

## NEW EMPLOYMENT LAWS FOR 2023

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The new year in California always means new employment laws. Several such new laws – likely to impact your business – go into effect on January 1, 2023 (and one goes into effect on January 1, 2024). Here's a summary.

### Paid Sick Leave / Protected Time Off to Care For a "Designated Person" – AB 1041

Currently, under the California Family Rights Act ("CFRA"), employers with 5 or more employees must grant eligible employees up to 12 workweeks of protected leave, within a 12-month period, to care for their own serious health conditions, or the serious health conditions of specified family members. Starting January 1, 2023, AB-1041 expands the class of people for whom an employee may take CFRA caregiver leave to include a "designated person." This is defined as any individual "related by blood," or whose association with the employee is "the equivalent of a family relationship." Employees may identify the designated person at the time the employee requests leave. Employers may, however, limit an employee to designating one person per 12-month period.

AB 1041 also amends the California Healthy Workplaces Healthy Families Act (California's paid sick leave law), which was enacted in 2015 to grant California employees with paid sick leave for their own illness or to care for a family member. Under the revised law, the term "family member" now also includes a "designated person," which is defined as "a person identified by the employee at the time the employee requests paid sick days." The definition of a "designated person" under the paid sick leave law is, therefore, much broader than under CFRA. While the Labor Commissioner may provide future guidance as to the breadth of the definition of a designated person under the paid sick leave law, as written, employees will have the right to use paid sick leave to care for anyone, including friends, roommates, coworkers, etc. (although, as with CFRA's designated person rules, employers may limit employees to designating one person every 12 months).

San Francisco based employers should take particular note of the new designated person rules under the California paid sick leave law. Under San Francisco's paid sick leave ordinance, employers have been required to offer employees who do not have a spouse or registered domestic partner the option of designating a person for whom they may use sick leave on an annual basis. The designation process under the California paid sick leave law, however, appears more favorable to the employee, as it grants them the right to designate a person regardless of their marital or relationship status, and it allows employees to make the designation when sick leave is requested.

### Mandatory Bereavement Leave – AB 1949

Many California employers have, for years, voluntarily offered some form of bereavement leave to employees. Starting January 1, 2023, AB 1949 makes it mandatory by amending CFRA to grant employees the right to take up to 5 days of protected bereavement leave upon the death of a defined family member, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law, as defined in CFRA. Leave may be taken intermittently, though employers may require

employees to complete their leave within 3 months of the date of death. Leave may be unpaid, unless the employer had an existing paid bereavement leave policy. If the employer's existing policy provided for fewer than 5 days of paid leave, for example 3 days, that would be the minimum number of paid leave days; the 2 remaining days may be unpaid (though employees may elect to use accrued paid time off).

Employees are eligible for protected bereavement leave once they have worked for the employer for at least 30 days. Employers may request documentation of proof of death, such as a death certificate, published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

### Pay Transparency Law - SB 1162

Under existing law, employers are prohibited from asking applicants about their salary history during the hiring process. Employers must also provide a pay scale to applicants upon reasonable request. Starting January 1, 2023, employers with 15 or more employees must "include the pay scale for a position in any job posting," including job postings through third parties. Employers must also provide applicants and employees with the pay scale for the position for which they are applying, or in which they are currently employed, upon reasonable request.

"Pay scale" is defined as "the salary or hourly wage range that the employer reasonably expects to pay for the position."

In addition, businesses with 100 or more employees must begin submitting detailed pay data reports to the California Civil Rights Department (formerly the Department of Fair Employment and Housing). The reports will be due annually by the second Wednesday in May.

Employers must also maintain records of the job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment relationship.

Employers in violation of SB 1162 face civil penalties of \$100 to \$10,000 per violation.

### COVID Notice Requirements - AB 2693

Under current law, when an employer gets notice of potential employee exposure to COVID-19 at the worksite, the employer must provide written notice within one business day to all employees who were potentially exposed. This notification requirement was set to expire on January 1, 2023. AB 2693 extends the reporting requirement to January 1, 2024, and also gives employers the option of posting a notice of the potential COVID exposure at the workplace instead of providing written notice to each employee.

### Rebuttable Presumption of Workers' Compensation Coverage for Employee COVID - AB 1751

Under existing law, which was set to expire at the end of 2022, COVID positive employees are presumed to have contracted COVID on the job, and are therefore entitled to Workers' Compensation

Coverage, if there was a prior “outbreak” at their worksite (i.e., 4% or more of the employment site's workforce tests positive for COVID within 14 calendar days). Employers may dispute this presumption only by presenting evidence of that can dispute a work-related infection. The new law extends the rebuttable presumption of workplace COVID exposure through January 1, 2024.

### Reproductive Rights – SB 523

This bill amends the Fair Employment and Housing Act (FEHA) and prohibits employers from discriminating against employees on the basis of their reproductive health decision-making. The law also prohibits employers from seeking information from applicants or employees about their reproductive health decisions. “Reproductive health decision-making” includes, but is not limited to, “a decision to use or access a particular drug, device, product, or medical service for reproductive health.” Reproductive decision-making also may be construed to fall under the definition of “sex” in FEHA.

### Emergency Condition Leave – SB 1044

Under this law, employers are prohibited from taking or threatening adverse action against an employee who refuses to report to, or leaves, work or a worksite due to an “emergency condition.” An emergency condition includes “conditions 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 “an 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.” An “emergency condition” does not include a health pandemic.

So long as employees have “a reasonable belief that the workplace or worksite is unsafe” due to an “emergency condition,” employers are prohibited from taking adverse action against employees for not reporting to the unsafe worksite.

### Off-Duty Marijuana Use – AB 2188

Starting January 1, 2023, California will join Connecticut, Montana, Nevada, New Jersey, New York, and Rhode Island by prohibiting employers from taking adverse action against employees for use of cannabis off the job or for findings of “non-psychoactive cannabis during pre-employment drug screenings” (meaning the employee was not “high” at the time of the drug screening). Exemptions exist for employers in the construction industry and businesses required by federal law to conduct pre-employment background checks and screenings.

### Conclusion

Employers should immediately review their impacted policies and procedures for compliance with these new laws. If you have questions about California’s new employment laws and how they might impact your business, contact our Employment Law Group.