



2023  
**COMPLIANCE  
CHECKLIST**

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# **UPDATED**

## **2023 COMPLIANCE CHECKLIST**

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### **RESPONDING TO CHANGES IN THE LAW**

As we approach the end of the year, it is time for California employers to begin taking steps to implement a number of new employment-related laws, regulations, and legal rules.

This Checklist summarizes the steps California employers should consider taking to comply with new laws and legal requirements. Unless otherwise noted, new laws take effect January 1, 2023.

Please refer to [WTK's 2022 California Legislative Update](#) for background about the new employment laws and regulations. And for more information on various key cases, please see the [Special Alerts](#) issued throughout the year.

*Wilson Turner Kosmo's Compliance Checklist is intended to update our valued clients on significant employment law developments. This should not be considered legal advice.*

## UPDATE WAGE PAYMENTS

- Review and update wage payments to meet the new minimum wage(s) as of January 1, 2023:
  - The statewide minimum wage will be \$15.50/hour for all employers.
  - Be aware of increases to higher minimum wages in various municipalities including San Diego (\$16.30/hr in 2023), San Francisco, San Jose, Palo Alto, Long Beach and the County of Los Angeles.
- Ensure employees classified as exempt from overtime are paid at least \$5,377.33 per month (for a total of at least \$64,480 per year) and meet the applicable duties tests.
- Ensure exempt computer professionals are paid at least \$112,065.20 per year, \$9,338.78 per month, or \$53.80 per hour (and meet the applicable duties test).

## LEAVE OF ABSENCE POLICY UPDATES

### New Bereavement Leave (AB 1949)

#### **Applicable to: Employers with 5 or more employees.**

- Update all handbooks and leave policies to allow 5 days off upon the death of a family member (spouse, child, parent, sibling, grandparent, grandchild, domestic partner or parent-in-law).
  - Ensure employees may use otherwise accrued or available vacation, personal leave, sick leave, or other paid time off to cover otherwise unpaid bereavement leave.

- May require employee to provide documentation related to the family member's death.
- Five days need not be taken consecutively but must be taken within three months of the family member's death.

- Ensure requests for leave are kept confidential. Any related documentation must be kept confidential and not disclosed except to internal personnel or counsel, as necessary, or as required by law.

### CFRA Expansion (AB 1041)

#### **Applicable to: Employers with 5 or more employees.**

- Update all handbooks, CFRA policies and CFRA forms to allow protected time off to care for a "Designated Person" with a serious health condition.

- "Designated Person" is "any individual related by blood or whose association with the employee is the equivalent of a family relationship," and may be identified by employee at time of request for leave.
- May limit employees to one "Designated Person" per 12-month period for CFRA leave.

- Retain records re: "Designated Persons" identified for purposes of CFRA leave, along with dates of requests.

### Paid Sick Leave Expansion (AB 1041)

#### **Applicable to: All California employers.**

- Update all handbooks and Paid Sick Leave policies to allow use of California paid sick leave to care for a "Designated Person" with a serious health condition.

“Designated Person” is a person identified by employee at time of request for leave.

May limit employees to one “Designated Person” per 12-month period for paid sick leave.

Retain records re: “Designated Persons” identified for purposes of paid sick leave, along with dates of requests.

## PAY SCALE REPORTING (SB 1162)

### Employers with 15 or more employees:

Include pay scale information in job postings and ensure third parties include pay scale in any job postings on your behalf.

“Pay Scale” is the salary or hourly wage range the employer reasonably expects to pay for the position.

Consider documenting objective reasons for setting the pay scale for new positions.

### All Employers:

Provide pay scale information to applicants upon reasonable request (request can come at any time; applicant need not wait until after interview).

Respond to requests from current employees by providing pay scale information for current position.

Retain job title and wage rate history for each employee for the duration of employment plus three years.

- Consider developing policy and/or identifying person(s) responsible for responding to pay scale requests to ensure consistency/compliance.
- Consider conducting pay audit to identify current pay scales and to ensure pay equity and consistency.

## PAY DATA REPORTS (SB 1162)

- Employers with 100 or more employees - submit California Pay Data Report on or before the new deadline of the second Wednesday in May, 2023 (and every year thereafter). (Must submit California-specific report; can no longer submit EEO-1 report.)
- Employers with 100 or more employees hired through labor contractors during the prior calendar year - submit separate California Pay Data Report covering employees hired through labor contractors or before second Wednesday in May, 2023 (and every year thereafter), with necessary data supplied by Labor Contractor.

“Labor contractor” is “an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer’s usual course of business.”

- Develop protocols with Labor Contractors for timely provision of necessary data, including potentially including relevant obligations in contracts.

- All required Pay Data Reports must include numerous items, including the number of employees by race, ethnicity, and sex in specified job categories and median and mean hourly rates for each combination of race, ethnicity, and sex within each job category.

For detailed information, including a user guide, Excel Template, and FAQs, see the Civil Rights Department's [California Pay Data Reporting website](#), which is expected to be updated with the new rules for 2023.

## ADDITIONAL HANDBOOK/POLICY UPDATES

### Discrimination/Harassment on the Basis of Reproductive Health Decisionmaking (SB 523)

- Update Handbooks and Discrimination/Harassment Policies to state that employer shall not discriminate or harass on the basis of reproductive health decisionmaking.

“Reproductive health decisionmaking” is defined to include, but not be limited to, “a decision to use or access a particular drug, device, product, or medical service for reproductive health.”

- Inform Human Resources Personnel, Recruiters, and Supervisors that employers are prohibited from requiring an applicant or employee to disclose information relating to reproductive health decisionmaking as a condition of employment, continued employment, or a benefit of employment. Consider whether this prohibition should be memorialized in any Handbooks and/or Policies.

### Cannabis Testing (AB 2188)

- Assess use of any cannabis testing and any policies/practices related to cannabis use by employees or applicants. Identify when you test and the reasons for testing, including as part of job application process, and in connection with hiring, discipline, and termination.

As of **January 1, 2024**, there will be limitations on employer use of cannabis testing that identifies nonpsychoactive cannabis metabolites or the use of cannabis off the job and away from the worksite.

Employers will still be able to prohibit employees to possess, be impaired by, or use cannabis on the job or on the jobsite and may still maintain a drug- and alcohol-free workplace.



Determine if you are covered by the new law. Examples of exemptions:

- Employees in the building and construction trades.
- Applicants or employees hired for positions that require federal government background investigation or security clearance
- Compliance with state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding, or federal licensing-related benefits or entering into a federal contract.




Consider whether to replace existing tests with tests for impairment and/or “scientifically valid” tests that “do not screen for nonpsychoactive cannabis metabolites.” Explore options for such testing.

### **Meal/Rest Break Policy Updates (*Naranjo v. Spectrum Security Services*)**



Ensure Meal/Rest Break Premiums are listed separately on wage statements.



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- Ensure any Meal/Rest Break Premiums owed are timely included in final pay.
  - Review meal/rest break policies and consider auditing compliance. Failure to pay premiums now also carries potential penalties for inaccurate wage statements and waiting time penalties.

### Timekeeping Policies

- Employers that round time punches:** If your timekeeping system can and does capture employees' actual work time, consult counsel about whether to cease rounding in light of risk of liability for underpayment of wages. (*Camp v. Home Depot U.S.A., Inc.*)
- Employees with computer-based time clocks:** If employees use their computers for their jobs and clock-in and clock-out using a timekeeping application on the same computer, consult counsel about whether to adjust timekeeping/compensation practices to mitigate risk that time spent turning on, waking up, and/or logging on to computers may be found to be compensable. ([\*Cadena v. Customer Connexx LLC\*](#))

### Emergency Conditions (SB 1044)

- Update attendance policies/discipline policies to eliminate adverse actions against employees who refuse to report to work or who leave a workplace within an affected area because the employee reasonably believed the worksite is unsafe due to an emergency condition (as defined), unless employer or employees fall within list of exceptions.
- Update policies regarding use of mobile devices/communications devices to clarify that employees will not be prevented from accessing communications devices to seek emergency assistance, assess safety, or communicate to verify safety during emergency condition (as defined).

## Public Access to Employee Restrooms (AB 1632)

**Applicable to: Businesses open to the general public for the sale of goods.**

- Consider developing policy to respond to requests from individuals to use employee toilet facilities during business hours, subject to limits identified in the law.
- Consider training employees about how to respond to requests for access to the employee restroom.

## Employee Parking Cash-Out Program (AB 2206)

- Determine if you are a covered employer:
  - Must be located in an air basin designated as a nonattainment area (see [Nonattainment Area Plans | California Air Resources Board](#) – this covers most of the state of California)
  - Must have 50 or more employees
  - Must pay for employee parking (rule does not apply to parking owned by the employer)
  - Must provide parking subsidies to employees (i.e., the employees are allowed to use the parking at a cost less than the market rate cost of parking)
  - Must be able to reduce, without penalty, the number of paid parking spaces maintained for the use of employees (the rule likely does not apply if reducing the number of parking spaces would cause employer to (1) continue to pay for unused spaces, (2) violate local planning regulations, or (3) break its lease)

If covered, determine the Market Rate Cost of Parking as specified in the statute and calculate the value of the parking subsidy (the difference between the Market Rate and the amount paid by employees).

Retain documents used to determine Market Rate Cost of Parking for at least 4 years.

Offer parking cash out option to employees who are using, or could use, a subsidized parking space.

Retain communications with employees regarding parking cash out option.

### Retirement Savings (SB 1126)

Employers with five or more employees should already either offer a payroll deposit retirement saving plan or be registered for the state-run retirement program (CalSavers).

Employers with one or more employees (but fewer than 5 employees) must now comply on or before December 31, 2025. For more information, visit <https://www.calsavers.com/>.

## COVID NOTICES AND REPORTING

Continue providing notification of potential COVID-19 exposure in the workplace through January 1, 2024. (AB 2693)

May post notice in all places where notices to employees concerning workplace rules or regulations are customarily posted (including on existing employee portal, if the employer posts other workplace notices on the portal) with required information regarding exposure.

- Notice must be posted within one business day from when the employer learns of a potential exposure and remain posted for not less than 15 calendar days.
- Notice must be in English and in a language understood by the majority of employees.
- Retain log of the dates any notice of COVID-19 exposure in the workplace is posted.

Or provide written notification to employees who were on the premises at the same worksite as the confirmed case of COVID-19 within the infectious period.

Consider reviewing COVID-19 policies and procedures to reflect new definitions of “close contact” and “infectious period,” available [here](#).

Ensure written COVID Prevention Program in place and updated (template can be found [here](#)).

## DATA PRIVACY POLICIES/PRACTICES (CCPA/CPRA EXEMPTION EXPIRES)

### Applicable to:

- For-profit businesses
- Doing business in California
- That meet one of three criteria:

- Gross annual revenues over \$25 million, or
- Buy, receive, or share the personally-identifiable information of 100,000 or more consumers, or
- Derive 50% or more of annual revenue from selling or sharing consumers’ personal information.

**Determine if your business is covered and, if so, consider planning and implementing a compliance program in connection with employee/applicant personal information, including:**

- Identify which data is subject to CCPA requests
- Update Privacy Policies
- Plan for processing privacy requests
- Train employees and vendors who will be implementing this plan
- Update existing notices of collection and data security protocols
- Review and update records retention policies and update recordkeeping practices
- Update terms with Service Providers who handle employee/applicant data or whose employees' data are collected by your business
- Review and consider insurance policy coverage

## ARBITRATION AGREEMENTS

- Consider revising arbitration agreements to provide for arbitration of individual PAGA claims and to preclude arbitration of PAGA claims on behalf of other aggrieved employees. ([Viking River Cruises v. Moriana](#))
- Consider revising arbitration agreements to acknowledge that claimant has the choice to bring sexual assault and sexual harassment disputes in court, but that any other claims brought alongside such disputes will nevertheless be arbitrated. ([HR 4445](#))

## NONDISCLOSURE AND NON-DISPARAGEMENT AGREEMENTS

- Consider revising all contracts with nondisclosure or non-disparagement agreements (including contracts with applicants, employees, independent contractors, and customers) to remove any pre-dispute agreements that limit disclosure of information relating to sexual assault or sexual harassment. (S 4524)

## ADDITIONAL LEGISLATIVE CHANGES

**There were additional legislative changes impacting employers in specific industries. Please contact WTK, or another employment attorney, to be sure you are in compliance with the changes that will go into effect on January 1, 2023.**

- Notice requirements for call center relocations (AB 1601)
- Selection of union representatives in agricultural industry (AB 2183)
- Expansion of businesses required to post human trafficking notices to include businesses providing hair, nail, and skin care (AB 1661)
- Employee and subcontractor compliance with workplace safety requirements at live events (AB 1775)
- Remote work for finance lender employees (AB 2001)
- Extension of meal and rest period requirements to employees of public hospitals (SB 1334)
- Extended exemption from “ABC Test” for Commercial fishers, through January 1, 2026 (AG 2955)
- Extension of electronic applications to submit work sharing plans in lieu of layoff, pursuant to which employees can obtain unemployment compensation (AB 1854)

## OTHER SUGGESTED “TO DO” ITEMS TO MITIGATE RISK

- Implement policies in line with changes to employment laws and regulations; communicate those policies, and provide training, particularly to supervisors, recruiters, and HR.
- Document all adverse employment actions, performance issues, evaluations, and disciplinary issues.
- Evaluate employee workdays to ensure you are paying for all time worked (all time an employee is subject to the control of the employer). This should include things like time spent waiting for COVID screening, waiting for an employer’s required exit search, waiting to be let out of the workplace, time spent setting the alarm or walking co-workers to their car and potentially commuting time if employees are using personal vehicles to carry tools and supplies.
- Evaluate expense reimbursement practices, including reimbursement of expenses related to working from home. Consider paying reimbursement to cover some space, internet and utility expenses, as well as cell phone cost reimbursement and necessary equipment especially for employees who do not have the option to work from their primary work location.
- Conduct a classification audit and an exemption audit to ensure all workers classified as independent contractors and all employees classified as exempt from overtime meet legal requirements to be classified in this manner.
- Review prior Checklists to ensure necessary steps have been implemented: [2020](#), [2021](#), [2022](#)

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