2024 CALIFORNIA LEGISLATIVE SUMMARY

March 4, 2024

The 2024 Legislative session is officially already underway and has resulted in a significant number of new bills being introduced in the California Assembly and Senate. In Sacramento, the deadline to introduce new bills has now passed. We are tracking more than 57 employment-related bills and an additional 31 employment-related "spot" bills (essentially placeholders that allow legislators to come back later and propose more substantive legislation). We have identified the "Top Ten" bills that – if passed – would have the most significant impact on California employers. These bills would:

- Regulate the use of **Automated Decision Tools and Artificial Intelligence** [AB 2930]
- Expand protections for **time off to victims of crime and violence** [AB 2499]
- Add to applicant protections re: **criminal history** [SB 1345]
- Require employers to **exclude positive COVID-19 cases** from the workplace for at least 10 days and **pay for such time off** [AB 3106]
- Eliminate employers' ability to require employees to use **PTO before paid family leave** [AB 2123]
- Expand **joint liability** for **labor contractors and client employers** [AB 2754]
- Impose **new obligations** on **client employers and labor contractors** [AB 2741]
- Increase protection for certain independent contractors (**Freelance Workers**) [SB 988]
- Expand **exemptions from the new fast food minimum wage** [AB 610]
- Provide **Unemployment Insurance** to Cover **Workers on Strike** [SB 1116]

Of course, some of these bills may fail to progress through the legislative process, others may be materially amended, and spot bills may be revised to incorporate new, substantive changes. Looking ahead, the deadline for bills to pass key substantive committees is April 26, 2024, so significant amendments and votes can be expected shortly. Stay tuned – we will keep you informed of developments as they occur!

In the meantime, below is a brief overview of our "Top Ten" potential employment law changes and a summary of the remaining notable employment bills currently pending, largely organized by subject matter. We have also included several references to notable new state and federal regulations and guidance.

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TOP TEN PROPOSED EMPLOYMENT LAW CHANGES

1. Regulation of the Use of Automated Decision Tools (Artificial Intelligence) (AB 2930)

This bill is a part of recent trend reflecting increased concern regarding the use of artificial intelligence (AI) and Automated Decision Tools (ADTs) in ways that may discriminate against workers, students, participants in the criminal justice system, and other users of public services. It is nearly identical to AB 331, which was introduced in 2023, and passed several Assembly committees on party-line votes before stalling in the Appropriations Committee.

The bill would create a new chapter in the Business and Professions Code to regulate ADTs and impose requirements on both the users of such tools and the developers of such tools. While employers who use ADTs *are* covered by this bill, the scope of the proposed new law is not limited to the employment context. California employers thus may also need to consider possible impacts of this bill on their use of ADTs with respect to consumers and other members of the public in addition to their employees.

- *What is an Automated Decision Tool?*

The bill defines and Automated Decision Tool (ADT) as a system or service that uses artificial intelligence and which has been specifically developed and marketed or modified to make, or be a controlling factor in making, consequential decisions. "Artificial intelligence" means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing a real or virtual environment.

"Consequential decisions" are defined to be decisions or judgments that have a legal, material, or similarly significant effect on an individual's life relating to the access to government services or benefits, assignments of penalties by government, or the impact of, or the cost, terms, or availability of a number of things, including:

- Employment, with respect to pay or promotion, hiring or termination, and automated task allocation that limits, segregates, or classifies employees for the purpose of assigning or determining material terms or conditions of employment;
- Education;
- Housing or lodging;
- Essential utilities;
- Family planning, adoptions services, and health care or health insurance;
- Financial services;
- The criminal justice system; and
- Legal services, private arbitration, mediation and voting.

- *Who Would Have New Obligations Under this Bill?*

This bill would apply to both "Deployers" and "Developers" of ADTs. A "Deployer" is a person, partnership, state or local government agency, or corporation that uses an ADT to make a consequential decision. A "Developer" is a person, partnership, state or local government agency, or corporation that designs, codes or produces an ADT or substantially modifies AI for the purpose of making, or being a controlling factor in making, consequential decisions.

Thus, because of the breadth of the definitions of "Deployer" and "Consequential Decision," this new bill apparently would apply to (among others) *any* employer in California who uses an ADT to make practically any decision about any aspect of employment or worker management.

- *Obligation to Perform Impact Assessment*

All Developers and all Deployers who have at least 25 employees or use an ADT that impacts more than 999 people per year would be required to prepare an annual "impact assessment" for any ADT they use or develop. The first such assessments would required to be completed by January 1, 2026. The bill includes detailed lists of the elements of the "impact assessments," which include (but are not limited to): a statement of the purpose of the ADT and its intended benefits, uses, and deployment contexts; a description of the ADT's outputs and how they are used in making consequential decisions; a summary of the data collected and processed by the ADT; an analysis of the potential adverse impacts on the basis of sex, race, color, ethnicity, religion, age, national origin, limited English proficiency, disability, veteran status, or genetic information from the Deployer's use of the ADT; and a description of the safeguards implemented to address reasonably foreseeable risks of algorithmic discrimination from the use of the ADT. "Algorithmic discrimination" would be defined to mean the condition in which an ADT contributes to unjustified differential treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex, religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, reproductive health, or any other classification protected by state law.

In addition, Developers would be required to provide a statement to a Deployer regarding the intended uses of the ADT and documentation regarding, among other things, the known limitations of the ADT, including any reasonably foreseeable risks of algorithmic discrimination arising from its intended use. In its impact statement, the Deployer would be required to describe the extent to which their use of the ADT is consistent with or varies from the Developers' statement of intended use.

Developers and Deployers would be required to provide the impact assessments to the Civil Rights Department (CRD) within seven days upon request. This bill (unlike last year's version) would clarify that the disclosure of an impact assessment pursuant to this rule would not constitute the waiver of any attorney-client privilege or work product protect that might exist with respect to the impact assessment; and if the CRD complies with a California Public Records Act request in connection with an impact assessment, it shall redact any trade secrets (as defined) from the impact assessment. A deployer or developer who fails to produce an impact assessment as required would face an administrative fine up to **$10,000 *per day*.** The CRD would be authorized to share impact assessments with other state entities.

- *Prohibition on Algorithmic Discrimination*

The bill would specifically prohibit the use of an ADT in a manner that results in algorithmic discrimination. Algorithmic discrimination means the condition in which an ADT contributes to unjustified differential treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex, religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, reproductive health, or any other classification protected by state law.

Unlike last year's version of the law, this bill does not create a private right of action to enforce this provision (although a public prosecutor could bring an action and recover a penalty of $25,000 per violation). However, employers should note that even without this bill becoming law, it is possible that use of AI or an ADT could lead to a discrimination claim. In May 2022, the federal Equal Employment Opportunity Commission and Department of Justice issued guidance regarding the use of algorithms and artificial intelligence to assess job applicants and employees and warned that use of AI may violate the Americans with Disabilities Act. (The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees | U.S. Equal Employment Opportunity Commission (eeoc.gov) and Guidance Document: Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring (ada.gov)) And in March 2022, California's Fair Employment and Housing Counsel issued proposed amendments to the regulations implementing the Fair Employment and Housing Act which would regulate the use of Automated Decision Systems in employment and specifically define the ways in use of such systems could constitute unlawful discrimination. (AttachB-ModtoEmployRegAutomated-DecisionSystems.pdf (ca.gov))

- *Disclosure/Notification Obligations*

All Developers and all Deployers (regardless of the number of employees) would be required to notify any natural person that is the subject of a consequential decision that an ADT is being used to make, or will be a controlling factor in making, the consequential decision. The disclosure must be made at or before the time the ADT is used to make a consequential decision. And the disclosure would be required to include a statement of the purpose of the ADT, contact information for the deployer, and a plain language description of the ADT that includes a description of any human components and how any automated component is used to inform a consequential decision.

- *Accommodation Requirement*

If a consequential decision is made *solely* based on the output of an automated tool, a Deployer (regardless of the number of employees) would be required to accommodate a natural person's request to *not* be subject to the ADT and to be subject to an alternative selection process or accommodation *if technically feasible*.

- *Creation of Governance Programs*

All Developers and all Deployers who have at least 25 employees or use an ADT that impacts more than 999 people per year would be required to establish, document, implement, and maintain a governance

program with reasonable administrative and technical safeguards to map, measure, manage, and govern the reasonably foreseeable risks of algorithmic discrimination associated with the use or intended use of an ADT. The bill includes specific requirements for the governance program, including designation of at least one employee to be responsibility for overseeing and maintaining the governance program and compliance with the new law, conducting an annual and comprehensive review of policies, practices, and procedures to ensure compliance, and maintaining results of an impact assessment for at least two years.

- *Required Policy*

Every Developer and Deployer would be required to make *publicly available*, in a readily accessible manner, a clear policy with a summary of the types of ADTs in use or made available to others, and how the Deployer or Developer manages the reasonably foreseeable risks of algorithmic discrimination.

- *Retaliation*

It would be unlawful for a deployer or developer to retaliate against a person for the exercise of rights provided under this new law.

- *Enforcement and Potential Penalties/Liability*

In addition to the penalties for failure to submit an impact assessment, Deployers and Developers would be subject to civil actions brought by the state Attorney General, a district attorney, county counsel, city attorney, or city prosecutor for any violation of the new law, in which a court could award injunctive relief, declaratory relief, and attorney's fees and costs. In addition, in an action for a violation involving algorithmic discrimination, a court could award a civil penalty of $25,000 per violation. Deployers and Developers would have an opportunity to cure violations before an action could be brought for injunctive relief. Prior to commencing an action for injunctive relief, the public attorney must provide 45 days' written notice, and the Deployer or Developer could avoid suit by curing the noticed violation and providing a statement under penalty of perjury.

- *Cybersecurity Exemption*

The bill specifies that it does not apply to cybersecurity-related technology, but does not define this term.

Status: Pending in the Assembly.

2. Changes and Expansion to Prohibition on Discrimination re: Time off for Victims of Crime and Violence (AB 2499)

Presently, sections 230 and 230.1 of the Labor Code prohibit employers from discharging or discriminating against an employees for taking time off to serve on a jury, taking time off to appear in court if the employee is a victim of a crime, or taking time off from work to obtain certain victim relief; and prohibit discrimination because an employee is a victim of a crime or abuse. Additionally, the existing law requires employers to provide reasonable accommodations to certain victims. Existing law imposes additional requirements on employers with 25 or more employees, prohibiting them from discharging or

discriminating against victims who take time off to seek medical attention or obtain services related to crime or abuse.

This bill would essentially repeal Labor Code Sections 230 and 230.1 and recast these rules as unlawful employment practices within the California Fair Employment and Housing Act (FEHA) at new Government Code section 12945.8, which would make violations of these rules a violation of FEHA, and place enforcement in the jurisdiction of the Civil Rights Division (rather than the Division of Labor Standards Enforcement) thus changing the procedures and remedies available for a violation.

In addition, this bill would substantially expand the employee protections in many ways.

- While the existing law provides rights and protections to any employee who is a victim of staking, domestic violence, sexual assault, or a crime that caused physical injury or death, this will would redefine "victim" to be a person against whom a qualifying act of violence is committed (or, solely with respect to the right to take time off to appear in court, a person against whom a crime is committed). A "qualifying act of violence" would be defined to include domestic violence, sexual assault, stalking, *or* an act, conduct or pattern of conduct including any in which an individual causes bodily injury or death; a dangerous weapon is exhibited, drawn, brandished, or used; or an individual uses, or makes a reasonably perceived or actual threat to use force against another individual to cause injury or death. Thus, this new bill would apply to a much broader category of "victims."

- Notably, this bill would also expand to prohibit employers from discharging or in any manner discriminating or retaliating against not only an employee who is a victim, but an employee who has a family member who is a victim of a qualifying act of violence, for taking time off from work for any of a number of prescribed purposes relating to a qualifying act of violence. It would also expand to protect employees against discrimination or retaliation not only because of their own status as a victim, but also because of their family member's status as a victim.

- The bill would reduce the 25-employee threshold for the provisions prohibiting discrimination against victims who seek medical care, services from a victim services organization, to obtain mental health services, or to participate in safety planning. These protections now apply to all covered employers with **five** or more employees, and the protections have been expanded to prohibit discrimination against an employee who is a victim (under the broadened definition) *or who has a family member* and to expand the protected reasons for taking time off work to also include to:

    - seek or assist a family member to seek medical attention
    - seek, or assist a family member to seek various victim services;
    - seek or assist a family member to seek mental health services;
    - participate in safety planning;
    - relocate or find new housing,

- provide care to an immediate family member who is recovering from injuries,
- seek or assist a family member to seek civil or criminal legal services,
- seek or assist a family member to seek financial services,
- prepare for, participate in or attend civil, criminal, or administrative legal proceedings,
- seek, obtain, or provide childcare or care to a dependent adult, or
- make modifications to a home or vehicle
- (all in connection with a qualifying act of violence).

- While existing law specifies that an employer shall not take action against an employee in connection with an unscheduled absence if the employee, within a reasonable time after the absence provides a specified certification, the new bill would only require the certification to be provided *upon the employer's request*.

- Prior law allowed employees to use vacation, personal leave, or compensatory time off for any of the time taken off under the law; this bill would also confirm that employees may use paid sick leave, but would specify that the law does not create a right of an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act (FMLA).

- This bill would also expand the employer's obligation to provide reasonable accommodations to include not only employees who are victims but also employees who are the family members of victims of a qualifying act of violence who request an accommodation for safety at work. In addition, the definition of reasonable accommodations would be expanded to include – in addition to the previously listed accommodations – permission to carry a telephone at work.

- This bill would also require an employer to inform each employee of their rights under the bill, to be provided to new employees upon hire, to all employees annually, at any time upon request, and any time the employer becomes newly aware that an employee or an employee's family member is a victim. Finally, this bill would require the department to develop and post, on or before January 1, 2025, a form, as prescribed, that an employer may use to comply with This requirement.

Status: Pending in the Assembly Judiciary Committee.

3. Additional Criminal History Protections for Job Applicants (SB 1345)

This bill would amend the FEHA to make it an unlawful employment practice for an employer to take an adverse action (as defined) against an applicant (also as defined) based upon criminal history information (i.e., prior arrest, charge or conviction information) unless the employer can demonstrate both of the following: (1) the applicant's criminal history has a direct and adverse relationship with one or more specific duties of the job; and (2) the employer's "business necessity" requires the adverse action. It would

also preclude employers from requiring, as a condition of employment, that an applicant waive their right to privacy in criminal history information or otherwise provide a release to obtain an applicant's criminal history information under a state or federal law (including for obtaining investigative consumer reports), unless the employer can demonstrate "business necessity."

While these prohibitions under proposed new Government Code section 12952.5 appear relatively straightforward, the accompanying definitions are quite broad. For instance, an "applicant" would include individuals applying for new employment, as well as current employees, including those being evaluated for promotion, transfer, or continued employment. "Employee," in turn, would be broadly defined to include employees, unpaid interns, volunteers, independent contractors or any other individuals providing services pursuant to a contract. "Employer" would include the general FEHA definition (i.e., employing five or more persons, including the state and political subdivisions) but would also include "a direct or joint employer, an entity that evaluates the applicant's criminal history information on behalf of an employer, a staffing agency, and an entity that selects, obtains or is provided workers from a pool or availability list. "Adverse action" would mean an employment action "adverse to the interest of the applicant," including denial of employment, termination and loss of privileges, promotion or transfer.

As noted above, both prohibitions authorize an exception if an employer can demonstrate "business necessity." This would require the employer to show their need to do either of the following: (1) comply with the requirements of exclusions based on specific criminal conduct or a category of criminal offenses in any federal law, federal regulations or state law; or (2) protect against incidents of workplace harassment, workplace violence or theft of business property when the employer has clear and convincing evidence that taking an adverse action based solely or in part on criminal history information is necessary to provide that protection and there is no reasonable alternative.

Status: Pending in the Senate.

4. Requirement to Exclude Employees with COVID-19 from the Workplace and Continue to Pay Wages (AB 3106)

Currently, the California Division of Occupational Safety and Health ("CalOSHA") has regulations regarding COVID-19 Prevention that require employers to exclude employees who have tested positive for COVID-19 from the workplace for a limited period of time, but do not require that such time be paid (unless it is otherwise covered by workers' compensation, disability insurance, or California's Paid Sick Leave law). This bill would both considerably lengthen the period of time during which employees must be excluded from the workplace after a positive test, and would require that all excluded time be paid.

Specifically, this bill would require employers to *ensure* that persons who have tested positive for COVID-19 must be excluded from the workplace until *all* of the following return-to-work requirements are met if the person has had COVID-19 symptoms: (1) at least 24 hours have passed since a fever of 100.4 degrees or higher has resolved without the use of fever-reducing medications; (2) COVID-19 symptoms have improved; and (3) *at least 10 days have passed since COVID-19 symptoms first appeared*. Therefore, for symptomatic COVID-19 cases, this bill would require exclusion from the workplace for a *minimum of 10*

days. The bill does not specify the return-to-work requirements for individuals who test positive for COVID-19 but do not experience symptoms.

The bill also requires that if an employee is excluded from the workplace, the employer shall continue and maintain the employee's earnings, wages, seniority, and all other employee rights and benefits, as if they had not been excluded. The bill specifies that wages due under this rule shall be paid at the employee's *regular rate of pay,* and that unpaid wages owed to an employee would be subject to "enforcement through procedures available in existing law." The only exceptions from this rule are if the employee received disability payments or was covered by workers' compensation and received temporary disability. While the bill states it does not limit any other applicable law or policy that provides for greater protection, it does not specify whether an employee could be required to use otherwise available paid sick leave or paid time off during a period of exclusion.

The bill requires that CalOHA shall adopt a standard that extends these protections to any occupational infectious disease covered by any permanent infectious disease standard adopted to succeed Section 3205 of Title 8 of the California Code of Regulations.

Status: Pending in the Assembly.

5. Eliminate Authorization to Require Employees to Use Vacation Before Paid Family Leave (AB 2123)

Existing law authorizes an employer to require an employee to take up to two weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of family temporary disability insurance benefits during any twelve-month period in which the employee is eligible for these benefits. This bill would eliminate the authorization and related provisions of the existing law.

Status: Pending in the Assembly Judiciary Committee.

6. Expansion of Joint Liability re: Client Employers and Labor Contractors (AB 2754)

Existing law (Labor Code section 2810) specifies that a person or entity shall not enter into a contract or agreement for labor or services with a contractor in certain industries (including, or example, construction, farm labor, janitorial, security guard, etc.) if they know or should know that the contract does not include funds sufficient to allow the contractor to comply with all applicable laws and regulations governing the labor or services to be provided. This bill would extend that law to apply to motor carrier contractors. For purposes of this bill, "motor carrier" means an entity that utilizes commercial drivers to move freight. The bill does not define "freight."

Existing law (Labor Code Section 2810.3) also provides that a client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by the labor contractor for the payment of wages and failure to secure workers compensation coverage. (This law applies to all client employers and labor contractors and is not limited to the industries listed above.) This bill would expand that rule in several significant ways:

- First, the bill would provide that Labor Contractors and Client Employers would also share responsibility for the reimbursement of, and indemnification for, business expenditures and losses for all workers supplied by the labor contractor.

- Second, the bill would expand the definitions of "Client Employer" and "Labor Contractor."

    - Currently, a "client employer" is a business entity that obtains or is provided workers to perform labor within its usual course of business from a labor contractor. The new bill would specify that a "client employer" includes a business entity that utilizes a labor contractor's workers to ship or receive freight to or from the premises or worksite of the client employer, regardless of the operating authority under which the freight is moved.

    - Currently, a "labor contractor" is an individual or entity that supplies, with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business. The new bill would specify that this includes providing workers to ship or receive a client employer's freight to or from the client employer's facility or worksite, under either the client employer's operating authority, the labor contractor's operating authority, or the drivers' own operating authority. The bill does not define "freight."

- Third, the bill specifies that a client employer shall be liable if either it or the labor contractor misclassifies an employee as an independent contractor.

Status: Pending in the Assembly.

7. Significant New Obligations re: Client Employers and Labor Contractors (AB 2741)

This bill would significantly increase the obligations of "Client Employers" and "Labor Contractors" In connection with the work of "Temporary Workers." For purposes of this bill, a "Client Employer" would be a business that obtains or is provided workers to perform labor within its usual course of business from a Labor Contractor. A "Labor Contractor" would be an individual or entity that supplies (with or without a contract) a Client Employer with workers to perform labor within the Client Employer's usual course of business. And a "Temporary Worker" would be a worker provided by a Labor Contractor to perform services for a Client Employer. The bill would impose numerous new requirements:

- *Wage Statements:* Labor Contractors would be required to list on a Temporary Worker's wage statement the total amount of actual charges to the Client Employer for the Temporary Worker during each pay period compared to the total compensation cost of the Temporary Worker, including costs of any benefits provided.

- *Direct Hiring of Temporary Workers:*

    - The bill would require a Client Employer to provide a Temporary Worker with an opportunity to become a direct employee when a Temporary Worker has performed

services for the Client Employer on a long-term and continuous basis. The bill does not define "long-term and continuous basis."

- If a Client Employer plans to hire a permanent employee for a position like the positions for which Temporary Workers are being provided at the same location, the Client Employer would be required to notify both the Labor Contractor and all Temporary Workers in the applicable positions and give an opportunity of those workers to apply before filling the permanent position.
- If a Client Employer informs a Labor Contractor of its plan to hire a permanent employee for a position like the positions for which Temporary Workers are being provided at the same work location, the Labor Contractor shall attempt to place a current Temporary Worker into a permanent position.
- Labor Contractors would be prohibited from restricting the right of a Temporary Worker to accept a permanent position with a Client Employer to whom the Temporary Worker has been referred for work or restrict the right of the Client Employer to offer employment to a Temporary Worker. Labor Contractors would be prohibited from assessing or collecting a placement fee when the Temporary Worker is offered permanent work.

- *Public Notice:* Client Employers with 100 or more direct employees hired through Labor Contractors within the prior calendar year would be required to make publicly available on an internet website the number of temporary employees hired through labor contractors within the prior calendar year as compared to the number of direct employees. [Note – this subsection may have a typo and we will be alert for amendments.]

- *Strikes and Lockouts:* Labor Contractors would be prohibited from sending a worker to a place where a strike, lockout, or other labor trouble exists without providing, at or before the time of dispatch, a statement, in writing and in a language that the worker understands, informing the worker of the labor dispute and the worker's right to refuse the assignment without prejudice to receiving another assignment.

The bill would also make it a violation of the law for a Labor Contractor or Client Employer (or their agents) to retaliate against any worker for exercising rights under the law; and would establish a rebuttable presumption that termination or disciplinary action by a Labor Contactor within 90 days of the person's exercise of protected rights was retaliatory. Employees who have been discharged or discriminated or retaliated against because they engaged in protected conduct would be able to file a civil action to recover reinstatement, reimbursement of lost wages and benefits, and appropriate equitable relief.

In addition, a person aggrieved by any violation of the new law would be able to bring an action against a Labor Contractor or Client Employer and could be entitled to appropriate legal and equitable relief, including attorney's fees and costs.

Finally, the Labor Commissioner would be entitled to enforce the law, and could assess and collect penalties of up to $250 for the first violation and up to $500 for each subsequent violation. Absent any

other change in the law, it appears this would also allow aggrieved employees to recover these penalties under the Private Attorneys General Act ("PAGA").

Status: Pending in the Assembly.

8. Increased Protection for Certain Independent Contractors (Freelance Workers) (SB 988)

Existing California law specifies various tests to determine whether a worker is an independent contractor or an employee. This bill would not change the tests, but would create additional protections for certain independent contractors.

This bill would apply to "Freelance Workers," defined as a person or organization with only one person (whether or not incorporated or employing a trade name) that is hired as an independent contractor to provide professional services (as defined in Labor Code section 2778(b)) for at least $250. The test for "professional services" in Labor Code section 2778(b) is complex, but it includes certain marketing, human resources, travel agent, graphic design, and fine arts work, among others. The bill would only apply to contracts entered into or renewed on or after January 1, 2025.

If a hiring entity hires a Freelance Worker, the hiring party would be required to:

- Have a contract in writing, furnish a copy to the Freelance Worker, and retain a copy for 6 years. The contract would be required to include, among other things, an itemized list of all services to be provided and the value of services, and rate and method of compensation; and the date on which the contracted compensation shall be paid or the mechanism to determine such date.
- Pay the Freelance Worker on the date specified in the contract, or no later than 30 days after the completion of the Freelance Worker's services.
- Not require that the Freelance Worker accept less compensation than specified in the contract after commencement of services.

The hiring entity would be prohibited from discriminating or taking adverse action against a Freelance Worker or from taking any action that is reasonably likely to deter a Freelance Worker from opposing any practice prohibited by the law, participating in proceedings related to enforcement of the law, seeking to enforce the law, or otherwise asserting or attempting to assert rights provided.

An aggrieved worker, the Labor Commissioner, or a public prosecutor could bring a civil action to enforce the law, and could recover attorneys' fees and costs, injunctive relive, and damages including $1,000 if the worker requested a written contractor and the hiring entity refused; twice the amount unpaid if the hiring entity failed to timely pay contracted compensation; or twice the value of the contract or work performed for any other violation.

This new bill would not apply to the federal or state government or a foreign government.

Status: Pending in the Senate Labor and Judiciary Committees.

9. Additional Amendments to Fast Food Minimum Wage (AB 610)

On September 28, 2023, Governor Newsom signed AB 1228 into law, ushering in a range of provisions that included the creation of the Fast Food Council, a minimum wage increase to $20 per hour for certain fast food workers (effective April 1, 2024), and changes to employment standards in the fast-food restaurant industry. AB 1228 applies to fast food restaurants that are part of a chain of 60 or more establishments nationally that share a common brand or standards, and that primarily provide food or beverages for immediate consumption either on or off the premises to customers who order or select items and pay before eating, with items prepared in advance, with limited or no table service. Currently, AB 1228 exempts bakeries that produce bread for sale as a stand-alone menu item on the premises and restaurants located within "grocery establishments," as defined.

This bill would add further exemptions to the definition of "fast food restaurant" (which would exempt these restaurants from AB 1228's requirements, including the minimum wage. These exemptions include a restaurant that is:

- Located in an airport, as defined, but excluding any military base or federally operated facility.
- Connected to or operated in conjunction with a hotel, event center, theme park, public or private museum, or gambling establishment, as defined.
- A restaurant that is all of the following: (1) located in or operated in conjunction with a building, group of building, or campus used for office purposes primarily or exclusively by a single, for-profit corporation or its affiliates; (2) primarily or exclusively serves employees of that corporation or its affiliates rather than the general public; and (3) is part of, or subject to, a concession of food service contract covering the building, group of buildings, or campus.
- Located on land owned by the state, a city or county, or other political subdivision of the state, that is part of a port district or land managed by a port authority or port commission, a public beach, public pier, state park, municipal or regional park, or historic district, and is operated pursuant to a concession agreement or food service contract.

This bill also includes an urgency clause specifying its necessity due to how the immediate operation of new regulation of the fast-food industry in California affects portions of the industry and existing local ordinances and pending regulatory and ballot measures. The rationale behind this bill is that these facilities include worksites where, across many parts of California, workers are often not directly employed by a fast-food franchisor, franchisee, or restaurant operator, and compensation already exceeds that which might be provided for under AB 1228 (in some cases, by more than $10 and even $20 per hour).

Status: Pending in the Senate.

10. Expansion of Unemployment Insurance to Cover Workers on Strike (SB 1116)

While Unemployment Insurance Code section 1262 presently provides that an employee is ineligible for unemployment insurance benefits if they left work due to a trade dispute, this bill would codify case law

to clarify that this limitation would not apply if the individual left work because of a "lockout" (as defined in Labor Code section 1132.8). Moreover, while employees presently remain ineligible during the entire trade dispute (except in a lockout), this bill would restore eligibility for unemployment insurance benefits after the first two weeks of absence due to a trade dispute. In other words, an employee who voluntarily left work to strike would be eligible for unemployment insurance benefits after two weeks.

This bill is identical to last year's SB 799, which passed the Assembly and Senate but was vetoed by Governor Newsom.

Status: Pending in the Senate.

ADDITIONAL PENDING CALIFORNIA BILLS

Harassment/Discrimination/Retaliation

Prevention Discrimination Based on the "Intersection" of Protected Bases (SB 1137)

SB 1137 would amend the Fair Employment and Housing Act (FEHA, codified at Government Code § 12900 *et seq.*) and the Unruh Civil Rights Act (Civil Code § 51 *et seq.*) to prohibit discrimination not only because of one protected trait, but also the "intersection of two or more protected bases." Drawing upon the concept of "intersectionality" which proposes that different forms of inequality operate together but uniquely (i.e., the discrimination and harassment faced by Black women compared to Black men), it would recognize that harassment or discrimination may occur because of the combination of protected factors, as opposed to any single one. This bill would affirm the decision of the Ninth Circuit Court of Appeals in *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551, and declare its provisions declaratory of existing law.

Status: Pending in the Senate Judiciary Committee.

Extending CROWN Act Protections to Amateur Sports Organizations (AB 1815)

In 2022, California enacted the CROWN (Create a Respectful and Open Workplace for Natural Hair) Act (SB 188), preventing discrimination based on hair style and hair texture under the FEHA and the California Education Code. This bill would amend the Unruh Act and enact new Civil Code section 53.8 to similarly prohibit amateur sports organizations (as defined) from discriminating against any person on the basis of race, including traits historically associated with race, including hair texture and protective hairstyles (e.g., braids, locks and twists). This bill would not apply to collegiate or professional sports organizations.

Status: Pending in the Assembly Judiciary Committee.

Civil Rights Department Amendments Regarding Administrative Procedure Deadlines (SB 1022)

This bill makes several minor amendments regarding the definitions and procedures when the Civil Rights Department (CRD) is pursuing a filed administrative charge. For instance, while Government Code section 12961 authorizes the CRD to consider a "group or class complaint," it does not presently define that term.

SB 1022 would amend Government Code section 12926 to clarify that a "group or class complaint" includes a complaint "alleging a pattern or practice." It also clarifies that the filing deadlines contained in Government Code sections 12960 (regarding employment) or 12980 (regarding housing) do not apply to such group or class complaints. It further provides that both of these changes are declarative of existing law.

While section 12965 presently provides that the post-charge statute of limitations period may be tolled during a mandatory or voluntary dispute resolution, SB 1022 would also toll these deadlines in the following new circumstances: (1) for the amount of time specified in any written agreement between the CRD and a respondent executed before the expiration of the applicable deadline; (2) for the length of time for which the CRD's investigation is extended due to the pendency of a potentiation to compel compliance; or (3) during a timely appeal within the CRD of the department's closure of the complaint.

Status: Pending in the Senate Judiciary Committee.

Civil Rights Department Involvement in Unruh Actions and SLAPP Lawsuits (AB 2232)

This bill would add the Civil Rights Department – along with the Attorney General, any district attorney or any city attorney – as an agency authorized to bring a civil action for violation of the Unruh Act's civil rights protections (i.e., prohibiting discrimination by businesses against consumers on the bases of the consumers' protected classifications).

Separately, California law presently provides special procedures to quickly evaluate and potentially dispose of lawsuits brought primarily to chill the valid exercise of constitutional rights of freedom of speech and distress (so called "strategic lawsuits against public participation" or SLAPP lawsuits). While these special protections (found in Code of Civil Procedure section 425.16) do not presently apply to enforcement actions brought in the name of the people of the State of California by the Attorney General, district attorney or city attorney acting as a public prosecutor, AB 2232 would also exempt enforcement actions by the Civil Rights Department.

Status: Pending in the Assembly Judiciary Committee.

Local Agency Enforcement of FEHA Protections (SB 1340)

In 2023, the California Legislature enacted AB 594 expanding the entities (beyond the Division of Labor Standards Enforcement [DLSE]) able to pursue civil or criminal actions for Labor Code violations. This bill would require the Civil Rights Department (CRD) to collaborate with the DLSE to develop partnerships with local agencies to assist with preventing and eliminating unlawful practices under the FEHA. Via procedures outlined in proposed new Government Code sections 12978 *et seq.* a complainant when filing a verified complaint could request a local agency pursue the complaint, and the local agency would need to receive, investigate and adjudicate the complaint using procedures substantially similar to those used by the CRD. SB 1340 further outlines the procedures applicable to these local agency claims, including the procedures for appealing, the applicable time periods for appealing or pursuing civil action, and the interplay between claims handled by the local agency and the CRD.

SB 1340 would also amend Government Code section 12993 to clarify that commencing January 1, 2026, the FEHA's general occupation of regulations regarding employment and housing discrimination do not preclude local agency enforcement of the FEHA.

Status: Pending in the Senate.

Labor Commissioner to Develop a "Model List" of Employee Rights and Responsibilities (AB 2299)

Labor Code section 1102.8 presently requires employers to prominently display a list of employees' rights and responsibilities under California's whistleblowing statute (Labor Code section 1102.5), including the telephone number of the Attorney General's whistleblowing hotline. AB 2299 would require the Labor Commissioner to develop a "model list" of employees' rights and responsibilities under these whistleblowing protections, which would be accessible on the Labor Commissioner's internet website and that – if posted by the employer – would satisfy the current posting requirement.

Status: Pending in the Assembly Labor and Employment Committee.

Leaves of Absence/Time Off/Accommodation Requests

Expanding Paid Sick Leave to Cover Farmworkers During State or Local Emergencies (SB 1105)

The Healthy Workplaces, Healthy Families Act of 2014 (HWHFA), entitles an employee to paid sick days if the employee works in California for the same employer for thirty or more days within a year from the commencement of employment. This bill would expand the specified purposes for which an employer, upon the oral or written request of an employee, is to provide paid sick days. Specifically, it would require paid sick days to be provided to agricultural employees (as defined in Labor Code Section 9110) who work outside and are entitled to paid sick days, to avoid smoke, heat, or flooding conditions created by a local or state emergency (as defined).

Status: Pending in the Senate.

Extension of Small Employer Family Leave Mediation Program to Include Reproductive Loss Leave and Eliminate Sunset Date (AB 2011)

This bill would amend Government Code Section 12945.21, which requires the Civil Rights Department to create a mediation pilot program for CFRA violations against smaller employers (i.e., with between five and 19 employees). It would expand to include resolution of alleged violations of reproductive loss leave (SB 848, codified at Government Code Section 12945.6). This bill would also expand the specified events under which the mediation is deemed complete. An employee is prohibited from pursuing a civil action until the mediation is complete or deemed unsuccessful. This bill adds the mediation is deemed complete if the mediator determines that the employer does not have between five or nineteen employees.

Finally, this bill would delete the repeal date of the pilot program (currently January 1, 2025), thereby extending operation of the program indefinitely.

Status: Pending in the Assembly Judiciary Committee.

Requiring Paid Disability and Parental leave For Public School and Community College Employees (AB 2901)

Presently, existing law authorizes the governing board of a public school district or community college district to provide for a leave of absence from duty, as it deems appropriate, for an employee required to be absent because of pregnancy, miscarriage, childbirth, and recovery from those conditions. Existing law also authorized the board to provide in the rules and regulations whether the leave granted shall be with or without pay and, if with pay, to be deducted from the salary due to the employee for the period in which the absence occurs. This bill would amend the law to now require a public-school employer or community college district to provide up to fourteen weeks of a leaves of absence, with full pay, for an employee who is required to be absent because of pregnancy, miscarriage, childbirth, and recovery from those conditions. This bill would authorize the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or a related condition, and would prohibit a leave of absence taken pursuant to these provisions from being deducted from other leaves of absence, as provided.

Status: Pending in the Assembly Judiciary Committee.

Human Resources/Workplace Policies

Repeal the ABC Test for Independent Contractor Status (AB 1928)

Existing law in California creates a presumption that a worker is an employee and requires a hiring entity to satisfy a strict three-part test (commonly known as the "ABC Test") to establish that a worker is an independent contractor, unless the worker falls within one of a number of exemptions. California's ABC Test was first articulated in a California Supreme Court case known as *Dynamex (Dynamex Operations W. Inc. v. Superior Court* (2018) 4 Cal.5th 903), and was then codified (along with various exceptions) in Labor Code sections 2775 through 2787.

This bill would nullify the *Dynamex* decision and repeal the ABC test for independent contractor status (and all the exemptions thereto) in Labor Code sections 2775 through 2787. If this bill passes, it appears the test for independent contractor status in California would revert to the more flexible multi-factor test that was articulated in the *Borello* case (*S.G. Borello & Sons, Inc. v. Department of Industrial relations* (1989) 48 Cal.3d 341).

Status: Pending in the Assembly Labor and Judiciary Committees.

Workplace First Aid Kit Rulemaking re: Narcan (AB 1976)

Under existing regulations, employers are required to have adequate first-aid materials readily available for employees on every job. (8 Cal. Code Regs. § 3400.) This bill would require the Occupational Safety and Health Standards Board to draft a rulemaking proposal before December 1, 2026 to revise applicable regulations and require all first aid kits in a workplace to include nasal spray naloxone hydrochloride. (This is sometimes referred to as "Narcan" and is a prescription medicine used for the emergency treatment of an opioid overdose or possible overdose.) The Board would be required to adopt revised standards on or before December 31, 2026.

Status: Pending in the Assembly Committee on Labor and Employment.

Requirement that Employees Obtain Heat Illness Prevention Certification (AB 2264)

Existing law (Cal. Labor Code §§ 6720-21 and 8 Cal. Code Regs. § 3395) requires employers to comply with certain safety and health standards for outdoor places of employment to prevent heat illness, including provision of water, access to shade, employee training, supervisor training, and (for certain specified industries) additional procedures when the temperature equals or exceeds 95 degrees Fahrenheit.

This bill would require that – starting July 1, 2028 – employees employed in industries subject to the heat illness standard in section 3395 must obtain a "heat illness prevention certification" within 30 days after the date of hire and maintain a valid certification for the duration of employment. Heat illness prevention certifications shall be valid for 3 years from the date of issuance, regardless of whether an employee changes employers during that period. The Division of Occupational Safety and Health (CalOSHA) would be required to develop and make accessible a heat illness prevention certification process on its website by July 1, 2028, and to offer the certification process in English and the five most used non-English languages.

The bill sets out minimum requirements for the certification requirements, including that the training course include basic, introductory instruction on the elements of knowledge and heat illness prevention practices, and an examination of at least 40 questions (on which the employee would be required to score a minimum of 70%). The training course and examination would be designed to be completed within approximately one day. The bill would require an employer to include the heat illness prevention certification process as part of its on-the-job training for employees, and to consider the time spent completing the training course and examination as compensable hours worked and to pay for any necessarily expenditures or losses associated with the certification. The bill would prohibit an employer from conditioning employment on an applicant already having an existing certification.

Status: Pending in the Assembly.

Expanded Disclosures to Protections for Barbers and Cosmetologists (AB 2444)

Existing law provides for the licensure and regulation of barbers and cosmetologists, and requires that a Health and Safety Advisory Committee must provide the State Board of Barbering and Cosmetology with

advice and recommendations about how to ensure licensees are aware of basic labor laws. This bill would add to the definition of "basic labor laws" the right to sick pay.

The bill would also require that starting January 1, 2026, all applicants/licensees and licensed establishment owners would be required to view of video on basic labor laws a condition of receiving a license or license renewal.

Existing law provides that as of January 1, 2025, the "ABC Test" for employee status will be applied to licensed manicurists. This bill would require the board to develop and disseminate a notification to all board-licensed establishments and licensed manicurists by July 1, 2025, that includes specified statements to inform them of a change in the law relating to the employment classification of manicurists and of the legal consequences of misclassification.

The bill would also require the board to develop a language appropriate and culturally-appropriate educational video or videos on basic labor laws and post them to the board's internet website.

Status: Pending in the Assembly.

Social Compliance Audits for Child Labor (AB 3234)

Existing law regulates the employment of minors in California. This bill would create a "child labor social compliance audit," which would mean an inspection of any production house, factor, fam or packaging facility of a business to verify whether it complies with social and ethical responsibilities, health and safety regulations, and labor laws regarding child labor. The bill would provide that a report detailing the findings of an audit shall contain certain information, including whether the business does or not engage in or support the use of child labor, whether the business exposes children to any hazardous or unsafe situations, and whether children work within or outside regular school hours. The bill would provide that if an employer has voluntarily subjected the business to a child labor social compliance audit, the employer shall post a clear and conspicuous link to a report detailing the findings on an website for their business. The bill does not specify who would conduct these audits.

Status: Pending in the Assembly.

Chain Employer: Displacement Notice (SB 1457)

This bill would state the intent of the Legislature to enact legislation to require a chain employer to provide each covered worker and their exclusive representative (if any) with a displacement notice.

Status: Pending in the Senate.

Wage and Hour

Employment agencies: domestic workers (AB 2185)

This bill, entitled the Employment Agency, Employment Counseling, and Job Listing Services Act, imposes certain obligations on an employment agency with regard to domestic workers referred by the agency.

The act provides that an employment agency is not the employer of a domestic worker for whom it procures, offers, refers, provides, or attempts to provide, work, if prescribed (nonemployment) factors characterize the nature of the relationship between the employment agency and the domestic worker. These nonemployment factors include the factor that payments for domestic services are made directly to either the domestic worker or to the employment agency and payments made directly to the employment agency are deposited into a trust account until payment can be made to the domestic worker. This bill would exclude the alternative of payments to the employment agency where a domestic worker provides care to an individual over 21 years of age and, instead, require that payments for domestic services in such a case be made only directly to the domestic worker.

Status: Pending in the Assembly Judiciary Committee.

Department of Industrial Relations: living wage: report and employer certification program (SB 1049)

This bill is motivated by concern that a growing percentage of families with at least one full-time minimum wage earner fall below the poverty line. The bill would require the Department of Industrial Relations, in conjunction with the Secretary of Labor and Workforce Development and the Director of Housing and Community Development, to develop a certification program for employers that pay a living wage. For purposes of this bill, "living wage" is defined as the lowest wage that allows full-time and part-time wage earners to afford a decent standard of living, which includes appropriate housing and basic expenses, including nonhousing necessities, such as childcare for an average household with minor dependents, food, transportation, health care, and allowance for basic miscellaneous expenses such as clothing, mobile telephone service, broadband access, and taxes.

In order to determine a decent standard of living, this bill would require the department to examine housing costs by county, by region, and in the state and create a formula to ascertain the living wage for each county, each region, and the state. Theis bill would also require the department to report to the Legislature by December 15 of each year the living wage in each county, each region, and the state and develop a method to annually adjust figures to account for housing cost inflation and inflation broadly.

Status: Pending in the Senate.

Working Group to Recommend Minimum Wage Levels (AB 1516)

While historically the Legislature has determined minimum wage levels – including via SB 3 (enacted in 2016), which raised the current statewide minimum wage to $16 an hour – this bill would require the Labor and Workforce Development Agency to convene a working group to study minimum wage-related topics in California. Comprised of representatives from the Labor Commissioner's office, the EDD,

organizations representing low-wage or immigrant workers, organizations advocating for the rights of incarcerated workers, and an organization representing employers, this working group would be tasked with providing recommendations to the Legislature by July 1, 2025 regarding raising the minimum wage.

Status: Passed the Assembly Labor on a party-line vote and is pending in the Senate.

Overtime Compensation for Agricultural Workers (AB 3056)

The Phase-In Overtime for Agricultural Workers Act of 2016 (codified at Labor Code section 860) imposes a schedule that phased in overtime requirements for agricultural workers each year, over the course of four years, from 2019 to 2022 (or, for smaller employees, to 2025). The purpose of the law was to move agricultural workers from a set of rules that allowed them to work up to 10 hours a day or 60 hours a week without earning overtime to the same rules that apply to most other employees in California – pursuant to which agricultural workers would be paid overtime for work in excess of 8 hours a day or 40 hours per week.

This bill would effectively eliminate the last two steps of the progressive phased-in overtime requirements and simply state that agricultural workers are entitled to overtime only if they work more than 9 hours in a day or over 50 hours in a workweek. Because larger employers have already been required to comply with the pre-existing law for several years (such that as of January 1, 2022, they have been required to pay overtime for work in excess of 8 hours per day or 40 hours per week), this would roll back entitlement to overtime for many workers.

Status: Pending in the Assembly.

Universal Basic Income Program for Employment Replaced by Artificial Intelligence (AB 3058)

This bill would state that it is the intent of the Legislature to enact legislation to promote economic security and stability for California residents by creating a universal basic income program for residents whose employment is replaced by artificial intelligence.

Status: Pending in the Assembly.

Narrowing of Exemption Definition for Faculty at Private Institutions of Higher Education (AB 3105)

Existing law exempts an employee from certain provisions governing wages, hours, and other protections if the employee meets certain requirements, including being employed to provide instruction for a course or laboratory at an independent institution of higher education, as currently defined. This bill would narrow the definition of an "independent institution of higher education" by excluding those institutions formed as a nonprofit corporation *on or after January 1, 2023*, and would require the institution to be in good standing with the Bureau for Private Postsecondary Education. Thus, this bill would effectively make it harder for such newly-formed educational institutions to classify their workers as exempt from overtime and other wage and hour laws.

Status: Pending in the Assembly.

Compensation: gratuities (AB 3143)

Existing law (Labor Code sections 351-356) establishes certain requirements relating to gratuities paid to employees, including prohibiting an employer from taking any gratuity paid to an employee by a patron or from requiring an employee to credit the amount of a gratuity against wages due to the employee. Existing law also requires an employer to keep accurate records of all gratuities received by the employer and requires that those records be open to inspection by the Department of Industrial Relations. Currently, the existing law makes a violation of those provisions by an employer a misdemeanor.

This bill would add Labor Code section 352, which would also prohibit an employer from prohibiting, or implementing a policy to prohibit, an employee of a restaurant from receiving any gratuity that is paid, given to, or left for an employee by a patron. Violation of this rule would similarly be a misdemeanor, punishable by a fine not exceeding $1,000 and/or imprisonment not exceeding 60 days.

Status: Pending in the Assembly.

Public Contracts/Prevailing Wage

Increased Access to Records, Including Payroll Records, for Public Works Projects (AB 3186)

While California law presently requires contractors to maintain accurate payroll records for public works projects and to make them available to the public agency awarding the public works contract, this bill would expand the entities entitled to request copies of these records. Specifically, new Labor Code section 1776.1 would require each contractor or subcontractor performing work on a covered public works project to make available specified records (including payroll records) upon request by the Division of Labor Standards Enforcement, multiemployer Taft-Hartley trust funds and to joint labor-management committees. This new section would specify the deadlines to comply with such requests as well as new enforcement penalties and procedures.

Status: Pending in the Assembly.

Extension of Labor Commissioner Deadline to Issue Civil Wage and Penalty Assessments (AB 2135)

Presently, the Labor Commissioner must issue civil wage and penalty assessments for public work contracts violations within 18 months of the later of the filing of a valid notice of completion or the acceptance of the public work. This bill would extend this period to 24 months and would also authorize a further extension for good cause, including ongoing investigation and assessment by the Labor Commissioner or their designee. It would also prohibit the dismissal of an investigation solely because the Labor Commissioner or their designee did not complete their review and assessment within the prescribed time.

Status: Pending in the Assembly Labor and Employment Committee.

Additional Legislation Contemplated Regarding Prevailing Wage Payments on Public Work Projects (SB 1303)

California law presently requires that at least the general prevailing rate of per diem wages be paid to workers employed on public work contracts. This bill states the Legislature's intent to enact legislation related to the use of for-profit labor compliance entities for the monitoring and enforcement of prevailing wage laws on public work contracts.

Status: Pending in the Senate.

New Reporting Requirements for Changes to Public Work Contracts (AB 1890)

California has specific provisions regarding the payment of prevailing wages for public works, including a requirement that an entity awarding a public works contract timely notify the Department of Industrial Relations (DIR) of this award. This bill would amend Labor Code section 1773.3 to also notify the DIR of any changes or additions regarding the notice that involve either: (1) a change in the identify of the contractor or subcontractor performing work on the project; or (2) a change in the total amount of the contract if the change exceeds $10,000.

Status: Pending in the Assembly Labor and Employment Committee.

Requiring Subcontractors to Ensure Usage of Skilled and Trained Workforces on Public Contracts (SB 1162)

Public Contract Code section 2600 outlines the circumstances and requirements of a public entity to ensure that a bidder, contractor or other entity will use a skilled and trained workforce to complete a contract or project. This bill would specify that these provisions would also apply to a commitment from a subcontractor to ensure a skilled and trained workforce.

Status: Pending in the Senate Labor Committee.

<u>Public Sector/Labor Relations</u>

Local Public Employee Organizations Recouping Representation Fees (AB 1941)

Existing law provides that public employees who are members of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations are not required to join or financially support an employee organization as a condition of employment. But existing law authorizes a recognized employee organization to charge an employee covered by the Firefighters Procedural Bill of Rights Act for the reasonable cost of representation when the employee holds a conscientious objection or declines membership in the organization and then requests individual representation in a discipline, grievance, arbitration or administrative hearing from the organization. This bill would extend this rule to employees covered by the Public Safety Officers Procedural Bill of Rights.

Status: Pending in the Assembly Committee on Public Employment and Retirement.

Notice to Public Agency Employees of Requests for Certain Personal Information (AB 2153 and AB 2283)

Existing law, the California Public Records Act (CPRA, Cal. Gov. Code § 7920.000, *et seq*.), requires public records to be open to public inspection. Under existing law, the CPRA generally does *not* require the disclosure of personnel, medical , or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. (Cal Gov. Code § 7927.700.) There are two pending bills that would require public agencies to inform public employees if there are CPRA requests for information about the employees.

- AB 2153 would require that if an agency receives a request for a copy of – or the inspection of – any personnel, medical or similar records of a public agency employee or any record that would disclose a public agency employee's personal identity in connection with the performance of that employee's work duties, the agency must promptly and prior to the release of the records, provide written notice of the request to the employee.

  Status: Pending in the Assembly Judiciary Committee.

- AB 2283 would require that when a public agency receives a request for the personnel records of one of the public agency's employees, the public agency shall provide written notice to the employee within 48 hours of receipt of the request if any of the following conditions are met:

  - The request seeks sensitive information concerning the employee or a family member, including but not limited to photographs, residential address, or medical history;
  - The disclosure of the requested information could reasonably be considered to put the safety of the employee or a family member at risk; or
  - The disclosure would constitute an unwarranted invasion of personal privacy as described in section 7927.200.

  The written notice would inform the employee of the specific records requested, inform the employee of the purpose for which the records were requested, inform the employee who made the request, and provide the employee with a means of contacting the public agency about the requested records.

  Status: Pending in the Assembly.

Public Employee Labor-Related Confidential Communications (AB 2421)

Existing law that governs public employee labor relations prohibits public employers from taking certain actions relating to employee organization, including imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of their guaranteed rights.

This bill would also prohibit a local public agency employer, a state employer, a public school employer, a higher education employer, or the San Francisco Bay Area Rapid Transit District from questioning any

employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

Status: Pending in the Assembly.

Federal Work Authorization for Student Employment at Public Colleges and Universities (AB 2586)

This bill would prohibit any campus of the University of California, California State University, or a California Community College from disqualifying a student from eligibility to apply for an employment position at the campus due to their failure to provide proof of federal work authorization, except where that proof is required by federal law or where that proof is required as a condition of a grant that funds the particular employment position for which the student has applied.

The bill would further provide that each such campus is required to treat a specified prohibition in federal law on hiring unauthorized aliens as inapplicable because that provision of federal law does not state that it applies to any branch of state government.

Status: Pending in the Assembly.

Basic Labor Standards at the University of California (ACA 14)

This is a resolution to propose a Constitutional Amendment that would require employees of the Regents of the University of California to have the right to, and be covered by, certain basic labor standards. Specifically, the proposed amendment would provide that UC employees are entitled to the same basic labor standards that apply to employees on or after January 1, 2025, including equal pay, minimum wage, timely payment of wages, overtime, occupational health and safety standards, meal and rest breaks, paid leave, including paid sick leave, and standards against displacement and contracting out of work. In addition, the amendment would provide that unless otherwise provided by state law, individuals who perform work for the UC Regents would have the right to payment of a prevailing wage if the work would be considered public works under prevailing wage laws. The amendment would allow the Legislature to enact laws to further these rights, to define or specify labor standards, or establish other protections for individuals who perform work for the Regents.

Status: Pending in the Assembly Labor and Employment Committee.

Salary Data re: Public School Classified Employees (SB 1388)

Existing law requires school districts to employ persons for positions not requiring certification qualifications and to classify, as defined, these persons. Under existing law, these employees make up the classified service. Existing law requires that each position in the classified service have, among other things, a specific statement of the duties required to be performed by the employees in each position, and the regular monthly salary ranges for each position.

This bill would state the intent of the Legislature to enact subsequent legislation related to salary data collection for school staff.

Status: Pending in the Senate Rules Committee.

State Provided Benefits

Notifying Employees of Legal Rights for Workers' Compensation Purposes (AB 1870)

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Employers who are subject to the workers' compensation system are generally required to keep posted in a conspicuous location frequented by employees and easily read by employees during the hours of the workday a notice that includes, among other information, to whom injuries should be reported, the rights of an employee to select and change a treating physician, and certain employee protections against discrimination. Existing law requires the administrative director to make the form and content of this notice available to self-insured employers and insurers.

This bill would require the notice to include information concerning an injured employee's ability to consult a licensed attorney to advise them of their rights under workers' compensations laws, as specified. The bill would also make technical, nonsubstantive changes to these provisions.

Status: Pending in the Assembly.

Workers' Compensation Coverage Not Required for Contractors with No Employees (SB 1071)

The Contractor's State License Law (codified in Business and Professions Code Section 7125) sets forth a requirement that all active contractors, under certain license categories, must carry workers' compensation insurance or possess a valid Certification of Self-Insurance, excluding active contractors organized as a joint venture and without employees. This bill would add an additional exception for active contractors that have no employees, if the active contractors provide both an affidavit to the board affirming they have no employees and adequate proof, as provided for by the board, demonstrating they are operating without employees.

Status: Pending in the Senate.

Authorizing Electronic Signatures for Workers' Compensation (AB 2337)

This bill would define "signature" for purposes of a proceeding before the Workers' Compensation Appeals Board to include electronic record or electronic signature. An electronic record or electronic signature is defined as attributable to a person if it was the act of the person, shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

This bill would also authorize the signature requirement of every compromise and release agreement to be satisfied by an electronic signature and authorize the notary public acknowledgment requirement to be satisfied by electronic signature provided an electronic record includes specified information.

Status: Pending in the Assembly.

Expanding Medical Benefits Under Workers' compensation (SB 1205)

Existing law requires employers to secure the payment of workers' compensation, including wage replacement and medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. This bill would make an employee, who is working, entitled to receive (in addition to all other benefits) reasonable expenses of transportation, meals and lodging incident to receiving treatment, together with one day of temporary disability indemnity for each day of wages lost receiving treatment. If treatment does not require the employee to miss a full day of work, the employer may instead provide a percentage of one day of temporary disability indemnity representative of the percentage of the wages lost receiving treatment. This would apply whether the employee's injury was permanent or not.

Notably, this bill would prohibit employers from discharging or in any manner discriminating against the employee for receiving treatment during normal business hours or during the hours of the day when the employee is customarily at work.

Status: Pending in the Senate.

Farmworker Workers' Compensation Payments for Heat-Related Injuries (SB 1299)

This bill would create a disputable presumption that where an employer failed to comply with heat illness prevention standards (as defined) and there is a heat-related injury to the farmworker, it arose out of and in the course of employment. This bill would require the Workers Compensation Appeals board to find in favor of the farmworker if the employer fails to rebut the presumption. This bill also specifies compensation awarded for heat-related injury to farmworkers is to include, among other things, medical treatment and disability.

Additionally, this bill would establish the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of $5,000,000 derived from nongeneral funds of the Workers' Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption.

Status: Pending in the Senate.

Unemployment insurance: benefit and contribution changes (SB 1434)

In response to California borrowing billions of dollars from the federal government to pay for unemployment benefits during the Covid-19 pandemic (a repeat of what happened during the Great

Recession), this bill would make numerous changes to existing law regarding unemployment compensation benefits. Of the numerous changes, two would significantly impact employers:

Modifying the taxable wage base

State unemployment benefits are financed through payroll taxes paid by employers, which generate revenues that are deposited into the state's unemployment insurance trust fund. Currently, the existing law, unchanged since 1983, sets the taxable wage base for employer payroll taxes at only the first $7,000 of each employee's annual pay. While this bill (at the moment) does not specify the exact amounts, it would modify (and presumably increase) the taxable wage base beginning January 1, 2025 and again on January 1, 2027. Then beginning on January 1, 2028, and each January 1 thereafter, the Director of Finance would calculate the adjusted taxable wage base based on the annual cost of living.

Requiring Payment into the Newly Created Excluded Workers Fund

Existing law provides that employer contributions to the Unemployment Fund shall accrue and become payable by every employer (except as specified) for each calendar year with respect to wages paid for employment. Existing law also requires, in addition to other contributions, every employer (except as specified) to pay into the Employment Training Fund contributions at the rate of 0.1% of wages (as defined) and sets forth the manner of collection.

This bill would create in the State Treasury a special fund known as the Excluded Workers Fund. This bill would require every employer (except as specified) to pay into the Excluded Workers Fund contributions at the rate of 0.5% of wages (as specified in Unemployment Insurance Code section 930). This bill would require, upon appropriation by the Legislature, specified costs to be reimbursed from the fund and would otherwise limit the use of moneys in the fund for the support of excluded worker programs to provide income assistance to excluded workers who are ineligible for the state or federal unemployment insurance benefits administered by the Employment Development Department and who are unemployed.

Status: Pending in the Senate.

Miscellaneous

Employer Tax Credits for Childcare or Qualified Plan Payments (SB 533)

In recent sessions, the California Legislature has briefly considered bills that would require certain employers to provide or finance childcare for their employers. Rather than require employers to provide childcare, this bill would allow an employer tax credit between 2024 and 2029 for 30% of the costs of startup expenses for childcare programs or constructing a childcare facility to be used primarily by the children of the taxpayer's employees or by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer. The total amount of the credit may not exceed $30,000 for any taxable year. It would also allow a similar tax credit for these same tax years for costs paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employees (up to $360 for each qualified dependent per taxable year).

Status: Passed the Senate Governance and Finance Committee and is pending in the Senate Appropriations Committee.

Tax Credit for Hiring Person Convicted of a Felony (AB 2128)

To encourage hiring of individuals with prior felony convictions, AB 2128 would allow qualified taxpayers (i.e., employers with five or fewer employees) from January 1, 2024 to January 1, 2029 to claim a tax credit up to 40% of the qualified wages (up to $5,000) paid or incurred to a qualified employee. A qualified employee would be someone who has worked for the qualified taxpayer for at least six months to perform services within California, has been convicted of a felony under federal or any state law, and is hired within one year of the felony conviction or their release from prison.

Status: Pending in the Assembly Revenue and Taxation Committee.

Expansion of New Employment Tax Credit (AB 2294)

Presently, Revenue and Taxation Code section 17053.73 allows various credits against taxes, including from January 1, 2024 to January 1, 2026 for hiring qualified full-time employees within a designated census tract or economic development area in an amount equal to 35% of the qualified wages. This bill would make various amendments to this section, including deleting the requirement that the new employment be within a designated census tract or economic development area, expanding the definition of qualified wages to include the amount of wages that exceeds 100% of the minimum wage (currently 150%) but does not exceed 350%, expanding the definition of qualified employees to include members of a targeted group (as defined), and expanding the tax credit availability to all businesses except sexually oriented businesses.

Status: Pending in the Assembly Revenue and Taxation Committee.

Labor Trafficking Unit within the Civil Rights Department (AB 1832)

This bill would establish a Labor Trafficking Task Force within the Civil Rights Department (CRD). The Task Force would take steps to prevent labor trafficking and coordinate with other government agencies to combat labor trafficking, refer complaints to the CRD or other agencies for potential investigation, civil action, or criminal prosecution, and follow protocols to ensure survivors of labor trafficking are not victimized by the process of prosecuting traffickers and are informed of services available to them, among other things. The bill would require the Division of Occupational Safety and Health to notify the Task Force when an investigation reveals evidence of labor trafficking.

This bill is similar to AB 235 (from 2023), which did not pass out of the Appropriations Committee.

Status: Pending in the Assembly Labor and Employment Committee.

Labor Trafficking Unit within the DLSE (AB 1888)

This bill is very similar to AB 380 (introduced in 2023) and would each establish a Labor Trafficking Unit in the Division of Labor Standards Enforcement (DLSE) to coordinate with other state enforcement agencies. The bill would give the unit authority to receive and investigate complaints alleging labor trafficking, to take steps to prevent labor trafficking and to issue civil penalties to be awarded to the person harm. The unit would also receive evidence from the Division of Occupational Safety and Health regarding possible labor trafficking and would coordinate with other agencies and refer cases for potential civil and criminal actions relating to labor trafficking violations. The unit would also annually submit a report to the Legislature regarding their activities, including the number of complaints received and the number of complaints referred.

This bill and AB 380 are similar to AB 1820 (2022), which was vetoed by Governor Gavin Newsom due to concerns the CRD – not the DLSE – would be the appropriate location for a Labor Trafficking Unit. AB 380 unanimously passed the Assembly before stalling in the Senate Appropriations Committee.

Status: Pending in the Assembly Labor and Employment Committee.

California Workplace Outreach Project (SB 1030)

This bill would require the Department of Industrial Relations (DIR) to create and administer the California Workplace Outreach project to promote awareness of, and compliance with labor protections that affect California workers, with a focus on low-wage and high-violation industries. Amongst other things, the DIR would issue competitive requests for proposals to qualified organizations (as defined) to provide education and outreach services, including on priority topics such as minimum wage, overtime, sick leave, retaliation, health and safety, excessive heat and OSHA's and the DLSE's adjudication processes.

Status: Pending in the Senate Labor Committee.

Extended Permitting Period Under Employee Housing Act for Permanent Single-Family Housing (AB 2585)

The Employee Housing Act requires a person operating employee housing to obtain a permit to operate that employee housing from the enforcement agency, and currently authorizes a permitting period of up to five years to operate employee housing consisting of permanent single-family housing. AB 2585 would extend that permitting period for up to six years rather than the current five years.

Status: Pending in the Assembly.

Expanded Agricultural Employee Housing for Agricultural Employees (AB 2746)

Like AB 2585, this bill would amend the Employee Housing Act as it relates to agricultural land use, allowing it to apply to employee housing of no more than 50 units or spaces (compared to present limit of "36 beds in a group quarters").

Status: Pending in the Assembly.

Spot Bills to Watch

The Legislature has also introduced several so-called "spot bills" which initially reference only "technical" or "non-substantive" changes to a particular existing statute, but which may be materially and substantively amended later, including as key committee votes approach. These spot bills suggest future amendments may be forthcoming regarding, amongst other things: artificial intelligence (AB 1824, 2058); cannabis use (SB 1264); wages (AB 2364); working Hours (AB 2972); Occupational Safety and Health (AB 2975, 2738), and independent contractor misclassification (AB 2994).

NEW STATE REGULATIONS AND GUIDANCE

CRD Opens 2023 Pay Data Reporting Period

On February 1, 2024, the CRD opened the pay data reporting portal for submissions for the 2023 calendar year. Private employers of 100 or more employees or workers hired through labor contractors are required to annually report pay, demographic, and other workforce data to the state. The **deadline** for employers to file pay data reports with CRD is **May 8, 2024**. Along with opening the portal, the CRD also released updated report templates, FAQs, and an updated user guide. Click Here to view. Employers should note that there is *new guidance* about how to handle remote workers.

Updated California Paid Sick and Safe Leave FAQs Address January 1, 2024 Changes

On December 12, 2023, California's Labor Commissioner revised its FAQs to address changes that will occur on January 1, 2024, to the Healthy Workplaces Healthy Families Act (HWHFA). Although revisions for many FAQs are minor and simply account for the increased amount of leave employees can accumulate, carry over, or use as of January 1, 2024, certain new FAQs provide insight into practical challenges some employers will face, shed light on issues the Labor Commissioner did not address in previous FAQ iterations, and make known the agency's position on its interpretation of amended provisions applicable to companies with employees covered by collective bargaining agreements.

California Department of Industrial Relations Issues New Wage Theft Prevention Act Notice

The California Department of Industrial Relations (DIR) has issued a new template Wage Theft Prevention Act Notice that reflects the new Paid Sick Leave requirement and has a section for emergency or disaster declarations. You can access the new template here: NOTICE TO EMPLOYEE (ca.gov). The template indicates that employers must identify applicable emergency or disaster declarations *and* state how such declarations may affect health or safety. You can access our Special Alert here.

Certain FEHA Protections Extended to California Workers Who Use Cannabis

As of January 1, 2024, most employers with 5 or more employees are prohibited, under the FEHA, from unlawfully discriminating against prospective or current employees for their use of cannabis under certain circumstances. In general, employers cannot fire, penalize, or otherwise discriminate against an employee based on the person's use and/or possession of cannabis off the job and away from the workplace, or if they test positively for non-psychoactive cannabis metabolites, unless the employer does not meet the employee threshold, the position involves a federal background investigation or security clearance, or the employee is in the building or construction trades. The CRD issued a 2024 FAQ Handout to assist employers on how to comply.

FEHA Protections for California Employees Subject to Reproductive Loss

The CRD published a new Fact Sheet on the right of California employees to take up to 5 days of leave within a three-month period following the employee, or the employee's spouse or partner, suffering a reproductive loss, which the FEHA defines as a miscarriage, stillbirth, failed adoption, failed surrogacy, or unsuccessful assisted reproduction. The new fact sheet outlines the types of employers subject to the law, who is eligible to take the leave, when the leave can be taken, how much leave is available, and whether an employee can be entitled to pay while they are out. It also covers protections against retaliation.

NEW FEDERAL REGULATIONS AND GUIDANCE

DOL Finalizes Independent Contractor Regulation

On January 10, 2024, the DOL published a final rule applying a six-factor test focused on the "economic reality" of the relationship between a potential employer and a worker to determine if an individual is an "independent contractor" under the FLSA. The final rule becomes effective March 11, 2024, and officially rescinds a 2021 rule defining the same term. The test generally asks whether, as a matter of economic realities, the worker depends on the potential employer for continued employment or is operating an independent business. The definition matters because the FLSA only applies to "employees" – it does not apply to "independent contractors." In California, most jobs are governed by the so-called "ABC Test," which is stricter than the new federal test. Therefore, the new federal test may not have much of an impact on most California jobs. However, and particularly if a California job falls within one of the exceptions to the ABC Test, employers should consider both whether they can satisfy the California test and whether they can satisfy the new federal test. Click here to learn further details on the DOL website or visit the WTK Special Alert article.

NOVEMBER 2024 BALLOT

Initiative to Raise the Minimum Wage

This ballot measure seeks to increase the minimum wage by $1.00 per year until it reaches $18.00 per hour and then to increase the minimum wage annually to adjust for inflation. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

Initiative to Repeal PAGA

This ballot measure seeks to repeal the Private Attorneys General Act, which allows employees to file lawsuits on behalf of themselves and other employees to recover monetary penalties for certain state employment law violations. The Labor Commissioner would retain the authority to enforce these laws and impose penalties. The initiative would require the legislature to provide funding for Labor Commissioner enforcement. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

If you have questions about how these new laws and regulations may affect your business, please contact us.

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