along with SB 428, expand the scope of the state's workplace violence temporary restraining order (TRO) laws, but those changes won't take effect until 2025. Currently, an employer whose employee has suffered unlawful violence or a credible threat of violence that was or could be carried out at the workplace can seek a TRO against the individual responsible for the violence or threat of violence on behalf of the employee.

Beginning January 1, 2025, the law will also authorize an employee's collective bargaining representative to seek a TRO, not just the employer.

Also in 2025, workplace TROs may be sought when an employee suffers "harassment," as defined, in addition to unlawful violence or a credible threat of violence. Harassment for purposes of workplace TROs means a "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose." Additionally, the conduct must be something that causes a "reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress."

Discrimination, Harassment and Retaliation

After its delayed implementation, last year's AB 2188 will take effect in January, prohibiting employers from discriminating against an employee or applicant based on the person's off-duty, off-

site cannabis use. Employers may still conduct preemployment drug testing, and an employer can still refuse to hire someone based on a valid preemployment drug screening that looks only for psychoactive cannabis metabolites. The law also doesn't permit an employee to possess, be impaired by or use cannabis on the job, and it maintains employers' rights and obligations in keeping a drug- and alcohol-free workplace.

Plus, this year's SB 700 makes some additions to AB 2188, prohibiting employers from requesting information from a job applicant about their prior use of cannabis. Information about an individual's prior cannabis use obtained from their criminal history is also off limits unless the employer is allowed to consider it under the state's Fair Chance Act, the law that places strict limits on the review and consideration of criminal history in employment decisions.

California also expanded its retaliation protections via SB 497.

Under current law, employers cannot discriminate or retaliate against employees for engaging in certain protected activities, such as filing a complaint with the California Labor Commissioner for a wage and hour violation or serving as a whistleblower. SB 497 adds to the law a rebuttable presumption in favor of an employee's claim if an employer takes adverse against the employee within 90 days of the employee's protected action. This means the law will presume that the employer retaliated against the employee if they take an adverse action within 90 days of the employee's protected activity, shifting the burden to the employer to rebut that presumption with sufficient evidence. The bill also expands the maximum civil penalty from $10,000 per violation to $10,000 per employee for each violation for any employer found to have retaliated against a whistleblower.

Notice Requirements

Labor Code section 2810.5 requires employers to provide a wage and employment notice to new hires that contains certain specified information, and AB 636 adds a requirement that employers also provide information about federal and state emergency declarations applicable to any counties in which employees are employed.

The bill also requires employers to provide additional information to H-2A employees, beginning March 14, 2024, describing an agricultural employee's additional rights and protections under California law. Another bill requirement is for the California Labor Commissioner to, by March 1, 2024, create a template notice that employers can use for this obligation.

Industry-Specific Laws

California passed several bills continuing its trend of regulating specific industries. This year, Governor Newsom signed laws aimed at the fast food, health care and grocery store industries.

AB 1228 creates the Fast Food Council, which will determine minimum wages, working hours and other working conditions for fast food restaurants. If this sounds familiar, then you probably remember that last year, Governor Newsom signed a similar law that would have set minimum wage in fast food restaurants at $22 per hour. The legislation, however, was hotly contested and ultimately put on hold when enough signatures were gathered to put the law before voters through referendum on the 2024 ballot.

In exchange for withdrawing the referendum, AB 1228 will repeal last year's law and replace it with a substantially similar law that has a lower starting minimum wage: The law raises the minimum wage for fast food restaurant employees to $20 per hour beginning **April 1, 2024.**

After the initial 2024 increase, the Fast Food Council may establish a new minimum wage rate beginning January 1, 2025. The highest hourly minimum wage the council may establish will be annual increases by either 3.5 percent or the rate of change in the Consumer Price Index.

The law applies to fast food restaurants that are part of a fast food chain consisting of 60 or more establishments nationally that:

- Share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products and services; and
- Primarily provide food or beverages for immediate consumption on or off the premises to customers who order and pay for food before eating, with items either prepared in advance or prepared or heated quickly, and with limited or no table service.

In the health care sector, SB 525 establishes five new minimum wage schedules for certain health care employees depending on the nature of the employer. Wage increases under this law are generally scheduled to take effect on June 1, 2024, except for certain county owned facilities, which will begin compliance in 2025. This law applies to a wide range of health care facilities — the statute lists 20 types in the definition of covered facilities, including hospitals, skilled nursing facilities, mental and psychiatric care facilities, home health agencies, clinics, residential care and many others.

SB 525's five minimum wage schedules are all different, setting minimum wages anywhere from $18 per hour to $23 per hour. Wage rates are set for scheduled increases over time, though it's important to note that the different wage schedules increase at different rates. For example, one schedule will increase the minimum wage annually from 2024 to 2026, while another will increase the minimum wage rate every two years. Health care employers should review the new law carefully to ensure compliance with the correct rates.

Affecting grocery stores is AB 647, which expands and revises requirements the law places on successor grocery employers' hiring and reinstatements when a change in ownership or control occurs. Current law requires:

- Incumbent grocery employers to, within 15 days after transfer, provide the successor grocery employer a list of eligible grocery workers; and
- Successor grocery employers to maintain preferential hiring lists for at least 90 days.

AB 647 adds certain distribution centers as "grocery establishments" for purposes of these requirements, expanding the number of workers covered under the law. The bill also creates a significant new private right of action.

Noncompete Agreements

California law is very strict in the area of noncompetition agreements. Aside from some narrow exceptions, they are not enforceable — and AB 1076 codifies existing California case law to that effect, making it unlawful to include a noncompete clause in an employment contract or require an employee to enter a noncompete agreement that doesn't satisfy specified exceptions.

The bill also requires employers to notify current and former employees who were employed after January 1, 2022, and whose contracts included a noncompete that doesn't meet one of the exceptions that the noncompete clause or agreement is void, as specified. Employees with such contracts must be notified in writing by **February 14, 2024**.

A related bill, SB 699, adds that noncompete agreements are void regardless of where they are signed, i.e., regardless of whether the contract was signed and employment was maintained outside of California. The bill also provides employees with the right to seek injunctive action and civil penalties.

COVID-19

Nearly four years after the COVID-19 pandemic hit the United States and has mostly subsided, virus-related laws and regulations are still governing workplaces in certain ways — but some are sunsetting.

On October 10, 2023, the governor signed SB 723, which extends one extra year — to the end of 2025 — an existing law providing workers displaced by COVID-19 in certain industries with various recall rights when the employer has open positions. More importantly, however, SB 723 adds a presumption to the law, meaning that a covered employee separated from employment due to lack of business, reduction in force or other economic nondisciplinary reason is presumed to be separated due to a COVID-19-related reason unless the employer establishes otherwise.

Additionally, while there isn't a brand-new COVID-19 law this year, it's worth noting that two COVID-19 laws that have been on the books since 2020 are now coming **off**, sunsetting at the end of this year.

The first is California's COVID-19 notice requirements found in Labor Code section 6409.6, which required employers to provide notice of COVID-19 exposures in the workplace. Employers should remember, however, that even after the state notice requirements expire, Cal/OSHA's COVID-19 non-emergency regulations remain in effect. The regulations require employers to notify employees and independent contractors who had a close contact with a COVID-19 case, as well as any employer with an employee who had a close contact, as soon as possible, and in no case longer than the time required to ensure that the COVID-19 exclusion requirements are met. (And that's just the tip of the iceberg; as a reminder, Cal/OSHA's COVID-19 non-emergency regulations also require employers to follow specific rules with respect to exclusion from and return to work, COVID-19 testing, face coverings and respirators, and ventilation through February 3, 2025.)

Second on the way out are California's COVID-19 workers compensation laws, enacted in 2020, that created rebuttable workers' compensation presumptions for employees, first responders and health care personnel who contracted COVID-19, as well as required employers to inform their workers' compensation carrier of COVID-19 cases in the workplace. Those provisions sunset at the end of 2023.

Source: Our Friends at the California Chamber of Commerce