PETTIT KOHN INGRASSIA LUTZ & DOLIN

Employment Law Update What You Need to Know for 2024

Presented by Shannon R. Finley, Esq., Shareholder Ryan H. Nell, Esq., Shareholder

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Shannon R. Finley is a shareholder in the firm's San Diego office and focuses her practice on employment law, representing California employers in disputes ranging from single plaintiff wrongful termination cases to complex class actions, and everything in between. In addition to defending employers in litigation, Ms. Finley provides guidance to employers, advising on best practices to avoid lawsuits before they arise.

Ms. Finley is a speaker and author on issues including best hiring practices, wage and hour law, discrimination, leaves of absence, and social media. She was recognized as a Rising Star by San Diego *Super Lawyers*[®] and received the C. Hugh Friedman New Lawyer Award from Lawyers Club for her leadership and professionalism in the San Diego Legal Community. Ms. Finley was also recognized by *Best Lawyers: Ones to Watch* for her work in Litigation – Labor & Employment and was honored as one of the 2020 & 2022 Leaders in Law and 2021-2023 Women of Influence in Law by the *San Diego Business Journal*.

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Ryan H. Nell is an employment attorney responsible for representing California employers statewide in both counseling and comprehensive litigation support. With the ever-changing landscape of California and federal employment law, Ryan prides himself on assisting clients in staying ahead of the curve in an effort to avoid legal trouble before it arises. He has extensive experience representing clients in harassment, retaliation, and discrimination matters, as well as large-scale wage and hour lawsuits.

Ryan speaks regularly on a wide range of topics aimed at assisting California employers in the avoidance of legal trouble before it arises, and his work in the field has led to his recognition as a Rising Star by San Diego *Super Lawyers*[®]. Mr. Nell was also included in the 2021-2024 editions of *Best Lawyers: Ones to Watch* for his work in Labor and Employment Law – Management.

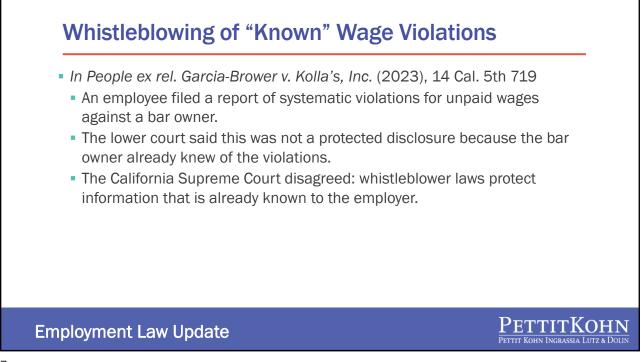


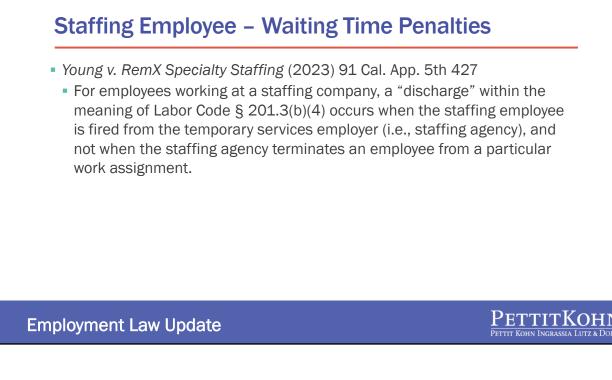


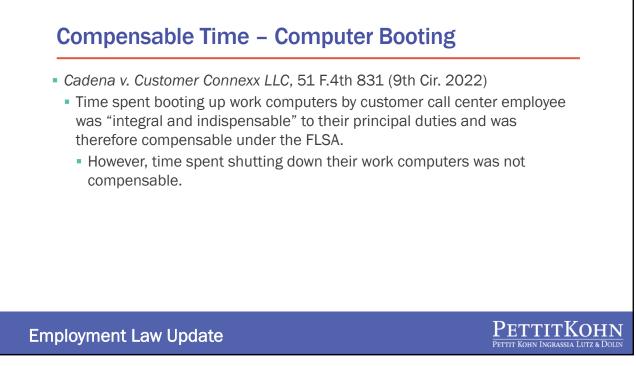


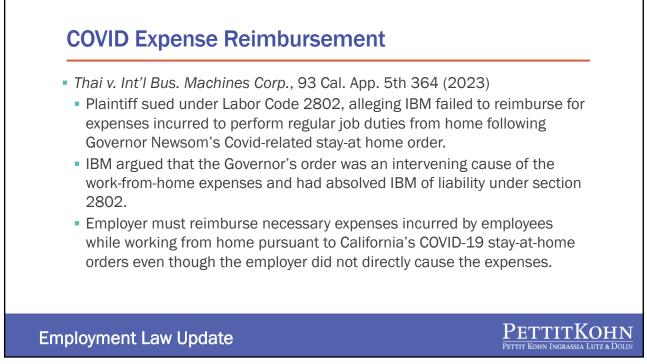








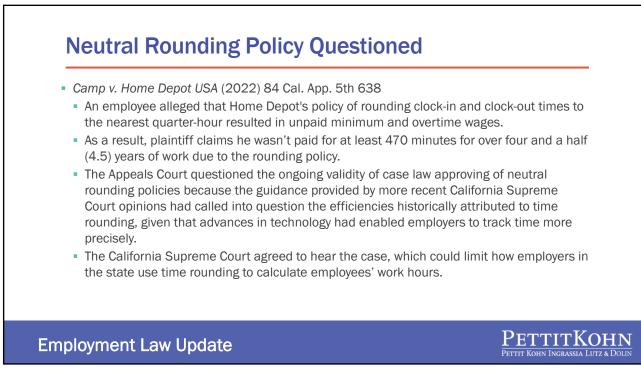


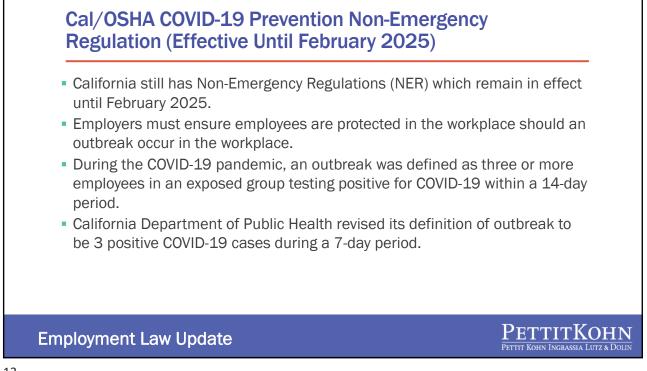


Employers Owe No Duty Of Care To Prevent The Spread Of COVID To Employees' Household Members

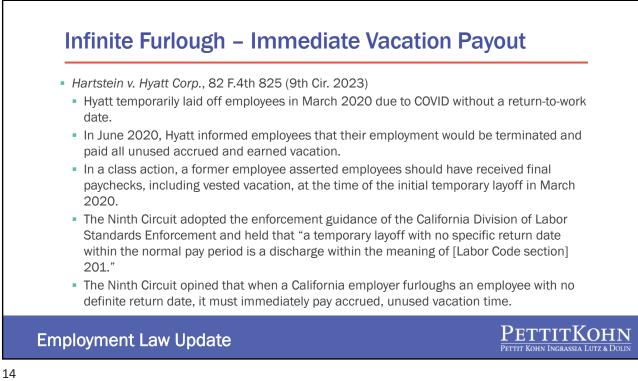
- Kuciemba v. Victory Woodworks, Inc. (2023) 31 F.4th 1268
 - Plaintiff claimed that he contracted COVID-19 while working and that as a result, his family members also became ill with the infection.
 - The Court ruled that California employers owe no duty of care to prevent the spread of COVID-19 to employees' household members.

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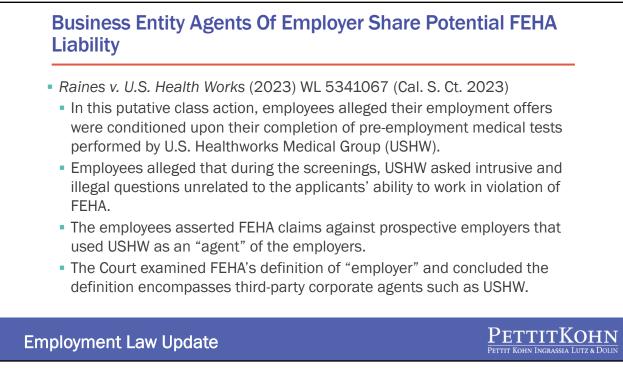






- Castelo v. Xceed Fin. Credit Union (2023) 91 Cal. App. 5th 777
 - Castelo sued Xceed for wrongful termination and age discrimination in violation of FEHA.
 - Plaintiff signed a two-part release: (1) a release of claims through the date of execution and (2) "Reaffirmation" that Castelo was supposed to sign on her last day of her employment six weeks later.
 - Castelo signed both releases at the same time (i.e., six weeks before her employment ended).
 - Castelo argued that the release violated Cal. Civ. Code § 1668, which prohibits predispute releases of liability.
 - Summary judgment granted and upheld in favor of Xceed.
 - The court held the releases were not barred by the statute because they did not have the purpose of immunizing Xceed from liability for a future violation of law.

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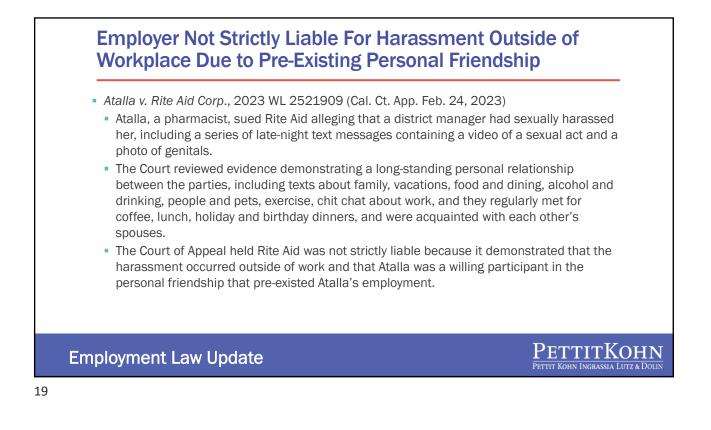
Employer Must Prove "Substantial Increased Costs" Would Result From Religious Accommodation

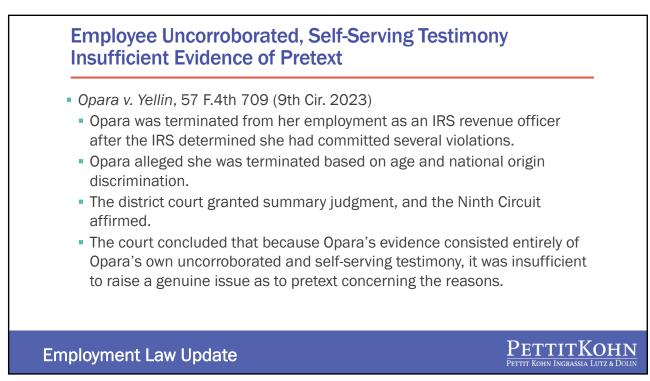
- Groff v. DeJoy, 143 S.Ct. 2279 (2023)
 - A USPS employee refused to work on Sundays saying it was necessary for a day of rest and worship.
 - The Supreme Court held that "more than a de minimis cost, as that phrase is used in common parlance, does not suffice to establish undue hardship under Title VII."
 - The Court held that undue hardship is demonstrated when "a burden is substantial in the overall context of an employer's business."
 - The Court further concluded that when "[f]aced with an accommodation request ... it would not be enough for an employer to conclude that forcing other employees to work overtime would constitute an undue hardship. Consideration of other options, such as voluntary shift swapping, would also be necessary."
 - The Court found that an employer must accommodate an employee's religious beliefs unless it can show that doing so would "result in substantial increased costs in relation to the conduct of its particular business."

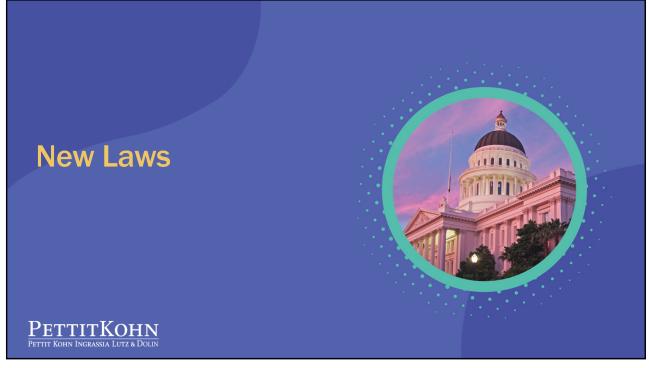
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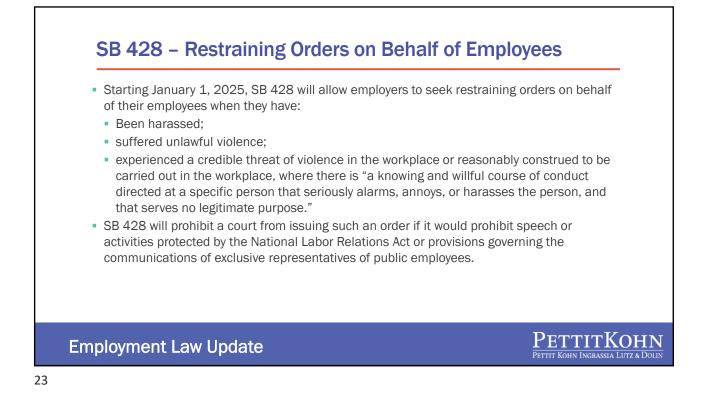








SB 235 – Initial Disclosures For cases filed on or after January 1, 2024, SB 235 requires parties to a civil action in state court to exchange initial disclosures with all other parties within 60 days of a demand by any party to the action, unless modified by stipulation. - Similar to the initial disclosures already required pursuant to the Federal Rules of Civil Procedure, these disclosures must include: 1) The name and contact information of persons likely to have discoverable information and the subject of the information; 2) a copy or description of all documents in support of the party's claims or defenses, or that is relevant to the action; and 3) contractual agreements or insurance policies under which an insurance company or person may be liable to satisfy a judgment entered in the action, or to indemnify or reimburse for payments made to satisfy the judgment. - Documents and information used solely for impeachment purposes are expressly excluded from these disclosures. • The new law also increases sanctions imposed from \$250 to \$1,000. PettitKohn **Employment Law Update** Pettit Kohn Ingrassia Lutz & Dolin 22

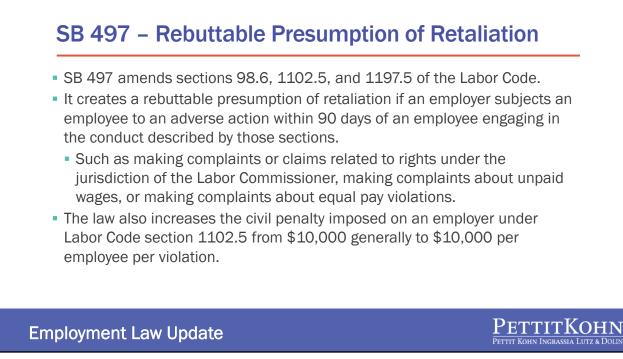




- The new law, effective July 1, 2024, requires nearly all employers in the State of California to prepare a Workplace Violence Prevention Plan, train employees on how to identify and avoid workplace violence, and maintain a violent incident log.
- SB 553 also has similar provisions that allow employers to seek temporary restraining orders on behalf of employees suffering violence or credible threats of violence, similar to SB 428.

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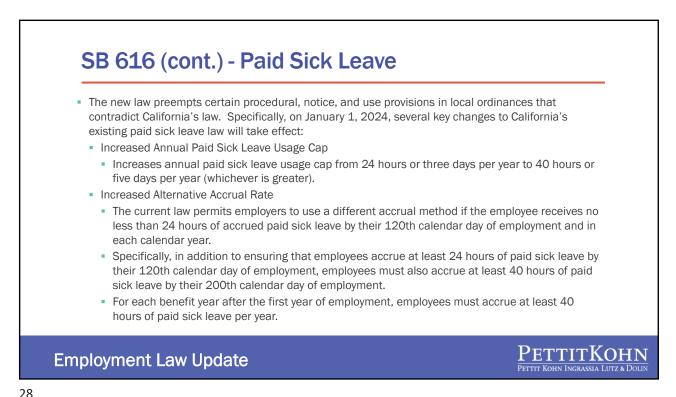




SB 616 – Paid Sick Leave

- SB 616 amends sections 245.5, 246, and 246.5 of the Labor Code.
- The new law increases the annual amount of paid sick leave from <u>three days</u> or 24 hours to <u>five days</u> or 40 hours for eligible employees and raises the accrual cap from 48 hours to 80 hours.
- It also extends the anti-retaliation and procedural provisions in California's sick pay law to include those covered by a valid collective bargaining agreement ("CBA"), and expressly excludes railroad carrier employers and their employees.

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SB 616 (cont.) - Paid Sick Leave

- Increased Rolling Accrual Cap
 - The new law also increases the current California paid sick leave rolling accrual cap to a year-end carryover cap from 48 hours (six days) to 80 hours (10 days). Employers can avoid the accrual and carryover requirements by providing a frontload of paid sick leave at the start of each benefit year.
- Increased Frontload Grant to Avoid Accrual and Carryover
- Under the amended law, employers who want to avoid accrual and carryover of paid sick leave will need to grant new hires the greater of 40 hours or five days, at a minimum, of paid sick leave upon hire that is available to use by their 90th calendar day of employment, and then at the beginning of each subsequent benefit year.

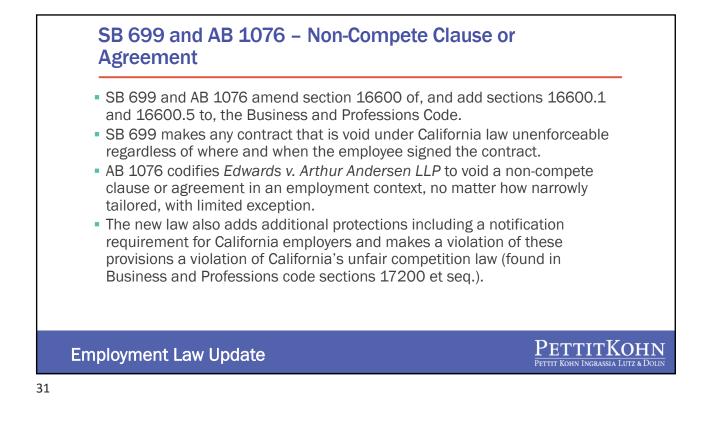
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SB 616 (cont.) - Paid Sick Leave

- Partial Preemption
 - The new law contains a new section which partially preempts local California paid sick leave ordinances that have different substantive standards on the following topics: (a) advances on paid sick leave before it accrues; (b) reinstatement of earned, unused paid sick leave upon rehire; (c) balance notification each pay period; (d) rate of pay for sick leave and the timing of such pay; and (e) employee notice to employers for planned and unplanned paid sick leave use.
- Expanded Application to Employees Covered by Collective Bargaining Agreement
 - The amendments change the application of California's paid sick leave law to employees covered by CBAs where the CBA qualifies for exemption.
 - Specifically, employers that rely on the CBA exemption must satisfy certain aspects of the paid sick leave law including reasons for use, no requirement to find a replacement worker, and no retaliation for use of paid sick leave (which would appear to include counting use of paid sick leave as an instance of absence for disciplinary purposes).

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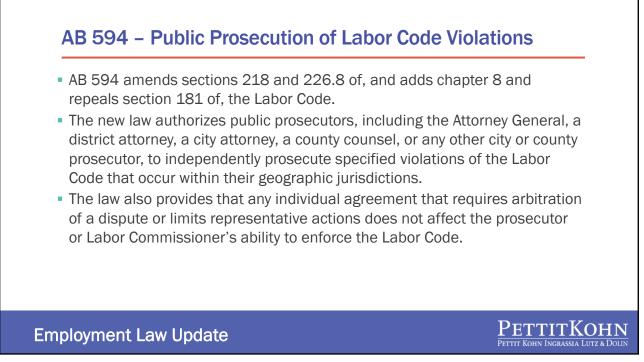
- SB 700 amends section 12954 of the Government Code and expands existing law.
- It makes it unlawful for an employer to discriminate against a candidate or employee because of the person's use of cannabis off the job and away from the workplace.
- The new law also makes it unlawful to request information from an applicant relating to the applicant's prior use of cannabis, with certain exceptions.

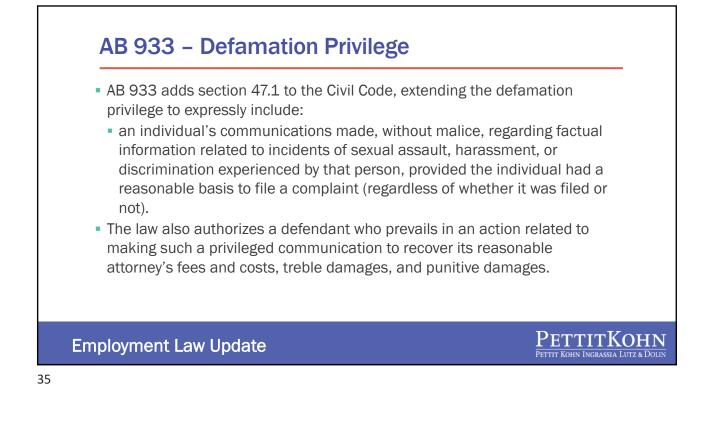
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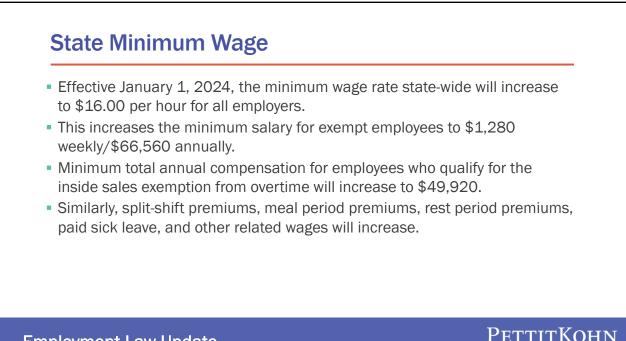
SB 848 – Time Off for Reproductive Loss

- SB 848 adds section 12945.6 to the Government Code and requires employers to provide eligible employees up to five days of (unpaid, unless the employer has an existing policy stating otherwise) reproductive loss leave.
 - Reproductive loss includes a failed adoption or surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.
- The law also prohibits retaliation against an individual who uses this leave or shares information about it.

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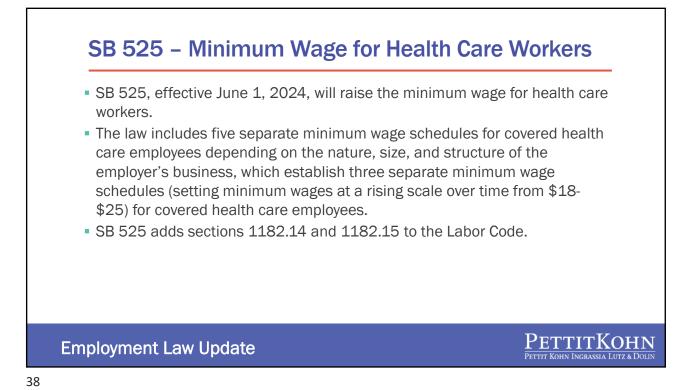


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City of San Diego – Minimum Wage

- Effective January 1, 2024, employees who perform at least two hours of work in one or more calendar weeks of the year within the geographic boundaries of the City of San Diego will receive a minimum wage increase from \$16.30 to \$16.85 an hour.
 - Tips and gratuities do not count toward payment of minimum wage.
- If a work location is not within the geographic boundaries of the City of San Diego, but within the County of San Diego, the California state minimum wage and earned sick leave laws apply.

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AB 1228 – Fast Food Council and Fast Worker Minimum Wage

- AB 1228 repeals existing law, presently suspended due to a referendum petition, which established the Fast Food Council within the Department of Industrial Relations, <u>only if</u> the referendum is withdrawn by January 1, 2024.
- If withdrawn by that date, the bill will, until January 1, 2029, re-establish the Fast Food Council, deem the council to be a governmental agency, and reestablish its duties to include setting minimum wage as well as requirements and review procedures for health, safety, and employment standards.
- AB 1228 also increases minimum wage for fast food workers to \$20 an hour, effective April 1, 2024.

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Bills to Watch - Vetoed By Governor

- SB 403: "Caste" as protected class under FEHA.
- SB 627: Chain businesses (100 or more nationwide) to provide a 60-day displacement for location closure.
- SB 725: Successor grocery employer to provide a dislocated worker a one-week allowance of pay for each year of employment.
- SB 731: Employer to provide 30 days' written notice to an employee working remotely to let them know they can
 request to continue to work remotely as a reasonable accommodation before requiring that employee to return to
 work in person.
- SB 799: Striking workers would be eligible for unemployment benefits after two weeks.
- AB 524: "Family caregiver" as a protected class under the FEHA.
- AB 575: Add "an individual's assumption of responsibilities for a child in loco parentis" to the reasons for which an employee taking leave may receive family temporary disability insurance benefits to bond with a minor child.
- AB 1356: Amend California's Worker Adjustment and Retraining Act (Cal-WARN) to expand its application beyond industrial or commercial facilities to all places of employment that have employed 75 or more persons in the preceding 12 months and included non-temporary employees of labor contractors.

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