2024 CALIFORNIA LEGISLATIVE SUMMARY

September 4, 2024

The 2024 Legislative Session drew to a close at the end of August with a flurry of legislative activity following the summer recess. Preliminarily, there were several new employment bills that have already been signed into law including substantial amendments to California's Private Attorneys General Act ("PAGA") and the extension of the small employer family leave mediation program.

Not surprisingly, a number of other employment bills were passed by both chambers of the Legislature and have been sent to Governor Gavin Newsom for signature or veto, including bills that would:

- Expand protections for **time off to victims of crime and violence** [AB 2499]
- Prohibit **mandatory employee attendance** at certain employer-sponsored meetings (SB 399)
- Eliminate employers' ability to require employees to use **PTO before paid family leave** [AB 2123]
- Increase protection for certain independent contractors (**freelance workers**) [SB 988]
- Prevent discrimination based on the **intersection of protected bases** [SB 1137]
- Prohibit advertising that a job **requires a driver's license** unless driving is part of the job [SB 1100]
- Impose expanded **notice requirements** when **grocery stores and pharmacies** close [SB 1089]

There were also some employment bills that stalled this session, including bills that would have imposed strict requirements on businesses that use Artificial Intelligence in employment decision making, limited the use of self-service checkouts at grocery stores and pharmacies, and expanded unemployment insurance to cover workers on strike, although some of these could resurface in the forthcoming 2025-2026 legislative session commencing soon.

Looking ahead, Governor Newsom has until September 30, 2024 to sign or veto the bills passed by the Legislature.

In the pages below, we identify the employment bills that have already been signed into law, as well as the employment bills currently awaiting Governor Newsom's signature or veto.

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TOP TEN NEW AND PROPOSED EMPLOYMENT LAW CHANGES

NEW LAWS

1. Substantial Changes to PAGA (AB 2288 and SB 92)

As California employers know too well, the Private Attorneys General Act of 2004 (PAGA) allows employees to sue their employers on behalf of the State of California to collect civil penalties for Labor Code violations. Although PAGA was designed to alleviate the burden of overworked governmental agencies who oversaw California's Labor Code compliance, PAGA has been subject to abuse in recent years by unscrupulous plaintiffs' attorneys.

On July 1, 2024, Governor Gavin Newsom signed into law two bills that completely overhaul the PAGA statute (by amending Labor Code sections 2699, 2699.3, and 2699.5) to balance the interests of the State, workers, and employers. This compromise also from the November 2024 ballot the initiative that sought to repeal PAGA. While the PAGA amendment does not fully eliminate PAGA, it does provide much-needed protections for employers and substantial benefits to those who diligently comply with the Labor Code. Among the key takeaways for employers are the following:

- **Retroactivity** – The PAGA amendment will not apply to any PAGA notice received, or PAGA action commenced, **before June 19, 2024**. Thus, if you have an existing PAGA action or received a PAGA notice before June 19, 2024, these new changes will not apply to that matter.

- **Standing** – To bring a PAGA claim now, employees must have personally suffered the ***same*** Labor Code violation as the employees they claim are aggrieved within the one-year statute of limitations period. Previously, an aggrieved employee was allowed to bring claims for Labor Code violations they had never suffered, leading to unmanageable and overly expansive lawsuits.

- **Penalties Capped for Diligent Corrections** –

    - Employers who have taken "all reasonable steps to be in compliance" with the Labor Code *before a PAGA notice is received* will not have to pay more than **15%** of the normal penalty, and those who take "all reasonable steps" to prospectively be in compliance within *60 days after a PAGA notice is received* will not have to pay more than **30%** of the normal penalty (unless the employer has been found to have engaged in the same violations within the past 5 years or is found to be malicious, fraudulent, or oppressive).

        - "All reasonable steps" may include, but are not limited to, any of the following: conducting periodic payroll audits and taking action in response to the results of the audits, disseminating lawful written policies, training supervisors on applicable Labor Code and wage order compliance, or taking appropriate corrective action with regard to supervisors.

        - Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources

available to the employer and the nature, severity, and duration of the alleged violations.

- The existence of a violation is not sufficient to establish that an employer failed to take all reasonable steps.

- An employer who satisfies either of the "reasonable steps" provisions *and* cures a violation shall not be required to pay a civil penalty for that violation.

- **Right To Cure** – The new law significantly expands the list of Labor Code violations that may be cured and creates new processes for cure depending on the defendant's number of employees:

  - **Fewer than 100 employees**: *Starting on October 1, 2024:* Within 33 days of receiving a notice of a PAGA violation, an employer can submit a confidential proposal to cure one or more of the alleged violations to the Labor and Workforce Development Agency (LWDA). The LWDA will then evaluate the sufficiency of the proposed cure within a certain period of time. If the LWDA determines the proposed cure is sufficient and has been properly implemented, then a PAGA-based civil action cannot be brought; but if the LWDA determines the cure is insufficient or was not properly completed, then an action may be filed. Additionally, if the aggrieved employee disagrees with the LWDA's determination, the employee has a right to file an action in court challenging the *LWDA*'s determination related to the cure.

  - **100 or more employees (or smaller employers who wish to use this procedure):** Employer can seek an "early evaluation conference" at the beginning stages of PAGA litigation. The evaluation would be conducted by a judge or other neutral and would assess whether any alleged violations occurred and, if so, whether the defendant has cured the alleged violations; the strengths and weaknesses of the plaintiff's claims and the defendant's defenses; whether plaintiff's claims can be settled; and whether the parties should share any information that may facilitate early evaluation and resolution of the dispute. Generally, the court would stay the court case during the early evaluation. The law sets out various deadlines for the process. If the neutral evaluator excepts the employer's cure proposal, and the employer proves the cure has been made, the PAGA penalties may be reduced to $15 per aggrieved employee per pay period.

  - **Definition of "Cure"**

    - An employer will be found to have "cured" a violation when it has corrected the violation and come into compliance with the underlying statutes specified in the PAGA notice, and each aggrieved employee is made whole. Any employee who is owed wages is made whole when they have received unpaid wages dating back *three years* from the date of the notice, plus 7% interest, any liquidated damages as required by statute, and reasonable lodestar attorney's fees and costs to be determined by the LWDA or the court.

- A violation of pay stub-related laws is cured only when the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period during which the violation occurred for *three years* prior to the date of the PAGA notice.

- **Clarity and Reduction of Penalties** –

  - The default civil penalty for most PAGA claims is now $100 per each aggrieved employee per pay period. Employers may owe $200 per pay period in two limited scenarios: (1) when, within the last 5 years, the LWDA or any court found an employer violated the same labor code provision; or (2) when a court determines the employer's conduct in this instance was malicious, fraudulent, or oppressive.

  - The penalty for pay stub violations under Labor Code section 226(a)(1) - (a)(9) will be $25 for each aggrieved employee per pay period if the employee could promptly and easily determine from the wage statement alone the accurate information specified by Labor Code section 226(a).

  - The penalty is $50 for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

  - Employers who pay weekly (versus bi-weekly or bi-monthly) will now only be liable for 50% of the penalties.

  - The bill limits "stacking" of waiting time penalties and wage statement penalties on top of the civil penalty for the underlying unpaid wage violation under certain circumstances.

- **Injunctive Relief –** Courts may now award injunctive relief in PAGA actions to the same extent the LWDA has discretion to seek injunctive relief (which was not previously permitted under PAGA).

- **Manageability** – PAGA now has an express "manageability" requirement, something previously rejected by the California Supreme Court. After a PAGA lawsuit has been filed, employers may now petition the court to limit the evidence presented, as well as the scope of any claim to ensure that the claim can be effectively tried.

- **Employees Receive Larger Share of Penalties** – under the old law, employees received 25% of any recovered civil penalties, while 75% went to the LWDA. Under the new amendments, employees receive 35% of any penalties.

Status: Signed into law by Governor Newsom on July 2, 2024.

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

This bill amends Government Code Section 12945.21, which required 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 expands the pilot program to now include resolution of alleged violations of reproductive loss leave (SB 848, codified at Government Code Section 12945.6). This bill also expands 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 deletes the repeal date of the pilot program (currently January 1, 2025), thereby extending operation of the program indefinitely.

Status: Signed into law by Governor Newsom on July 18, 2024.

3. New Minimum Wage

The California statewide minimum wage will increase to **$16.50** on January 1, 2025. Many cities and counties impose higher minimum wages. The following localities increased their minimum wages as of July 1, 2024; and others will increase their minimum wages as of January 1, 2025:

City or County	**Minimum Wage Effective July 1, 2024**
Alameda	$17.00
Berkeley	$18.67
Emeryville	$19.36
Fremont	$17.30
Los Angeles (City)	$17.28
Los Angeles (County, unincorporated areas)	$17.27
Malibu	$17.27
Milpitas	$17.70
Pasadena	$17.50

San Francisco	$18.67
West Hollywood	$19.61 (hotel employees only)

There is also a **ballot initiative** that will appear on the November 2024 ballot (as Proposition 32) that seeks to increase the minimum wage. If it passes, employers with 26 or more employees would pay $17 per hour for the remainder of 2024 and $18.00 per hour beginning on January 1, 2025; and employers with 25 or fewer employees would pay $17.00 per hour beginning January 1, 2025, and $18.00 per hour beginning January 1, 2026. Thereafter, the minimum wage would adjust annually for inflation.

BILLS PASSED BY THE LEGISLATURE AND PRESENTED TO THE GOVERNOR

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

Presently, sections 230 and 230.1 of the Labor Code prohibit employers from discharging or discriminating against an employee for taking time off for specified purposes that include serving on a jury, appearing in court if the employee is a victim of a crime, or obtaining or attempting to obtain certain victim relief; and prohibit discrimination because an employee is a victim of a crime or abuse. The existing law imposes additional requirements on employers with 25 or more employees, prohibiting them from discharging or discriminating against victims who take time off to seek medical attention, obtain services related to crime or abuse, or participate in safety planning and other actions to increase safety from future crime or abuse. Additionally, the existing law requires employers to provide reasonable accommodations to certain victims.

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) as 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 stalking, domestic violence, sexual assault, or a crime that caused physical injury or death, this bill 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."

- Existing law (Labor Code section 230.1) requires employers with 25 or more employees to not discharge or discriminate or retaliate against an employee who is a victim for taking time off for certain purposes. This bill would expand that rule in numerous ways.
    - First, it would apply the broadened definition of "victim" discussed above.
    - Second, it would prohibit employers from taking these actions against an employee who *has a family member who is a victim* and who takes time off to assist that family member in various ways. "Family member" would be defined to mean a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person. A "designated person" would be any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer could limit an employee to one designated person per 12-month period for this type of leave.
    - Third, it expands the list of protected reasons for time off to include:
        - obtain or attempt to obtain any relief for the family member. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the family member of the victim;
        - 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 a family member who is recovering from injuries;
        - seek or assist a family member to seek civil or criminal legal services;
        - prepare for, participate in or attend civil, criminal, or administrative legal proceedings; or
        - seek, obtain, or provide childcare or care to a dependent adult;
        - (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).

- The bill would permit an employer to limit the total leave taken pursuant to these provisions to 12 weeks and specify that the leave taken by an employee pursuant to these provisions shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) if the employee would have been eligible for that leave and is a victim of a crime or abuse. If the leave is for an employee who is not a victim, but whose family member is a victim (and not deceased as a result of a crime), employers can limit the total leave taken pursuant to these provisions to 10 days. Additionally, employers can limit the total leave taken to 5 days if the leave is for an employee who is not a victim, to assist a family member who is a victim (and not deceased as a result of a crime) in relocating or finding new housing.

- 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 an employee informs an employer that the employee or the 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.

- Finally, this bill would expand Labor Code section 246.5 (California Sick Leave Law) requirements to include the additional purposes for which this bill would prohibit an employer from discharging, or in any manner discriminating or retaliating against, the employee (as specified).

Status: Passed the Assembly and Senate with bipartisan support and has been sent to Governor Newsom.

5. Prohibiting Mandatory Employee Attendance at Certain Employer-Sponsored Meetings (SB 399)

Entitled the "California Worker Freedom from Employer Intimidation Act," this bill would enact new Labor Code section 1137 to preclude an employer from discharging, discriminating against, retaliating against, or taking adverse action against an employee (or threatening to take any such action) because the employee declines to attend an employer-sponsored meeting or declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinions about religious or political matters. An employee who is working at the time of the meeting and elects not to attend a meeting covered by this new law must continue to be paid while the meeting is held.

"Political matters" would be defined as "matters relating to elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political or **labor organization**." "Religious matters" would be defined as "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."

This bill would not prohibit the following: (1) employers from communicating to employees information the employer is required by law to convey, but only to the extent of that legal requirement; (2) employers from communicating information that is necessary for employees to perform their job duties; (3) higher education institutions or their agents from meeting with or participating in communications with employees that are part of coursework, any symposia or an academic program at that institution; or (4) public entities from communicating to employees any information related to a policy of the public entity or any law or regulation that the public entity is responsible for administering.

This prohibition also would not apply to the following: (1) religious entities (as enumerated) with respect to speech on religious matters to employees who perform work connected with the activities of the religious entity; (2) a political organization or party with respect to communication of the employer's political tenets or purposes; (3) an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the institution's regular coursework; (4) non-profit, tax-exempt training programs requiring a student or instructor to attend classroom instruction, complete fieldwork or perform community service hours on political or religious matters as it relates to the mission of the training program or sponsor; (5) an employer requiring employees to undergo training to comply with the employer's legal obligations, including obligations under civil rights laws and occupational safety and health laws; or (6) a public employer holding a new employee orientation, as defined in Government Code section 3555.5 or Welfare and Institutions Code section 12301.24.

The Division of Labor Standards Enforcement will be responsible for enforcing this section, including investigating alleged violations and ordering appropriate temporary relief to maintain the status quo pending a full investigation or hearing, issuing a citation and filing a civil action. Alternatively, employees who have been subjected or threatened to be subjected to discharge, discrimination or retaliation or other adverse action for refusing to attend a prohibited employer-sponsored meeting may bring a civil action for damages and punitive damages. In such actions, an employee or their exclusive representative

may also petition for injunctive relief. In addition to any other remedy, an employer who violates these new protections shall be subject to a civil penalty of $500 per employee for each violation.

Status: Passed the Legislature on party-line votes and has been sent to Governor Newsom.

6. 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 make the authorization and related provisions *inapplicable* to any disability commencing on or after January 1, 2025.

Status: Unanimously passed the Legislature and has been sent to Governor Newsom.

7. 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 new Business and Professions Code sections 18100 to 18107 that would add 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 four 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 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 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: Passed the Senate over some opposition, passed the Assembly unanimously, and has been sent to Governor Newsom.

8. 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 "combination of those characteristics." 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) any combination of those characteristics; (2) a perception the person has any of those characteristics or any 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 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 Legislature and has been sent to Governor Newsom.

9. 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") 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 amend Government Code section 12940 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: Passed the Senate and Assembly with bipartisan support and has been sent to Governor Newsom.

10. 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 22949.92 - 22949.92.2 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 clarifies that it would not apply to pharmacies owned by a health facility or part of a fully integrated delivery system, as defined.

The bill would create a new Business and Professions Code section 22949.92.1, which would require a covered establishment to take the following actions no later than 45 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 if the covered establishment employs more than 5 employees. (If a covered establishment employs 5 or fewer employees, it shall provide written notice to the affected employees no later than 30 days before the closure.)

- Provide written notice to the Employment Development Department, the State Department of Social Services, the local workforce development board and chief elected official of the city and county, the local human services department in the county in which the covered establishment is located, and the California State Board of Pharmacy, if the covered establishment is a pharmacy establishment.

    - There are limited exceptions from the obligation to provide notice to certain public agencies/entities for covered establishments that are owned by a person or entity who owns 15 or fewer establishments nationwide and that are not covered by CalWARN (Labor Code section 1400.5), although these small entities would still be required to provide notice to their employees and authorized representatives.

    - The bill provides that if a covered establishment is covered by CalWARN (Labor Code section 1400.5), it shall only be considered in compliance with this new notice rule regarding notice to the public agencies/entities if it provides notice as required and pursuant to the timeframe specified in CalWARN (Labor Code section 1401).

- Post a written notice of closure in a conspicuous location at the entrance of the covered establishment's premises that includes the planned closure date. If the covered establishment is a pharmacy establishment, the notice shall include the name, address, and contact information of the pharmacy where any prescriptions will be transferred, and the phone number, email address, or website where patients may obtain information regarding the process of transferring a prescription to another pharmacy.

- Take reasonable steps to provide written notice of closure in at least one additional form in which the covered establishment regularly communicates or advertises to consumers or patients.

The only exceptions to the notice requirement would be if a closure is necessitated by a physical calamity or an act of war *or* the closure is caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required.

Violations of this section would be subject to a civil penalty up to $10,000 for each closure. 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. (An employee would be entitled to recover these liquidated damages *or* to enforce a civil penalty under CalWARN (Labor Code section 1403), but not both.) There would be no private cause of action for failure to provide written notice in any form in which the establishment regularly communicates to its customers.

The bill would also create a new Business and Professions Code section 22949.92.2. 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: Passed the Senate and Assembly over some opposition and has been sent to Governor Newsom.

ADDITIONAL NEW LAWS AND PENDING BILLS

Harassment/Discrimination/Retaliation

Extending CROWN Act Protections to the Unruh Act (AB 1815)

In 2022, California enacted the CROWN (Create a Respectful and Open World 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 existing definition of race in those provisions to eliminate the requirement that a trait must be "historically" associated with race for it to be protected from racial discrimination.

This bill would also 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).

As discussed above, SB 1137 would amend the FEHA to preclude discrimination based upon an "intersection" of two or more protected characteristics. If SB 1137 is enacted first or concurrently, this bill would similarly amend the Unruh Act to preclude such "intersectional" discrimination.

This bill also states it is declarative of existing law meaning it would apply retroactively.

Status: Unanimously passed the Assembly and Senate and has been sent to Governor Newsom.

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. Most significantly and in response to several high-profile CRD investigations alleging long-standing patterns of harassment or discrimination (e.g., against Tesla and at Activision), it would enable the CRD to pursue group or class claims alleging violations occurring up to seven years before the CRD complaint is filed (compared to the three-year administrative period for individual charges filed with the CRD).

Secondly, it would create new instances where administrative deadlines within the FEHA are tolled presumably for the purpose of streamlining the process and avoiding duplicative litigation. Accordingly, the complainant's one-year window to file a civil action following the issuance of a right-to-sue notice would be tolled for the duration of the claimant's timely appeal of the CRD's decision to close a case. It

would also toll the CRD's one- or two-year window to conduct an investigation following the filing of an administrative complaint as follows: (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. It would also toll the CRD's obligation to issue a right-to-sue notice at the end of an investigation for these same events.

Finally, it would permit the CRD to hold off on issuing a right-to-sue notice in a case where the CRD determines that a complaint is related to an ongoing complaint filed by the CRD as a group or class complaint for purposes of an investigation, conciliation, mediation or civil action.

While Government Code section 12961 authorizes the CRD to consider a "group or class complaint," it does not presently define that term, so SB 1022 would amend Government Code section 12926 to clarify that a "group or class complaint" includes a complaint "alleging a pattern or practice." SB 1022 further provides that these changes are declarative of existing law.

Status: Unanimously passed the Senate following amendments and has been sent to Governor Newsom.

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 this initial complaint and request would satisfy any exhaustion requirement. The CRD would have 30 days to determine whether to pursue the complaint or to issue a letter authorizing the complaint to be pursued by local agency or through a civil action. A local agency handling the complaint 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 does 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, as well as the total straight time and overtime hours ad wages paid to each individual employed by the contractor or subcontractor. It would also require – commencing July 1, 2025 and thereafter as determined by the DFEH – for a contractor or subcontractor under a state agency-issued infrastructure project funded in whole or in part by certain federal laws to report demographic information enumerated in the statute, and provide employees the option to participate in an optional survey to obtain this demographic information. It would also impose civil penalties upon contractors or subcontractors who fail to comply with these provisions and require state agencies to utilize its database with this collected information to enforce employee demographic requirements in any project labor agreement.

Status: Passed the Senate and Assembly on party-line votes and has been sent to Governor Newsom.

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. The bill would declare that these provisions are declarative of existing law to the extent that the sick days are necessary for preventive care, as provided.

Finally, this bill would incorporate additional changes to Section 246.5 of the Labor Code proposed by AB 2499 to be operative only if this bill and AB 2499 are enacted and this bill is enacted last.

Status: Passed the Legislature and has been sent to Governor Newsom.

Human Resources/Workplace Policies

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: Signed into law by Governor Newsom on July 15, 2024.

Social Compliance Audits (AB 3234)

Existing law regulates the employment of minors in California. This bill responds to the proliferation of non-governmental audits conducted by private companies, often in response to negative press or to help consumers gain confidence in a business. This bill would require transparency about the results of such an audit. The bill defines "social compliance audit" as a voluntary, nongovernmental inspection or assessment of an employer's operations or practices to evaluate whether the operations or practices are in compliance with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor. The bill would require that if an employer has voluntarily subjected itself to a social compliance audit, the employer shall post a clear and conspicuous link on its internet website to a report detailing the findings of the employer's compliance with child labor laws. The report shall contain certain information, including the date and time the audit was conducted, and whether the audit was conducted during a day shift or night shift; whether the employer did or did not engage in or support the use of child labor; whether the business exposed children to any hazardous or unsafe situations; whether children worked within or outside regular school hours; and a statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

Status: Unanimously passed the Assembly and the Senate and has been sent to Governor Newsom.

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 solely for call center work to provide public or customer service on or after January 1, 2025, to provide a report to the Department of General Services containing certain information about the total number and percentage of jobs that will be located within California and outside the state. The Department of General Services would maintain a master list of contracts and an aggregate number of call center jobs, including how many are located in another state. The list would be made available, upon request, to any member of the public. The bill would not apply to a contract or subcontract reached between a private entity and the State of California or other authority of the State of California where call center services are secondary and the services to be provided are related to state employee benefits.

Status: Unanimously passed the Assembly, passed the Senate over some opposition and has been sent to Governor Newsom.

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 port drayage motor carrier contractors. "Port drayage motor carrier" is defined in Section 2810.4 to mean, among other things, entities that operate in the port drayage industry, which involves movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has an origin or destination at a port.

Existing law (Labor Code section 2810.4) requires the Division of Labor Standards Enforcement to post on its web page information on port drayage motor carriers with unsatisfied final court judgments, tax assessments, or tax liens relating to, among other things, the misclassification of employees as independent contractors. Existing law requires a customer that engages or uses a port drayage motor carrier that is on the list to share with the motor carrier or its successor all civil legal responsibility and civil liability owed to a port drayage driver or to the state for port drayage services obtained after the date the motor carrier appeared on the list.

This bill would also require a customer to share with the motor carrier all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor, regardless of whether or not the port drayage motor carrier is on the division's list.

Status: Passed the Assembly and Senate over some opposition and has been sent to Governor Newsom.

Study Regarding Janitorial Standards and Increase in Cost of Training for Janitorial Employees (AB 2364)

This bill would require the Division of Labor Standards Enforcement (DLSE) to direct one or more of specified programs and departments of the University of California to conduct a study evaluating opportunities to improve worker safety and safeguard employment rights in the janitorial industry and would require the entity or entities of the University of California to timely conduct the study. Under new Labor Code section 1429.6, the bill would require the division to convene an advisory committee that includes representatives from, among others, the University of California, the Civil Rights Department, and a collective bargaining agent that represents janitorial workers throughout the state. The bill would require the advisory committee, no later than March 1, 2025, to make recommendations regarding the scope of the study, and would require the division, on or before January 1, 2026, to submit a report with the results of the study to the advisory committee and specified legislative committees. The report shall include, but not be limited to, a number of specified topics, including typical production rates in the janitorial industry, and production rates before, during, and after the Covid-19 public health emergency; assessment of the risk of ergonomic and other injuries; the prevalence of wage theft in the janitorial industry; and whether production rates and the prevalence of wage theft differ between unionized employees and non-unionized employees. The bill would require the University of California entity or

entities and the division, in developing that report, to consider and be guided by the recommendations of the advisory committee. The bill would require employers to provide to the entity or entities of the University of California access to the place of employment for purposes of completing the study.

In 2016 and 2019, California enacted several bills (AB 1978 (2016) and AB 547 (2019)) requiring sexual harassment training and violence prevention training for janitorial employees (codified at Labor Code 1429.5). This bill would 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.

Status: Passed the Assembly and Senate on party-line votes and has been sent to Governor Newsom.

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 submit a draft rulemaking proposal before December 1, 2027 to revise applicable regulations and require all first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the U.S. FDA to reverse opioid overdose and instructions for using the opioid antagonist. The division would be instructed to consider, and provide guidance to employers on, the proper storage of the opioid antagonist in accordance with the manufacturer's instructions. The Board would be required to adopt revised standards on or December 1, 2028.

Separate and apart from any rulemaking requiring storage of opioid antagonists, the bill would also limit liability of individuals who administer naloxone hydrochloride or another opioid antagonist if certain conditions are met.

Status: Unanimously passed the Assembly and the Senate and has been sent to Governor Newsom.

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 by March 1, 2027, to require that a hospital must implement a weapons detection screening policy 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. For purposes of this standard, a "weapons detection screening policy" would include security mechanisms, devices, or technology designed to screen and identify instruments capable of inflicting death of serious bodily injury. Handheld metal detector wands alone would *not* be sufficient, except at small and rural hospitals, or at entrances with space limitations, or at hospitals that exclusively provided extended hospital care to patients with complex medical and rehabilitative needs. The bill would also require the standards to direct that a hospital assign appropriate personnel, other than a health care provider, who meet specified training standards, to implement the weapon detection screening policy.

Hospitals would be required to implement training for personnel responsible for implementing the weapons detection screening policy that includes a minimum of eight hours of training on specified policies, including de-escalation and implicit bias.

A weapons detection screening policy would need to include reasonable protocols addressing how the hospital will respond if a dangerous weapon is detected and reasonable protocols for alternative search and screening for people who refuse to undergo weapons detection device screening.

Hospitals would be required to post a notice advising that the hospital conducts screenings for weapons, but that no person shall be refused medical care, pursuant to the federal Emergency Medical Treatment and Active Labor Act.

The new standard would be effective no later than 90 days after the standard is adopted (with the specific date to be set by CalOSHA).

Hospitals operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation would be exempted.

Status: Unanimously passed the Assembly and the Senate and has been sent to Governor Newsom.

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 workers to cover any unpaid wages, damages or penalties owed to those workers, and any remaining civil penalties to go to the state's General Fund. 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 and Senate on party-line votes and has been sent to Governor Newsom.

Wage and Hour

NEW LAWS

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 narrows the definition of an "independent institution of higher education" by excluding those institutions formed as a nonprofit corporation *on or after January 1, 2023*. This bill also declares that these provisions are declaratory of existing law.

Status: Signed into law by Governor Newsom on July 18, 2024.

New Health Care Work Minimum Wage Delayed (SB 159)

Signed by Governor Gavin Newsom on June 29, 2024, this immediately effective law delays the annual health care workers minimum wage phase-in schedule. Last year, Governor Newsom signed SB 525 (later codified at Labor Code sections 1182.14 and 1182.15), which established a new healthcare-specific minimum wage with various phase-in schedules based upon a classification system using factors such as health care facility size, type of facility and the governmental payor mix percentage. The original law increased the minimum wage annually (beginning June 1, 2024) until it reached $25.00 per hour by 2026, 2028, or 2033 (depending on hospital type). The newly enacted amendment delays the effective date of the minimum wage increases.

- The effective date will be October 15, 2024, if state agency cash receipts for July through September 2204 are at least 3% higher than projected in the 2024 budget.

- The effective date will be the earlier of January 1, 2025, or 15 days after the California Department of Health Care Services notifies the Legislature that it has initiated the data retrieval related to hospital quality assurance fees for the program period commencing January 1, 2025.

Public Contracts/Prevailing Wage

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 a private labor compliance entity to confer with the negotiating parties to review relevant public works law and would prohibit the entity from withholding an amount that exceeds the alleged underpayments and penalty assessments. It would also require a private labor compliance entity seeking to withhold funds to provide a venue for a public works 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 is violated.

Status: Passed the Legislature and has been sent to Governor Newsom.

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 jobsites 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 (unless extended by the Labor Commissioner) 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: Passed the Legislature and has been sent to Governor Newsom.

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 require the awarding body to also notify the DIR within thirty days (1) if there is a change in the identity of the contractor or subcontractor performing work on the project; or (2) if the total amount of the contract change exceeds specified thresholds. This bill would exempt projects of awarding bodies operating labor compliance programs that are approved and monitored by the DIR and covered by a valid project labor agreement.

Status: Unanimously passed the Legislature and has been sent to Governor Newsom.

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 include the full name of, and identify the apprenticeship program name, location, and graduate date of, all workers relied upon to satisfy the apprenticeship graduation percentage requirement.

Status: Unanimously passed the Legislature and has been sent to Governor Newsom.

Public Sector/Labor Relations

NEW LAWS

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 new law (Gov. Code 3503.2) extends this rule to employees covered by the Public Safety Officers Procedural Bill of Rights.

Status: Signed into law by Governor Newsom on July 2, 2024.

BILLS PASSED BY THE LEGISLATURE AND PRESENTED TO THE GOVERNOR

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 also allow a joint labor-management cooperation committee to bring an action against a direct contractor to enforce liability for any unpaid wages, fringe or other benefit payments or contributions, penalties, or liquidated damages or interest owed by the **direct contractor** on account of the performance of labor on private work.

Status: Unanimously passed the Assembly; Passed the Senate over some opposition and has been sent to Governor Newsom.

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 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; but Congress has not taken action on either bill. (H.R. 7712 and S. 3978)

Status: Passed the Assembly and Senate and has been sent to Governor Newsom.

Right of First Refusal and Rehire Rights for Certain Education Employees (AB 2088)

This bill expresses the intent of the Legislature that education employers and exclusive bargaining representatives should bargain in their collective bargaining agreements whether they wish to create or explicitly waive a right of first refusal for classified employees. The 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 July 1, 2025.

Status: Passed the Assembly and Senate on party-line votes and has been sent to Governor Newsom.

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.

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 the origin and history of the work, and the manner in which wages have

been set, in determining whether compensation and classification inequities exist and whether work is currently undervalued or has historically been undervalued.

Status: Passed the Assembly and the Senate and has been sent to Governor Newsom.

State Provided Benefits

NEW LAWS

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.

The amended law will now 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: Signed into law by Governor Newsom on July 15, 2024.

BILLS PASSED BY THE LEGISLATURE AND PRESENTED TO THE GOVERNOR

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 an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

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 Senate and unanimously passed the Assembly following amendments and has been sent to Governor Newsom.

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 and Assembly with bipartisan support and has been sent to Governor Newsom.

Development of Plan for Unemployment Benefits for Ineligible Workers (SB 227)

Existing law prohibits payment of unemployment compensation benefits to a person who is not a citizen or national of the United States, unless that person is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed. This bill would require the Employment Development Department to develop a detailed plan to establish a permanent Excluded Workers Program to provide cash assistance that resembles unemployment insurance benefits to unemployed workers who are ineligible for unemployment insurance due to their immigration status, as specified. The EDD would be required to develop the plan by March 31, 2025, and submit the plan to the appropriate fiscal and policy committees of each house of the Legislature, the Department of Finance, and the Legislative Analyst's Office. The bill would require the Legislative Analyst's Office to review the plan and report any findings or recommendations to the appropriate fiscal and policy committees of each house of the Legislature and the Department of Finance, no later than 3 months after the department submits the plan.

Status: Passed the Assembly and Senate over some opposition and has been presented to Governor Newsom for signature.

Miscellaneous

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, support law enforcement agencies that investigate criminal actions related to labor trafficking, and 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 Legislature and has been sent to Governor Newsom.

Labor Trafficking Unit within the DLSE (AB 1888)

This bill would establish a Labor Trafficking Unit (LTU) withing the Department of Justice to serve as the centralized enforcement, referral and investigative unit to combat labor trafficking in coordination with other state entities. The LTU would be given the authority to receive labor trafficking reports from law enforcement agencies and refer them to appropriate agencies for investigation, prosecution or other remedies. It would also authorize the LTU to coordinate with state and local law enforcement agencies (including the CRD and the DIR), tribal law enforcement agencies and district attorneys' offices when investigating criminal actions related to labor trafficking. The unit would also annually submit a report to the Legislature regarding its activities, including the number of complaints received and the number of complaints referred.

This bill is 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.

Status: Unanimously passed the Assembly and Senate and has been sent to Governor Newsom.

NEW STATE REGULATIONS AND GUIDANCE

Indoor Heat Regulations

Only July 23, 2024, California's new indoor heat protections went into effect. Employers are required to adopt safety measures in most cases when indoor temperatures reach 82 degrees Fahrenheit. If the temperature reaches 82 degrees indoors, employers must take steps to protect employees from heat illness, including providing water, rest, cool-down areas, and training. There are additional requirements applicable when temperatures reach 87 degrees. More information is available here.

NEW FEDERAL REGULATIONS AND GUIDANCE

Court Halts FTC Regulation Banning Nearly All Employment Non-Competes Nationwide

The Federal Trade Commission (FTC) had issued a rule that would have effectively banned all employment non-compete agreements nationwide as of September 4, 2024. However, on August 20, 2024, a federal district court issued an order stopping the FTC from enforcing the rule. The FTC may appeal, but in the meantime, the rule will not go into effect. For more details about the rule as it was originally written, see WTK's Special Alert*. In addition, you can read the complete rule* here*.*

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

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