2024 CALIFORNIA LEGISLATIVE SUMMARY

April 12, 2024

Spring has arrived, the 2024 Legislative session is in full bloom, and two new laws have already taken effect. First, AB 1228 (enacted in 2023) took effect on April 1, 2024, creating a $20.00 statewide minimum wage for certain fast food restaurant restaurants covered by that law (i.e., those with 60 locations nationwide, etc.). (See our 2023 Legislative Summary for a more detailed overview of that law.) Second, Governor Gavin Newsom has signed AB 610, which took effect immediately, creating multiple new exemptions from the new fast food minimum wage.

The California Legislature is also still considering a record number of pending bills, including approximately 60 employment-related bills, and key committee votes have recently occurred or will soon occur. As tends to happen, some major bills have stalled as key votes approach (including AB 2741, which would have imposed new obligations on client employers and labor contractors), while other major bills suddenly emerge as amendments occur, including the just-introduced "right to disconnect" bill (AB 2751), which would allow employees to ignore most employer communications outside of work hours. Suffice to say, employers should anticipate a flurry of activity as the deadlines for bills to pass the key policy committee votes (April 26, 2024) and to pass the first legislative chamber (May 24, 2024) approach.

For tracking purposes, we have identified the "Top Ten" bills that – if passed – would have the most significant impact on California employers. These bills that would:

- Allow employees the "**right to disconnect**" from employer communications outside of working hours [AB 2751]
- 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]
- Eliminate employers' ability to require employees to use **PTO before paid family leave** [AB 2123]
- Expand employer responsibility to issue **COBRA Notices** [AB 2494]
- Expand **joint liability** for **labor contractors and client employers** [AB 2754]
- Increase Protection for Certain Independent Contractors (**Freelance Workers**) [SB 988]
- Expand **Unemployment Insurance** to Cover **Workers on Strike** [SB 1116]
- Increase **Unemployment Insurance Benefits** and **Related Employer Taxes** [SB 1434]

In addition, two employment-related initiatives will appear on the November ballot: one would repeal PAGA and has the potential to upend the enforcement of the Labor Code if enacted, and another would increase the minimum wage to $18.00 per hour. In the pages below, we provide an overview of the newly enacted AB 610 and summarize the remaining employment-related bills and initiatives that we are tracking, largely organized by subject matter. We have also included several references to notable new state and federal regulations and guidance.

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NEW LAWS

Additional Amendments to Fast Food Minimum Wage (AB 610)

Signed by Governor Gavin Newsom on March 25, 2024, this immediately effective law adds further exemptions to the definition of "fast food restaurant" for purposes of California's fast food minimum wage law. In 2023, Governor Newsom signed AB 1228 into law, creating Labor Code section 1474 and 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. The law 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. The original law exempted bakeries that produce bread for sale as a stand-alone menu item on the premises and restaurants located within "grocery establishments," as defined.

The newly enacted amendment to Section 1474 *also* exempts any 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.
- 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.

The rationale behind the change 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).

These amendments became law March 25, 2024, before the fast food minimum wage became effective on April 1st.

TOP TEN PROPOSED EMPLOYMENT LAW CHANGES

1. Employee "Right to Disconnect" (AB 2751)

Echoing legislation recently adopted in several European countries (e.g, France, Spain and Italy), this bill would require employers to establish a workplace policy providing employees "the right to disconnect" from employer communications during non-working hours. Under proposed new Labor Code section 1198.2, this would mean that except for communications about "scheduling" or an "emergency," the employee would have the right to ignore communications from the employer during non-working hours. The employer and employee would be required to establish by written agreement the "non-working hours," defined as the hours before and after an employee's assigned hours of work, whether stated in their job description or stated otherwise.

As mentioned, the employee would not be entitled to ignore communications regarding "scheduling" or an "emergency." For purposes of this exception, "scheduling" would mean changes to a schedule within 24 hours. "Emergency" would be an unforeseen situation that threatens an employee, customer or the public; disrupts or shuts down operations; or causes physical or environmental damage.

Employees would be able to file complaints with the Labor Commissioner about a "pattern of violation," defined as three or more documented instances of violating the right to disconnect. While violations would not be punishable as a misdemeanor under Labor Code section 1199, the Labor Commissioner could issue fines of not less than $100.00.

This law would apply to all employers (private and public) but would not apply to employees covered by a valid collective bargaining agreement.

Status: Pending in the Assembly Labor and Employment Committee.

2. 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 an 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 many 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 be 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 responsible 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 Privacy and Consumer Protection Committee.

3. 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 employees for taking time off to serve on a jury, to appear in court if the employee is a victim of a crime, or to obtain certain victim relief; and prohibit discrimination because an employee is a victim of a crime or abuse. Existing law also requires employers to provide reasonable accommodations to certain victims and 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: Passed the Assembly Labor and Employment Committee on a party-line vote and is pending in the Assembly Judiciary Committee.

4. 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.

It would also require the employer requesting an applicant's authorization to obtain the applicant's criminal history information to provide written notice to the applicant, with the notice's contents depending upon whether the employer is asserting a business necessity for this information. If the employer is asserting a business necessity for this information, the employer must identify: (1) the business necessity; (2) if claiming this information is compelled by law, the federal law, federal regulation, or state law containing the requirement or exclusion; and (3) if claiming the business necessity is to protect against workplace concerns (identified above [e.g., workplace harassment, etc.]), the specific risk contemplated and that the employer's use of criminal information is necessary to protect against this risk and that there is no reasonable alternative to using the applicant's criminal information.

Alternatively, if the employer is not asserting a business necessity for this criminal history information, the notice must clearly and conspicuously explain that (1) the applicant has the right to refuse to authorize the employer's access to the applicant's criminal history information; and (2) that the law prohibits the employer from taking an adverse action based on the applicant's refusal.

Status: Pending in the Senate's Judiciary and Labor Committees.

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: Unanimously passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

6. New COBRA Notice Requirements (AB 2494)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with 20 or more employees to provide former employees continuation of benefits and provide notice of continued benefit eligibility upon certain qualifying events (e.g., termination, etc.). Depending on the terms of the health plan, this notice may be provided by the health plan administrator or the employer.

Citing concerns that notice from the health plan administrator may be delayed and result in a gap in coverage, this bill would require employers with 20 or more employees to immediately provide notice directly to the employee upon termination or a reduction in hours that would otherwise require COBRA notice. Specifically, under new Labor Code section 2808.05, employers (whether public or private) would be required to provide this COBRA coverage notice both (1) in a written, hard copy provided in person; and (2) in an email from the employer to the employee.

Status: Unanimously passed the Assembly Labor and Employment Committee and is pending in the Assembly Appropriations Committee.

7. 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, but would exempt any contract with a motor carrier contractor involving 30 days or fewer of cumulative labor or services within a one-year period. 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 (with certain exceptions). The new bill would specify that a "client employer" includes a business entity that utilizes a labor contractor's workers to ship or receive containerized freight to or from the premises or worksite of the client employer, regardless of the operating

authority under which the containerized freight is moved, except when the freight container is not full, the shipments occur fewer than 11 times in a one-year period, or the contract period is less than 31 cumulative days in a one-year period.

- 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 containerized 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.

- 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 Labor and Judiciary Committees.

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 (codified at Labor Code sections 2775 through 2787). This bill would not change the tests but would create additional protections for certain independent contractors characterized as "freelance workers." The bill is motivated by concerns that freelance workers do not have the same protection against wage theft as employees, and it is similar to recent laws enacted in New York and Illinois and Los Angeles's Freelance Worker Protections Ordinance.

As noted, this bill would apply to "Freelance Workers," defined as persons or organizations with only one person (whether or not incorporated or employing a trade name) who are hired as independent contractors 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 signed copy to the Freelance Worker, and retain a copy for 4 years. The contract would be required to include, among other things, an itemized list of all services to be provided, the value of services, the 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 or provide more goods or services or grant more intellectual property rights than agreed to 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 contract 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: Unanimously passed the Senate Labor Committee and is pending in the Senate Judiciary Committee.

9. 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 Labor, Public Employment and Retirement Committee.

10. 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, such as increasing the maximum weekly benefit and altering the calculation of benefits to increase the number of workers who qualify for maximum benefits. Of the numerous changes, two would significantly impact employers:

Modifying the taxable wage base to fund unemployment benefit increases

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.

Opponents believe that, if passed, this bill would significantly increase unemployment insurance taxes on every employer in California to cover the increase in benefits and fails to appropriately address the structural issues of California's Unemployment Insurance program, instead placing the burden on employers.

Status: Pending in the Senate Labor, Public Employment and Retirement Committee.

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.*), the Unruh Civil Rights Act (Civil Code § 51 *et seq.*), and the California Education Code 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. Accordingly, it would revise the definition of these protected characteristics in Government Code section 12926(o) [for FEHA purposes] to include (1) an intersection or combination of those characteristics; (2) a perception the person has any of those characteristics or any intersection or combination of those characteristics; or (3) a perception that the

person is associated with a person who has, or is perceived to have any of those characteristics or any intersection or combination of those characteristics.

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: Passed the Senate Judiciary Committee and is pending in the Senate Appropriations Committee.

Prohibition on Advertising that Job Requires Driver's License Unless Driving is Part of the Job (SB 1100)

The Fair Employment and Housing Act ("FEHa") already prohibits various forms of employment and housing discrimination, including discrimination on the basis of national origin. The implementing regulations clarify that it is unlawful for an employer to discriminate against an applicant or employee because they hold a driver's license issued under Section 12801.9 of the Vehicle Code (which permits the Department of Motor Vehicles to issue a driver's license to a person who is not able to submit satisfactory proof that their presence in the United States is authorized under federal law).

This bill would add section 12945.8 to the Government Code and make it an unlawful employment practice for employers to state in a job advertisement, posting, application or other material that an applicant must have a driver's license unless the employer reasonably expects driving to be one of the job functions for the position *and* the employer reasonably believes that satisfying the job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. "Alternative form of transportation" would include but not be limited to using a ride hailing service or taxi, carpooling, bicycling, or walking.

Status: Pending in the Senate Judiciary Committee.

Additional Law Enforcement Positions Exempted from FEHA's Cannabis Protections (SB 1264)

In 2022, California enacted AB 2188 (codified at new Government Code section 12954) prohibiting employers from discriminating against applicants or employees because of cannabis use off the job and away from the workplace or because an employer-required drug screening test revealed the presence of nonpsychoactive cannabis metabolites. Currently, Government Code section 12954 exempts certain applicants and employees from these protections, including applicants and employees hired for positions requiring a federal government background investigation or security clearance.

This bill would broaden these exemptions to applicants or employees in sworn or nonsworn positions within law enforcement agencies who have or would have functions or activities related to any of the following: (1) the apprehension, incarceration or correction of criminal offenders; (2) civil enforcement matters; (3) dispatch and other public safety communications; (4) evidence gathering and processing; (5) law enforcement records; (6) animal control; (7) community service duties; (8) public administrator or public guardian duties; or (9) coroner functions.

Status: Pending in the Senate Labor and Judiciary Committees.

Extending CROWN Act Protections to the Unruh Act (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 (Civil Code section 51 *et seq.*), which presently prohibits businesses from discriminating based upon a customer's protected classifications (including race), to include similar definitions and protections within the Unruh Act. Accordingly, businesses offering services or accommodations to the public would be prohibited from discriminating against any person on the basis of race, including traits associated with race, including hair texture and protective hairstyles (e.g., braids, locks and twists).

Status: Passed the Assembly Judiciary Committee with bi-partisan support and is pending in the Assembly Appropriations Committee.

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

This bill makes several amendments regarding the definitions and procedures used 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. Instead, such class complaints would be able to allege any violation occurring within a period of 10 years or fewer before the date the complaint was filed, or more than 10 years before the complaint was filed if it is determined to be reasonable by a court of competent jurisdiction. SB 1022 further provides that 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: Passed the Senate Judiciary Committee on a party-line vote and is pending in the Senate Appropriations Committee.

Local Agency Enforcement of FEHA Protections and Expanded CRD Powers Regarding Infrastructure Projects (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.

This bill would also amend the FEHA relating to infrastructure projects. For instance, it would authorize the CRD to handle complaints alleging unlawful practices by a contractor or subcontractor in connection with an agreement with a state agency for an infrastructure project. In such actions, the court would have the authority to cancel the agreement. It would also require the CRD to maintain a comprehensive database tracking infrastructure contracting and procurement activities by state agencies, including the demographic data of employees by contractors and subcontractors utilized by state agencies, including for race, gender, marital status and county of residence. It would also require – commencing July 1, 2025 and annually thereafter – for a contractor or subcontractor under a state agency-issued infrastructure project to report demographic information enumerated in the statute, and provide employees the option to participate in an optional survey to obtain this demographic information.

Status: Pending in the Senate Labor and Judiciary Committees.

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) that prevent agricultural employees from working.

Status: Unanimously passed the Senate Labor, Public Employment and Retirement Committee and is pending in the Senate Appropriations Committee.

Requirement to Exclude School 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 require that excluded time be paid for school employees.

This bill only applies to school districts, county offices of education, and charter schools. The bill would require those covered employers to ensure that persons who have tested positive for COVID-19 are excluded from the workplace consistent with the State Department of Public Health Isolation Guidance. The current guidelines provide for exclusion until at least 24 hours have passed since a fever of 100.4 degrees or higher has resolved without the use of fever-reducing medications, and COVID-19 symptoms are mild and have improved. (The bill notes that if guidelines change, the revised exclusion requirements will apply.)

The bill also requires that if a school 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 requirement to pay wages applies only to the period during which the employee is excluded pursuant to the Department of Health's Isolation Guidance, but 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 for school employees.

Status: Pending in the Assembly Labor and Employment Committee.

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: Unanimously passed the Assembly Labor and Employment Committee, the Assembly Judiciary Committee, and the Assembly Appropriations Committee and has been placed on the consent calendar (suggesting it very likely will pass the Legislature).

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: Unanimously passed the Assembly Education Committee and is pending in the Assembly Higher Education Committee.

<u>Human Resources/Workplace Policies</u>

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.

Notification of Collection of Personal Information via Electronic Monitoring (AB 2568)

This bill is part of a trend in bills related to artificial intelligence, privacy, and electronic monitoring. The authors of this bill intend for it to be a more moderate (and thus, potentially employer-friendly) version of more strict electronic monitoring bills that have been introduced in recent years.

Existing law (the California Privacy Rights Act, or "CPRA") already grants consumers (including employees at some businesses) with certain rights related to their personal information, including the right to know what information is being collected and the right to require the business to delete certain personal information.

This bill would create a new section in the Labor Code. It would apply to employers with 250 or more employees in California that control the collection of employee personal information. The bill would require those covered employers to notify an employee if personal information will be collected through electronic monitoring.

- "Personal information" would be defined to mean information that identifies, relates to, describes, or is reasonably capable of being associated with, or could reasonably be linked with a particular employee. However, for purposes of the bill, personal information would *not* include confidential business information, internal legal documents, privileged information, publicly available information, deidentified or anonymized information, aggregated information, work product such as emails sent from a company account, or another employee's personal information.

- "Electronic monitoring" would be defined as the collection of employee personal information by an employer by means of a device or system that stores, generates, or transmits information in electronic form for the purpose of assessing worker performance or satisfaction of a job function. However, the bill has many carve-outs from covered "electronic monitoring." For example, it would not include processes performed for system or records maintenance or security, or those designed to protect the security or integrity of the employers' property, premises, systems, or devices.

The notice would be required to describe the activities, locations, communications, and job roles that will be monitored, the types of technologies used to conduct electronic monitoring and categories of personal information that will be collected, and the retention periods for each category of personal information collected. Employers would be required to provide the notification to new employees no later than 15 days after their start date, to existing employees no later than 60 days after enactment of the new law, and to all employees whenever there is a material change in the employer's practices.

The Division of Labor Standards Enforcement would have exclusive jurisdiction to enforce the new rule, and the bill specifies that it could not be enforced via the Private Attorneys General Act (PAGA).

Status: Pending in the Assembly Privacy Committee.

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.

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.

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.

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 the change in the law relating to the employment classification of manicurists and of the legal consequences of misclassification.

The bill would also require that informational materials on basic labor laws, including the ABC test, shall be written by the Department of Industrial Relations and inserted into the application and renewal forms for licenses.

The bill would also require the Department of Industrial Relations to develop language appropriate and culturally appropriate notifications on basic labor law to be distributed in certain specified ways at certain specified times.

Status: Passed the Assembly Committee on Business and Professions on a party-line vote and is pending in the Assembly Labor and Employment Committee.

Social Compliance Audits (AB 3234)

Existing law regulates the employment of minors in California. This bill would create a "social compliance audit," which would mean an inspection of any production house, factory, farm or packaging facility of a business to verify whether it complies with social and ethical responsibilities, health and safety regulations, and labor laws, including those 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 does 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 any website for their business. The bill does not specify who would conduct these audits.

Status: Unanimously passed the Assembly Labor and Employment Committee and is pending in the Assembly Appropriations Committee.

Increased Reporting re: State Agency Call Center Contracts (AB 2068)

In 2022, AB 1601 became law, prohibiting call center employers from relocating a call center or one or more of its facilities or operating units within a call center unless it provides advance notice to the affected employees, the EDD, the local workforce investment board, and the chief elected official of each city and county government within which the relocation/mass layoff occurs.

This bill would require each state agency that enters into a contract with a private entity specifically for call center work to provide public or customer service on or after January 1, 2025 to provide a report to the Labor Commissioner containing certain information about the total number of jobs that will be located within California and outside the state. It would also specify that if any state agency reports a contract for which less than 90% of the total covered jobs are located within the state, or less than 90% of the overall volume of calls are handled within the state, to provide the Labor Commissioner with a report containing a proposal to reduce the percentage of out-of-state jobs by no less than 50%, as specified. The Labor Commissioner would be permitted to disclose aggregated data at the request of any member of the public.

Status: Pending in the Assembly Labor and Employment Committee.

Joint Liability in Connection with Displaced Janitors (AB 2374)

Currently, the Displaced Janitor Opportunity Act (Labor Code Sections 1060-1062) requires contractors and subcontractors for janitorial of building maintenance services to retain certain employees who were employed at that site by the previous contractor or subcontractor for a period of 60 days. Under existing law, "contractor" is defined to mean any person that employs 25 or more individuals and that enters into a service contract with the awarding authority.

This bill would change the definition of "contractor" to mean any person that employes janitor employees and enters into a service contract with the awarding body. It would also extend the timeframe for which

a successor contractor or subcontractor is required to retain employees to 90 days. The successor contractor or subcontractor would be required to maintain a preferential hiring list and to offer employment to retained employees if their performance during the 90-day period was satisfactory.

The bill would also enable the Labor Commissioner to enforce the section and to recover hiring and reinstatement rights, front pay or back pay, and the value of benefits the employee would have received. In addition, a person who violates the law may be subject to a civil penalty of $500 for each employee whose rights are violated and an additional amount payable as liquidated damages of $500 per employee per day of violation, not to exceed $10,000 per employee, which may be paid to the employee as compensatory damages.

Status: Passed the Assembly Labor and Employment Committee and is pending in the Assembly Judiciary Committee.

Expansion of Property Service Workers Protection (AB 2364)

This bill would make a number of changes to the California Property Service Workers Protection Act (PSWPA, Labor Code section 1420 *et seq*.). This law applies to "covered workers," defined to mean any individuals predominantly working as a janitor (including employees, independent contractors, and franchisee), as defined under federal law. Current law requires employers to maintain accurate employment records related to covered workers for 3 years, including hours worked daily by each employee and the wage and wage rate paid each payroll period.

This bill would now require the employer, beginning January 1, 2026, to also keep records of whether, in the preceding year, any employee worked at a production rate (as defined) exceeding an average of 2,000 square feet per hour during any shift. It would also require the annual registration with the Labor Commissioner to include whether, in the preceding year, any employee was subjected to a production rate (as defined) during a shift that exceeded an average of 2,000 square feet per hour and would require the employer to provide specified information relating to the excess assignment.

This bill would also increase the costs of paying a qualified organization to provide sexual violence and harassment prevention training. Presently, employers are required to pay $65 per participant. It would instead require the employer, until January 1, 2026, to pay the qualified organization $200 per participant for training sessions having less than 10 participants, and $80 per participant for training sessions with 10 or more participants, except as specified. Each year thereafter, the employer would be required to increase the rate of payment, as specified.

The bill would revise the list of circumstances under which the Division of Labor Standards Enforcement is prohibited from registering an employer to include, among other things, the employer failing, refusing, or being unable to attest under penalty of perjury that, in the preceding year, no employee has been subjected to a production rate (as defined) during any shift that exceeds an average of 2,000 square feet per hour of work.

Lastly, the bill would make technical, nonsubstantive changes to these provisions.

Status: Pending in the Assembly Labor and Employment Committee.

Occupational Safety and Health

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: Passed the Assembly Committee on Labor and Employment and is pending in the Assembly Appropriations Committee.

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.

Changes to Hospital Workplace Violence Prevention Plans (AB 2975)

Existing law requires all employers to establish an Injury and Illness Prevention Plan. Existing law also requires employers to establish and implement a Workplace Violence Prevention Plan, although there is one set of requirements for specified hospitals (Labor Code section 6401.8) and a separate set of requirements for most other employers (Labor Code section 6401.9).

This bill would amend the Workplace Violent Prevention Plan requirements applicable to *hospitals*. It would require the Occupational Safety and Health Standards Board to amend the applicable standards to require that a hospital must maintain metal detectors at the hospital's main public entrance, at the entrance to the emergency department, and at the hospital's labor and delivery entrance if separately accessible to the public; and to require that a hospital assign appropriate security personnel to monitor the metal detectors. Hospitals would also be required to adopt reasonable protocols for the storage of any patient, family, or visitor property that might be used as a weapon and reasonable protocols for alternative search and screening for patients, family, or visitors who refuse to undergo metal detector screening.

Status: Pending in the Assembly Labor and Employment Committee.

Alternative Enforcement of Occupational Safety Rules (AB 2738)

In 2023, California enacted AB 594, authorizing public prosecutors (as defined) to prosecute an action through alternative enforcement procedures for violations of specified Labor Code provisions, or to enforce those provisions independently. As often happens with newly enacted laws, this bill would amend Labor Code section 181 (which just took effect on January 1, 2024) in several respects. First, it would slightly amend the recipients of any moneys recovered by these public prosecutors, specifying the moneys should be applied first to payments due to affected workers, then to attorney's fees and costs if otherwise authorized by the Labor Code, and then divided equally between California's General Fund and the public prosecutor's office. It would also provide that a public prosecutor may enforce any other Labor Code provision as specifically authorized. Lastly, it would require (instead of just permit) a court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under these provisions.

In 2022, California enacted AB 1775 mandating contracting entities (as defined) to require entertainment sports vendors to certify its employees and any subcontractor employees have complied with specified training, certification, and workforce requirements, including for setting up live events. Citing concerns that the transitory nature of most live entertainment events prevents adequate enforcement, this bill seeks to expand the enforcement of safety protections for public events. Accordingly, it would amend Labor Code section 9251 and require that any contract subject to these requirements will provide in the writing that the entertainment events vendor will furnish, upon hiring for the live event pursuant to the contract, the contracting entity with specified information about those vendor's and subcontractor's employees' trainings. It would also subject the contract to a provision of the California Public Records Act (CPRA) that makes any executed contract for the purchase of goods or services by a state or local agency a public record subject to disclosure under the CPRA.

It would also authorize the contracting party to use or disclose to third parties the specified information for purposes of carrying out the contracting party's duties under the contract but prohibit the use or disclosure for unrelated purposes. Finally, it would also expand the categories of entities subject to penalties for violations to also include a public events venue or contracting entity and enable "public prosecutors" (discussed above) to enforce these procedures.

Status: Passed the Assembly Labor and Employment and Judiciary Committees on party-line votes and is pending in the Assembly Appropriations Committee.

Wage and Hour

Authorizing Injunctive or Declaratory Relief in PAGA Cases (AB 2288)

Currently, the Private Attorneys General Act ("PAGA") allows employees to file lawsuits on behalf of themselves and other employees to recover civil penalties for certain state employment law violations. This bill would authorize the award of injunctive or declaratory relief in addition to civil penalties.

Status: Pending in the Assembly Judiciary Committee.

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 Labor and Employment Committee.

Employer Certification Program re: Living Wages (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 non-housing 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. This 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: Passed the Senate Labor, Public Employment, and Retirement Committee on a party-line vote and is pending in the Housing Committee.

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 Labor and Employment Committee.

Unconditional Benefit Program for Employment Replaced by Artificial Intelligence (AB 3058)

This bill would create the California Unconditional Benefit Income Pilot Program, which would allow eligible individuals to apply to receive $1,000 per month for 12 months if the individual is unemployed because of automation or artificial intelligence and has already received the maximum amount of unemployment compensation benefits allowed by law. Individuals would be able to apply for this benefit up to January 1, 2027; and the program would not pay out any benefits after January 1, 2028.

Status: Pending in the Assembly Privacy and Consumer Protection Committee.

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*.

Status: Unanimously passed the Assembly Labor and Employment Committee and is pending in the Assembly Appropriations Committee.

Payment of 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 Labor and Employment Committee.

<u>Public Contracts/Prevailing Wage</u>

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 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 Labor and Employment Committee.

Enforcement Changes Regarding Violations on Public Work Projects (SB 1303)

Presently, an awarding body may withhold contract payments from a public works contractor for alleged violations, including when payroll records are delinquent or inadequate, or related to worker classification and scope of work, amongst other things. This bill would restructure the process prior to funds being withheld, including requiring the awarding body to notify the DLSE and confer with the negotiating parties and to participate in a process allowing the contractor or subcontractor to review and respond to alleged violations.

It would also establish new conflict of interest rules related to so-called "private labor compliance entities" hired by an awarding party to perform labor compliance and enforcement activities on public works projects on behalf of an awarding body. Amongst other things, the private labor compliance entity will be required to aver that it has no conflicts of interest (as defined) and allow the contract to be voided if the conflict of interest provisions are violated.

Status: Pending in the Senate Labor and Judiciary Committees.

Increased Inspection Rights Regarding Public Works Projects (AB 2182)

Presently, the Labor Commissioner may investigate allegations of a contractor or subcontractor violating the law regulating public works projects, including the payment of prevailing wages, and sets forth procedures for the public or a public agency to inspect certain records regarding such projects. Commencing July 1, 2025, this bill would require job sites to give reasonable access (as defined) to representatives of a joint labor-management committee to monitor compliance with the prevailing wage and apprenticeship requirements. It would also authorize this committee to bring an action against an awarding body, contractor or subcontractor that willfully denies the committee's representative's reasonable access. Separately, it would authorize new penalties if a contractor or subcontractor fails to make payroll records available for inspection by the Labor Commissioner within a 10-day period after they are requested.

This bill would also authorize the Director of Industrial Relations to identify changes to the prevailing rate during any semiannual period and enumerate procedures to review that determination.

Status: Pending in the Assembly Labor and Employment Committee.

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 identity 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: Unanimously passed the Assembly Labor and Employment and Appropriations Committees and is pending on the Assembly floor.

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 and requires the enforceable commitment that the contractor will provide to the public entity a monthly report demonstrating its compliance with these requirements. This bill would also require the enforceable commitment that these monthly reports will include the date of birth of each worker. It would also require the payroll records that are available for inspection by the Labor Commissioner to include the date of birth of each employee, while also requiring this date of birth information be subject to existing requirements to prevent disclosure of similar personal information.

Status: Pending in the Senate Labor Committee.

Public Sector/Labor Relations

Constitutional Amendment Protecting Union Rights (SCA 7)

This resolution would propose an amendment to the California State Constitution, which would provide that all Californians have the right to join a union and to negotiate with their employers, through their legally chosen representative, to protect their economic well-being and safety at work, and that the Legislature shall provide for the enforcement of these rights. It would also provide that after January 1, 2023, no statute or ordinance shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety. If this resolution is passed by two-thirds of both houses of the legislature, it would be presented to the voters of California. It would only become law if approved by the electorate.

Status: Passed the Senate Labor Committee and is pending in the Senate Elections and Constitutional Amendments Committee.

Protection for State and Local Public Employees Who Do Not Cross Picket Lines (AB 2404)

The Meyers-Milias-Brown and the Ralph C. Dills Act grant specified employees of local public agencies and the state the right to form, join, and participate in the activities of employee organizations of their choosing. This bill would provide that it is not unlawful or a cause of discipline or other adverse action for a public employee to refuse to enter a property that is the site of a primary strike, perform work for a public employer involved in a primary strike, or go through or work behind a primary strike line. The bill would prohibit a public employer from directing a public employee to take those actions and would authorize recognized employee organizations to inform employees of these rights and encourage them to exercise these rights. The bill would specify that any provision in a public employer policy or collective bargaining agreement that purports to limit or waive these rights would be void, except that parties to a collective bargaining agreement entered into before January 1, 2025 could negotiate over this issue.

This new rule would not apply to specified employees of fire departments and certain peace officers.

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

Expanding Labor-Management Cooperation Committee's Ability to Sue for Unpaid Wages and Benefits (AB 2696)

Existing law (Labor Code section 218.8) requires that direct contractors making or taking a contract on or after January 1, 2022 for certain specified construction projects must assume and be liable for any debts related to wages incurred by a subcontractor acting under the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. Existing law extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor.

Existing law also authorizes a joint labor-management cooperation committee to bring an action against a direct contractor or subcontractor to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor on a private work.

This bill would change the scope of claims that may be brought by a joint labor-management cooperation committee. While existing law allows such a committee to bring an action to *enforce* liability for unpaid wages or benefits, the new bill would allow a committee to bring an action *for* any unpaid wages or benefits. In addition, while existing law allows a committee to bring a claim related to unpaid wages owed by the subcontractor, the bill would add that a committee can bring a claim for unpaid wages owed *by the direct contractor*. And the new bill would explicitly allow a committee to bring an action for unpaid wages, benefit payments or contributions, penalties, or liquidated damages or interest owed by the direct subcontractor pursuant to its joint liability for the subcontractor's debts.

Status: Unanimously passed the Assembly Labor and Employment Committee and is pending in the Assembly Judiciary Committee.

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: Unanimously passed the Assembly Committee on Public Employment and Retirement and is pending on the Assembly Floor.

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: Passed the Assembly Public Employment and Retirement Committee and is pending in the Assembly Appropriations Committee.

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

This bill would prohibit the University of California, California State University, or a California Community College from disqualifying a student from being hired for an employment position 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 undocumented noncitizens as inapplicable because that provision does not apply to any branch of state government.

The bill would require implementation by the covered colleges and universities by January 6, 2025.

U.S. Senator J.D. Vance and U.S. Representative Jim Banks have introduced contrary bills in the U.S. Congress that would prohibit a college or university from receiving federal funds if it employs undocumented workers and would require such institutions to participate in the federal E-Verify Program. (H.R. 7712)

Status: Passed the Assembly Committee on Higher Education with some opposition and is pending in the Assembly Appropriations Committee.

Basic Labor Standards at the University of California (ACA 14 and SCA 8)

These are two resolutions 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 other 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: ACA 14 passed the Assembly Labor and Employment Committee and is pending in the Assembly Appropriations Committee. SCA 8 is pending in the Senate.

Right of First Refusal and Rehire Rights for Certain Education Employees

This bill would require county offices of education, school districts, community college districts and joint powers authorities to offer vacancies for part-time or full-time positions to current regular non-probationary classified employees who meet the minimum job qualifications of the position. The current employees would have a right of first refusal for ten business days. There are numerous specific requirements for the employer's offer, the employee's response, and the employee's resulting schedule. These new requirements would not supersede existing law regarding reemployment of employees who have been laid off from education employers, and do not apply to an education employer with a valid contravening collective bargaining agreement in effect on January 1, 2025.

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

Public Employment Compensation and Classification (AB 2335)

Currently, California's State Civil Service Act sets out a personnel system for the state, with appointments based on merit and fitness established by competitive tests. One of the purposes of that law is to provide a comprehensive personnel system in which positions involving comparable duties and responsibilities are similarly classified and compensated. This bill would expand that purposes to include that the compensation relationship between state civil positions with comparable duties and responsibilities is maintained.

Existing law also establishes the Commission on the Status of Women and Girls and requires the commission to evaluate the compensation and classification plans for state civil service and related employees and certain other employees in higher education to determine where inequities exist based on comparability of the value of the work, and to give primary consideration to identifying and correcting

inequities between female dominated and male dominated classes of employees. This bill would require the commission to give primary consideration to identifying and correcting inequities between jobs that employ a higher proportion of females than males and males than females. In addition, the bill would specify that in determining whether compensation and classification inequities exist, the commission shall include any relevant factor, including but not limited to seven listed factors, which include the origins and history of the work and systematic undervaluation of the work.

Currently, the State Civil Service Act requires each state agency to establish an equal opportunity plan that includes identifying the areas of significant underutilization of specific groups based on race, ethnicity, and gender within each department and job category level. This bill would also require the plan to identify areas of significant *over*utilization of specific groups.

Existing law requires the Department of Human Resources to establish and adjust salary ranges for each class of position in the state civil service based on the principle that like salaries should be paid for comparable duties and responsibilities. This bill would require the department to consider any relevant factor (including the factors the Commission on the Status of Women and Girls would consider, as discussed above) in determining whether compensation and classification inequities exist between bargaining units within the state civil service.

Finally, current law requires the Department of Human Resources to evaluate all state civil service classifications in the Personnel Classification Plan, and prepare a detailed report (as specified) on gender and ethnicity pay equity in each classification where there is an underrepresentation of women and minorities. This bill would also require the report to include where there is an overrepresentation of women and minorities and statistical information for each bargaining unit. The bill would require the department to negotiate salaries to close any gaps found. It would require the department to consider any relevant factors (including those considered by the Commission on the Status of Women and Girls, as discussed above) in determining whether compensation and classification inequities exist and whether work is currently undervalued or has historically been undervalued.

Status: Pending in the Assembly Public Employment and Retirement 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.

Status: Unanimously passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

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 Business, Professions and Economic Development.

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: Unanimously passed the Assembly Insurance Committee and the Assembly Judiciary Committee and is pending in the Assembly Appropriations Committee.

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: Passed the Senate Labor, Public Employment and Retirement Committee on a party-line vote and is pending in the Senate Appropriations Committee.

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 non-general funds of the Workers' Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption.

Status: Passed the Senate Labor, Public Employment and Retirement Committee on a party-line vote and is pending in the Senate Judiciary Committee.

Unemployment insurance: paid family leave (AB 2167)

Existing law requires an individual to file a claim for family temporary disability insurance benefits no later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits. This bill would extend the timeline for an individual to file a claim to no later than the 60th consecutive day.

Status: Pending in the Assembly Insurance Committee.

Industry-Specific: Grocery and Drug Stores

New Requirements re: Closure of Grocery Stores and Pharmacies (SB 1089)

While California presently has its version of the federal Worker Adjustment and Retraining Notification Act (CalWARN, Labor Code section 1400, *et seq.*) and "grocery establishment"-specific worker retention requirements (Labor Code section 2500, *et seq.*), SB 1089 would create requirements similar to (and broader than) Cal-WARN for "grocery establishments" and "pharmacy establishments" and require notice to affected communities prior to a store closure. (However, the bill would not locate this rule in the Labor Code; instead, it would create sections 22949.90 - 22949.92 in the Business and Professions Code.) This bill arises from concern with lack of access to grocery stores, supermarkets, and healthy food in low-income neighborhoods.

The bill would apply to "grocery establishments" and "pharmacy establishments." "Grocery establishment would be defined to mean a retail store that sells primarily household foodstuffs for offsite consumption, including but not limited to fresh produce, meats, poultry, beverages, baked foods, or prepared foods, and in which the sale of other household supplies or other products is secondary to the primary purpose of food sales. (The definition does not limit applicability to stores of any particular size or number of employees and is thus broader than the worker retention requirements in Labor Code section 2500, *et seq*.) "Pharmacy establishment" would mean a pharmacy as defined in Business and Professions Code section 4037 that is a chain or independent pharmacy (as defined) and is open to the public.

The bill would create a new Business and Professions Code section 22949.91, which would require a covered establishment to take the following actions no later than 90 days before a "closure" (the cessation or substantial cessation of industrial or commercial operations):

- Provide written notice to employees affected by the closure and their authorized representatives, the Employment Development Department, the State Department of Social Services, the local workforce development board and chief elected official of the city and county, and the local human services department in the county in which the covered establishment is located.

- Post a written notice of closure in a conspicuous location at the entrance of the covered establishment's premises with a link to a page on the State Department of Social Service's website that outlines the requirements of the new law.

- Provide written notice of closure in any other form in which the covered establishment regularly communicates or advertises to its customers (e.g., text, e-mail, advertisements).

The notices would be required to include:

- The planned date of closure;

- The reason for the closure; and

- The names, addresses and contact information of the three nearest covered establishments that provide comparable services.

A pharmacy notice shall also include the name, address, and contact information for the pharmacy where any prescriptions will be transferred and information regarding the process to transfer the prescription to a pharmacy of the consumer's closing.

The only exceptions to the notice requirement would be if a closure is necessitated by a physical calamity or an act of war.

Violations of this section would be subject to a civil penalty up to $10,000 for each violation. The bill would create a private right of action for any person injured by the violation or the Attorney General, district attorney, or city attorney; and a prevailing plaintiff could collect attorneys' fees and costs. An employee

that does not receive written notice would be entitled to recover an *additional* sum of $100 per day for each day their rights are violated and continuing until the violation is cured.

The bill would also create a new Business and Professions Code section 22949.92. This would require the county and local workforce development board to provide certain information to the covered establishment about safety net programs and workforce training services after receiving the notice described above. The covered establishment would then be required to provide that information to its employees no later than 30 days before the closure.

Status: Pending in the Senate Labor and Judiciary Committees.

Grocery and Drug Store Self Service Checkout (SB 1446)

This bill would substantially curtail the ability of grocery establishments and retail drug establishments to provide self-service checkout and would require these establishments to compete specified assessments before implementing any technology that would significantly affect the essential job functions or eliminate the jobs or essential functions of its employees.

The bill would apply to:

- "Grocery establishments" as defined in Labor Code section 2502 (retail stores over 15,000 square feet that sell primarily household foodstuffs for offsite consumption and in which sale of other household supplies or other products is secondary to the primary purpose of food sales); and

- "Retail drug establishments," defined to mean any person or entity that has 75 or more businesses or establishments within the state and is identified as a retail business or establishment in the North American Industry Classification System within the retail trade category 45611.

The bill would prohibit a grocery establishment or retail drug establishment from providing self-service checkout for customers unless *all* of the following conditions are satisfied:

1. At least one manual checkout station is staffed by an employee who is available at the time a self-service checkout option is available.

2. Self-service checkouts are limited to 10 or fewer items.

3. Customers are prohibited from using self-service checkout to purchase items that require identification (like alcohol) or items subject to theft-deterrent measures.

4. No more than two self-service checkout stations are monitored by any one employee, who shall be relieved from all other duties while monitoring the self-checkout stations.

Covered establishments would also be required to include self-service checkout in their analysis for potential work hazards in their Injury and Illness Prevention Programs.

Separately, grocery establishments and retail drug establishments would be required to complete a worker and consumer impact assessment before implementing any technology that significantly affects the essential job functions of its employees, eliminates jobs or essential job functions, or enables self-service by customers. The assessment would be required to include twelve specific factors, including the number of employees whose duties would be affected, the number of work hours that would be eliminated, and the potential effect on consumers including any barriers to access that the technology would be created for certain populations of customers, including but not limited to seniors, the disabled, the unbanked, those without access to appropriate technology, youth, or other vulnerable populations. Covered establishments would be required to provide the assessment to potentially-affected employees or their collective bargaining representative at least 60 days before implementation; and would be required to post a copy of the assessment in a location accessible to its employees and customers before, and for at least 90 days following, implementation of the technology.

Status: Pending in the Senate Labor Committee.

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, 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: Unanimously passed the Assembly Labor and Employment and Safety Committees and is pending in the Assembly Appropriations Committee.

Labor Trafficking Unit within the DLSE (AB 1888)

This bill is very similar to AB 380 (introduced in 2023) and would 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 collaborate with the various agencies (including Division of Occupational Safety and Health and the Civil Rights Department) to develop policies, procedures and protocols to track, record and report potential labor trafficking activity. It would also 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: Unanimously passed the Assembly Labor and Employment and Safety Committees and is pending in the Assembly Appropriations 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. These materials would also be translated into non-English languages as appropriate for the geographic region the qualified organization would serve.

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

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.

The new rule is subject to court challenge, and the U.S. House and Senate are both considering Joint Resolutions to disapprove of the rule, which would direct that the rule shall have no force or effect if passed. (H.J. Res. 116, S.J. Res. 63.)

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.

- Michael Kalt (mkalt@wilsonturnerkosmo.com)
- Katie M. McCray (kmccray@wilsonturnerkosmo.com)
- Patricia Clark (pclark@wilsonturnerkosmo.com)

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