EMPLOYMENT
LAW UPDATE

PETTITKOHN
PETTIT KOHN INGRASSIA LUTZ & DOLIN

OCTOBER 2026

We are dedicated to providing the highest quality legal services and obtaining superior results in partnership with those who entrust us with their needs for counsel.

We enjoy a dynamic and empowering work environment that promotes teamwork, respect, growth, diversity, and a high quality of life.

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

We represent clients in the areas of Appellate, Business Litigation, Community Association Litigation, Employment & Labor, Ethics & State Bar Defense, Personal Injury, Product Liability, Professional Liability, Real Estate Litigation, Restaurant & Hospitality, Retail, Toxic Tort, Transactional & Business Services, Transportation, and Trial & Civil Litigation.

LEGISLATIVE

California

New California Laws

Governor Gavin Newsom's deadline to act on bills was September 30, 2026. Below is a summary of new laws that will impact California employers and employees. All new laws take effect January 1, 2027, unless stated otherwise.

AB 1331 & 1883 – Workplace Surveillance

AB 1331 (Elhawary) prohibits an employer from using a "workplace surveillance tool" for monitoring or surveilling employees in a workplace bathroom and allowing employees to leave behind workplace surveillance tools when entering a workplace bathroom unless:

- an employee is required to remain available during meal or rest periods;
- the employer has a policy requiring possession of the device for identification or safety reasons; or
- for access to locked or secure areas if the device (a) does not detect or record audio or video and (b) does not have physically embedded or attached artificial intelligence.

Workplace surveillance tools include a "system, application, instrument, or device that collects or facilitates the collection of employee data, activities, communications, actions, biometrics, or behaviors by means other than direct observation by a person, including, but not limited to, video or audio surveillance, continuous incremental time-tracking tools, geolocation, electromagnetic tracking, photoelectronic tracking, a photo-optical system, or other means." Smoke or carbon monoxide detectors and metal detectors are expressly excluded.

AB 1883 (Bryan) prohibits certain employers (including government entities, universities, and labor contractors and their clients) from using a workplace surveillance tool that uses AI to collect neural data (such as gait analysis) or recognizes an individual's emotional state.

Employers are exempted from the new law's requirements if they are engaged in (1) the development of aircraft for use in national airspace; or (2) the development of products or services for national security, military, space, or defense purposes

where the use of a workplace surveillance tool is reasonably necessary to comply with a federal statute, a regulation, or binding federal contract.

Both new laws authorize the Labor Commissioner or a prosecutor to enforce their provisions, and allow for civil actions seeking injunctive relief, punitive damages, and reasonable attorney's fees and costs. Employers who violate the laws' provisions are subject to civil penalties of up to $500 for each violation. AB 1331 adds part 5.8 (commencing with Labor Code section 1560) and AB 1883 adds part 5.8 (commencing with Labor Code section 1580).

AB 1697 – Stay-or-Pay Contract Provisions

AB 1697 (Kalra) amends Business and Professions Code section 16608 and Labor Code section 926. AB 1697 makes the law's restrictions on contracts effective for stay-or-pay contracts entered into on or after January 1, 2027, rather than January 1, 2026, as initially legislated. The bill has an urgency clause so that it went into effect on September 30, 2026. The law establishes new exceptions to the stay-or-pay prohibition for:

- Contracts entered into pursuant to a recruitment and retention program funded by a federal, state, or local government agency grant if the employee repayment obligations comply with the requirements of the grant and do not exceed the service obligations required by the grant;

- Repayment obligations arising from advanced paid time off upon voluntary separation (if certain conditions are met); and

- Contracts for the receipt of a discretionary or unearned monetary payment from the employer to induce the worker to be affiliated with the employer or to maintain a relationship with the employer between a securities broker-dealer, insurance producer, or investment adviser and its agents or representatives that are registered and licensed (if the contract satisfies certain conditions).

AB 1961 – TRO: Protecting A Group of Employees

AB 1961 (Aherns) amends Code of Civil Procedure section 527.8. This new law will permit an employer to seek a temporary restraining order on behalf of a reasonably identifiable group of employees based on their workplace or location, without having to identify an individual employee, if a credible threat of violence is generally directed at the employer's workplace or at a group of employees.

AB 2495 – Unlawful Immigration-Related Practices

AB 2495 (Kalra) expands Labor Code section 1019 to include prohibiting retaliation against any person for exercising or attempting to exercise any right under federal, state, and local statutes and regulations applicable to employees. In addition, Labor Code section 1019 makes it unlawful for an employer, or any person, to engage in conduct, related to any person's perceived immigration status, that would reasonably tend to dissuade him or her from engaging in conduct that the person has a legal right to engage in under any federal, state, or local statute or regulation that is applicable to employees, or to induce a person to engage in conduct where the person has a legal right to abstain. Additionally, if an employer or other person violates this law, there is liability for civil penalties not to exceed $10,000 per employee or person for each violation.

AB 2563 – Sex Discrimination Definition Synchronization

AB 2563 (Pacheco) creates a consistent definition of sex discrimination across California's statutory codes, to align the definition in the Fair Employment and Housing Act, the Unruh Act, the Education Code, and other statutes. This bill amends various sections of each impacted statute.

AB 2646 – Agricultural Workers Minimum Wages

AB 2646 (Krell) requires the minimum hourly wage for an approved agricultural employee to be $19.75 per hour, to be adjusted according to the cost of living adjustments for social security benefits each January, starting in 2027. AB 2646 adds Labor Code section 1208.

SB 947 – "No Robo Bosses Act" Automated Decision Systems ("ADS")

SB 947 (McNerney) adds section 1520 of the California Labor Code. Beginning on July 1, 2027, this law will prohibit employers from relying solely on an ADS when making employment-related decisions, and requires a human reviewer to conduct an independent investigation and compile corroborating information for disciplinary and termination decisions. An ADS includes any computational process derived from machine learning, statistical modeling, data analytics, or AI that issues simplified output, including scores, classifications, or recommendations, that is used to assist or replace human discretionary decision-making.

If the ADS output cannot be corroborated, or a human reviewer concludes it is inaccurate or misleading, the employer will be prohibited from relying on it. The new law will also prohibit employers from using an ADS to:

- Infer a worker's protected status under the Fair Employment and Housing Act, and
- Predict and take adverse action against a worker for exercising their legal rights.

The new law requires employers to provide affected employees with post-use notice of an ADS, and a right to obtain a description of employee data primarily used by an ADS in a disciplinary or termination decision. The Labor Commissioner and prosecutors have enforcement authority and employees may also bring private causes of action to recover civil penalties up to $500 per violation.

SB 951 – Cal/WARN Act: AI Technological Displacement Notice

SB 951 (Reyes) amends Labor Code sections 1400.5 and 1401 and adds Labor Code section 1402.7. This new law revises the California Worker Adjustment and Retraining Act ("Cal/WARN Act") to require a notice of a mass layoff, relocation, or termination caused in whole or in substantial part by an AI system (or other automated technology that replaces or automates employment positions). The notice must state at the top: "This notice is for a technology displacement," and include: (1) the number, classification or occupation, and work location of layoffs substantially due to AI or other automated technology; (2) the job functions performed by those replaced workers that will be automated; and (3) the specific category or type of AI system or other automating technology resulting in the technological displacement.

The Employment Development Department must publish on its website a summary of the notices received and post a quarterly state-wide summary of reported technological displacements. Of note, the Cal/WARN Act's 60-day advance notice period or coverage thresholds remain unchanged.

SB 1149 – Bereavement Leave for a "Designated Person"

SB 1149 (Durazo) expands the persons for which an employee may take up to five days of unpaid (unless the employer's policy provides for paid) bereavement leave to include the employee's "designated person." Employees can make this designation at the time they take leave and employers may limit an employee to one designated person per 12-month period. This bill amends section 12945.7 of the Government Code.

SB 1237 – Pay Data Report Penalties

SB 1237 (Blakespear) amends Government Code section 12999 and increases the penalty imposed on private employers for subsequent failures to file the annual pay data report from $200 per employee to $1,000 per employee. The penalty for initial violations remains $100 per employee. The new law also requires the Civil Rights Department to annually publish the total number of pay data reports submitted.

SB 1316 — Labor Commissioner Liens and Hearing Evidence

SB 1316 (Smallwood-Cuevas) authorizes the Labor Commissioner to renew a lien created on an employer's real property to satisfy a wage order under Labor Code section 98.2 for an additional 10 years. The new law prohibits employers from using records in certain Labor Commissioner proceedings under Labor Code section 1174 (such as payroll, time, and employment records required to be maintained at the place of employment or at a central location within the state) that were not provided timely to the Labor Commissioner pursuant to a written request, unless the employer proactively obtained a court order excusing production. The evidentiary prohibitions are also applicable in administrative proceedings contesting a citation for retaliation or discrimination. In addition, the new law extends the evidentiary preclusions to contractors and subcontractors in hearings under Labor Code section 1742. SB 1316 amends Labor Code sections 98.2 and 1174.1 and adds Labor Code section 1742.05.

AGENCY

Federal

NLRB Restores More Employer-Friendly Standard for Employee Misconduct During Protected Activity

On September 23, 2026, the National Labor Relations Board ("NLRB") issued *Lion Elastomers LLC*, 375 NLRB No. 41 (2026), reinstating the standard established in *General Motors LLC*, 369 NLRB No. 127 (2020), for evaluating employee discipline when offensive, abusive, or potentially harassing conduct occurs in the course of union or other protected concerted activity.

Under prior precedent, the NLRB applied a series of context-specific tests that considered factors such as the location of the misconduct, its severity, and whether the employer had provoked the conduct. As a result, employees

often received protection for misconduct that occurred during protected activity even when the conduct itself would otherwise have warranted discipline.

By restoring the *General Motors* framework, the Board returned to a causation-based analysis. Under this standard, discipline is generally lawful if the employer can demonstrate that it would have imposed the same discipline for the misconduct regardless of the employee's protected activity. The focus is therefore on whether the discipline was motivated by the misconduct itself rather than by the employee's engagement in protected conduct.

Although the decision provides employers with a more straightforward and predictable standard, employers should ensure that disciplinary decisions are supported by legitimate, well-documented misconduct and that comparable conduct has been treated consistently in similar circumstances.

EEOC Procedural Changes May Shorten Employer Response Times

The U.S. Equal Employment Opportunity Commission may soon shorten the standard response period for charges from 30 days to 15 days and take a significantly more restrictive approach to granting extension requests. Although the agency has not yet publicly announced the policy, employers may want to review their existing charge-response procedures and consider implementing measures to expedite fact gathering, witness identification, document collection, and internal review.

This is Pettit Kohn Ingrassia Lutz & Dolin PC's employment update publication intended to be educational regarding recent legislative changes and court decisions affecting California employers. If you would like more information regarding our employment team, please contact Tom Ingrassia, Jennifer Lutz, Ryan Nell, Shannon Finley, Christine Clark, Kristin Kameen, Nicole Allen, Ruby Carlon, Melina Corona, Alec Dea, Will Dischmann, Kendall Garald, Michelle Guitard, Emma Hill, Gabriella Kelly, Celeste Leung, Haley Murphy, Jessica O'Malley, Nia Perkins, Mariam Saleh, Jenny Sturman, Jackson Sullivan, Lisa Thorsson or Ben Watson at our San Diego office: 11622 El Camino Real, Suite 300, San Diego, CA 92130, (858) 755-8500; or Nathalie Alvarez, Colette Asel, Steven Dawson, Jenny Che, Brett Greenberg, Alexa Magrath or Jacob Schwartz at our Los Angeles office: 101 Continental Blvd., Suite 820, El Segundo, CA 90245, (310) 649-5772.