

EMPLOYMENT LAW UPDATE

Relationship-Driven Results

November 2022

LEGISLATIVE UPDATE

At the close of each legislative cycle, California signs into law a host of new laws with significant impact on California employers. Below is a list of key pieces of legislation, arranged in order by bill number, for ease of reference.

Assembly Bills

AB 152

COVID-19 Supplemental Paid Sick Leave Extension

Effective immediately, AB 152 extends the provision of California's COVID-19 supplemental paid sick leave through December 31, 2022. The bill does not *add* any new benefit or otherwise require that employers provide additional sick leave, but instead simply extends the time period through which employees may take that leave. Instead of expiring on September 30, 2022, leave may now be utilized through the end of the calendar year.

AB 984

Motor Vehicle Tracking

AB 984 requires California's department of motor vehicles to allow the use of vehicle location devices on fleet (non-employee owned) vehicles, but only if necessary to ensure the performance of employee's work duties. The law also expressly prohibits employers from utilizing that technology to monitor employees during non-work hours. Employers that install monitoring devices are required to advise employees both of the existence of the devices and of employees' rights under the statute, including the right to disable devices during non-work hours.

AB 1041

"Designated Person" Allowance under CFRA

AB 1041 expands the scope of individuals for whom an employee is entitled to seek protected leave under the California Family Rights Act ("CFRA") and California's paid sick leave law. Beginning on January 1, 2023, employees may take leave to care for a "designated person" that is either a family member or "akin" to a family member. An employer may limit employees, however, to designation of a single "designated person" per 12-month period.

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- Harassment, Discrimination, & Retaliation Update
- Workplace Investigations
 - How to Get Sued
- Class, PAGA, & Arbitration
- Employment Termination Checklist

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AB 1751
COVID-19 Workers' Compensation Presumption

AB 1751 extends, through January 1, 2024, the rebuttable presumption that, for purposes of workers' compensation benefits, an employee's COVID-19 illness was sustained in the course of employment.

AB 1949
Bereavement Leave

Under AB 1949, private employers with five or more employees and all public employers are now required to permit up to five days of unpaid bereavement leave to employees within three months following the death of a family member, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. Employers are permitted to require documentation to support the leave request, and employees may use existing accrued leave benefits (vacation, paid time off, sick leave, etc.) in lieu of unpaid leave, at their own discretion.

AB 2068
Workplace Health and Safety Notices

Pursuant to AB 2068, notices posted as a result of citations/orders received from the Division of Occupational Safety and Health must be posted in "the top seven non-English languages used by limited-English-proficient adults in California, as determined by the most recent American Community Survey by the United States Census Bureau." The legislation also requires that notices be posted in Punjabi during any time period during which it is not one of the top seven languages (which, at present, it is not). The languages currently covered by that instruction (other than English and Punjabi) are Spanish, Cantonese, Mandarin, Vietnamese, Tagalog, Korean, and Armenian.

AB 2188
Off Duty Cannabis Use

Beginning on January 1, 2024, AB 2188 will prohibit employers from taking adverse employment action based on employee's off-the-job use of cannabis (whether for medicinal or recreational purposes) or based upon results of pre-employment drug screening that finds non-psychoactive cannabis metabolites in a job applicant's hair, blood, urine, or other bodily fluids.

Notably, however, the law does not apply to employees in positions that require federal background investigation and/or clearance, or to employees in the construction/building industries. Employers that are required to abide by state or federal drug-free policies, as well as those that receive federal funding/benefits or hold federal contracts, are also exempted.

Areas of Practice

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Employment & Labor

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Product Liability

Professional Liability

Real Estate Litigation

Restaurant & Hospitality

Retail

Transactional & Business Services

Transportation

Trial & Civil Litigation

AB 2693
COVID-19 Exposure Notice Requirements

AB 2693 slightly revises COVID-19 exposure notification requirements and extends applicable provisions through January 1, 2024. In most pertinent part, employers may now post notice of potential COVID-19 exposure at the worksite (and/or on existing employee portals) in lieu of providing written notice, as had previously been the required practice.

AB 2960
Tolling of Discrimination Claims Before the Civil Rights Department

Pursuant to AB 2960, employees that file claims with the Civil Rights Department (formerly the Department of Fair Employment and Housing) are entitled to a tolling period on those claims while an administrative dispute proceeding is pending.

Senate Bills

SB 1044
Absences Excused by “Emergency Conditions”

Effective January 1, 2023, SB 1044 expressly prohibits California employers from taking an adverse employment action against any employee that refuses to work (whether by refusing to report to work or by leaving the workplace) when the employee holds reasonable belief that the workplace is unsafe. The “reasonable person” standard is defined as circumstances under which a “reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises.”

The legislation particularly focuses on “emergency condition(s)” - defined as the “existence of either [. . .] [c]onditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act,” or “[a]n order to evacuate a workplace, a worksite, a worker’s home, or the school of a worker’s child due to natural disaster or a criminal act.” The definition specifically *excludes* health pandemics.

SB 1162
Pay Data Reporting Requirements

SB 1162 marks the next step in the progression of California’s focus on “pay transparency” by expanding a previous obligation and adding another. Employers with 100 or more employees (including labor contractors) are now required to report median and mean hourly rates within each specified job category by race, ethnicity, and gender.

Beginning on January 1, 2023, employers with 15 or more employees will also be required to include pay scale information in all job postings and must make pay scale information available to current employees in a position, upon request.

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We act with unparalleled integrity and professionalism at all times to earn the respect and confidence of all with whom we deal.

Employers must also maintain wage and job title history for each employee during the entirety of their employment and for (at least) three years thereafter.

Penalties are imposed for non-compliance and increase in instances of repeated malfeasance.

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This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Rio Schwarting, Christine Dixon, Jessica O'Malley, Rayne Brown, Nicole Allen, or Haley Murphy at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Rachel Albert, or Enoch Cheung at (310) 649-5772.

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