

NEW CALIFORNIA EMPLOYMENT LAWS LIKELY TO IMPACT YOUR BUSINESS IN 2024

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As always, the new year means a raft of new employment laws in California. Below is a summary of the new laws likely to impact your business in 2024.

More Generous California Paid Sick Leave Benefits (SB 616) – This law expands employer obligations for paid sick leave under the Healthy Workplaces, Healthy Families Act of 2014. Now, an employer must either:

(1) frontload 40 hours/5 days of paid sick leave (previously, 24 hours/3 days) at the beginning of each year of employment, calendar year or 12-month period (in which case the employer does not need to accrue or carry over unused sick leave);

(2) accrue 1 hour of paid sick leave for every 30 hours worked, in which case the employer must carry over paid sick leave from year to year but can apply an 80-hour/10-day accrual cap (previously, 40 hours/5 days) and can limit the employee's use to 40 hours/5 days (previously, 24 hours/3 days) in each year of employment, calendar year, or 12-month period; or

(3) use a different accrual method provided that the accrual is on a regular basis so that employees have no less than 24 hours of paid sick leave by their 120th day of employment or each calendar year or in each 12-month period and (as a new requirement) no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year or in each 12-month period.

Employee Leave Entitlement for Reproductive Loss (SB 848) – Employers of five or more employees must now provide up to 5 days of protected leave to employees who (1) have worked for the employer for at least 30 days; and (2) have suffered a “reproductive loss event.” A reproductive loss event is defined as a failed adoption, failed surrogacy, miscarriage, stillbirth or an unsuccessful assisted reproduction. The 5 days of leave need not be taken consecutively but must be taken within three months of the event. If an employee experiences more than one reproductive loss event within a 12-month period, the employer must provide up to 20 days of leave within a 12-month period. The leave is not required to be paid; however, employees may use other types of paid leave (such as vacation, PTO or paid sick leave) concurrently. Employers must maintain employee confidentiality relating to reproductive loss leave.

Off-Duty Cannabis Use (AB 2188 and SB 700) – Employers are now prohibited from discriminating against applicants or employees because they (1) have used cannabis off the job and away from the workplace, or (2) were found by a drug screening test to have non-psychoactive cannabis metabolites in their hair, blood, urine or other bodily fluids. These new protections do not apply to employees in the building and construction trades or other state or federally regulated jobs that ban cannabis use. Moreover, employers may still use drug tests that screen for current impairment as the new law does not permit employees to possess, be impaired by, or use cannabis on the job (even for medicinal purposes). Employers are also prohibited from asking a job applicant about their prior use of cannabis unless the employer is permitted to consider that information under state or federal law.

New Requirement to Develop and Implement a Workplace Violence Prevention Plan (SB 553) – Almost all California employers must establish, implement, and maintain an effective workplace violence

prevention plan by July 1, 2024. The plan should include (among other things): (1) the names or job titles of the people responsible for implementing the plan; (2) procedures to obtain the active involvement of employees in developing and implementing the plan, including their participation in identifying, evaluating and correcting workplace violence hazards, designing and implementing training, and reporting and investigating workplace violence incidents; (3) procedures for the employer to respond to reports of workplace violence and to prohibit retaliation against employees who reported an incident; (4) procedures to develop and provide training on the employer's plan; (5) procedures to timely correct workplace violence hazards; (6) procedures for post-incident response and investigation; and (7) procedures for the employer to review and update the plan at least annually, or when a deficiency is observed, or after an incident of violence. Employers must also maintain detailed records about the workplace violence hazard identification, evaluation and correction, the employer's investigations and a "violent incident log."

Higher Minimum Wage - The California state minimum wage will increase to \$16 per hour for all employers, regardless of its number of employees. (Various local minimum wage laws within California have also been enacted, which may increase your local minimum wage.) Also, exempt employees in California must be paid a minimum annual salary of \$66,560. Likewise, exempt computer professional employees must be paid a minimum of \$55.58 per hour, or \$115,763.35 in annual salary. Starting April 1, 2024, the minimum wage for employees of covered fast food restaurant employers will increase to \$20 per hour. Finally, there is now a multi-tiered statewide minimum wage schedule for health care workers employed by certain covered health care facilities.

New Wage Theft Prevention Notice (AB 636) - California law already required employers to provide each employee with written Wage Theft Prevention Notice (a template for which was published by the California Labor Commissioner), at the time of hiring, providing basic wage information such as rate(s) of pay, payday, legal name of the employer and any dba names, address, workers' compensation information and paid sick leave information, etc. Now, the Notice must also provide information on "the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee's first day of employment, that may affect their health and safety during their employment." The California Labor Commissioner has published an updated Notice template to include this new requirement.

Noncompete Agreements and Notice Requirements (SB 699, AB 1076) - Most employee non-competition and non-solicitation agreements have been unenforceable in California for decades. But some employers found a way to assert their validity by specifying that the law of another state applied. Now, "[a]ny contract that is void under [California law] is unenforceable regardless of where and when the contract was signed." This broad ban applies "regardless of whether the contract was signed and the employment was maintained outside of California." Employers are also specifically and affirmatively prohibited from entering into non-competition agreements or from attempting to enforce them. Employees now have a private right of action to enforce the law and can obtain injunctive relief, actual damages and attorneys' fees if they win. Finally, employers must notify current and former employees (employed after Jan. 1, 2022) in writing by February 14, 2024, that any non-competition clause or agreement already entered into is void.

No More Automatic Stay of Litigation Pending Arbitration Appeal (SB 365) - Previously, trial court proceedings were automatically stayed pending appeal of an order denying a motion to compel arbitration. Now, such an appeal will no longer automatically stay trial court proceedings and employers

may have to keep litigating the merits of a lawsuit while they appeal the arbitration question unless the trial court exercises its discretion to order a stay. This new California law conflicts with U.S. Supreme Court precedent, which holds that a federal trial court must stay proceedings pending an appeal on the question of arbitration. Accordingly, the new California law will likely be challenged on the grounds that it is preempted by federal law.

Public Prosecutors and the Labor Commissioner Can Prosecute Actions for Wage Hour Violations (AB 594) – For the next five years – until January 1, 2029 – public prosecutors may file an action, either civil or criminal, for the violation of specific provisions of the California Labor Code related to payment of wages and the willful misclassifications of workers as independent contractors. Recovered wages are prioritized for payments to the injured workers and civil penalties are paid to California’s General Fund. Public prosecutors can also seek injunctive relief and prevailing party attorney’s fees and costs.

Please don’t hesitate to contact our employment lawyers with questions about how these new laws may impact your business.