CALIFORNIA LEGISLATIVE SUMMARY

APRIL 14, 2022

With the arrival of Spring, the California Legislative Session for 2022 is fully underway, with most bills heading to key initial committee votes in their chamber of origin before the April 29th deadline. Although this is only the first step in the legislative process, these substantive committee votes will indicate which bills have enough support to move forward and which bills will be culled early in the process. Not surprisingly, there are a number of significant employment bills under consideration.

Several new or newly-amended bills have emerged in the month since our last update, including bills that would:

- Create four-day workweeks for overtime purposes (AB 2932).
- Require employers to address third-party harassment of customers and provide related training to employees (AB 2448).
- Allow employers to claim a tax credit for expenses incurred in connection with California's COVID-19 Supplemental Paid Sick Leave Law (AB 1890 and AB 1920).
- Require large private-sector employers to submit annual reports detailing work-related statistics which the Labor and Workforce Development Agency will use to identify "high-road employers," who may be eligible for state-provided incentives (AB 2095).
- Shorten the time for making final payment of wages to seasonal employees (AB 2133).
- Require employers to obtain workers' compensation policies for workers contracted from staffing agencies in the Manufacturing and Mercantile industries (AB 2614).

In addition, numerous employment bills continue to progress through the legislative process, including bills that would:

- Require employers to ensure employees are vaccinated (AB 1993) and extend the period under which employers must provide written notices of COVID-19 exposure (AB 2693).
- Amend the Fair Employment and Housing Act (FEHA) to preclude discrimination because of "family responsibility" (AB 2182).
- Preclude discrimination against employees or applicants for cannabis usage away from the workplace and limit drug screening that can be considered by employers (AB 2188).
- Revive previously time-barred sexual harassment and wrongful termination claims under certain circumstances (AB 2777).
- Entitle employees to up to five days of bereavement leave (AB 1949).
- Enable employers to provide state tax-favored student loan repayment assistance (AB 1729).
- Implement new requirements regarding pay scale disclosures and promotion opportunity announcements and amend the recently enacted Pay Data Reporting requirements (SB 1162).
- Enact new fast food industry regulations, including setting "minimum standards" and imposing joint and several liability for franchisors and franchisees (AB 257).
- Allow individual alternative workweek schedules (AB 1761).
- Expand the current exemptions from the California Consumer Privacy Act for information obtained in the employment context (AB 2871, AB 2891 and SB 1454),
- Require employers to develop and enforce new policies regarding employee biometric information (SB 1189).

- Require employers to allow the public to access restrooms provided to employees under certain circumstances (AB 1632).

Looking ahead, the bills that pass this initial hurdle will then need to pass their chamber of origin by May 27th before moving to the second chamber to repeat the process.

Further, efforts are presently underway to gather signatures to qualify for the November 2022 general election ballot an initiative that would materially amend California's Private Attorneys General Act (PAGA Initiative).

In the interim, below is a brief overview of the new laws already enacted in the 2022 session followed by a summary of the key employment bills currently pending, largely organized by subject matter.

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NEW LAWS

Federal

Limitations on Mandatory Arbitration of Sexual Assault and Sexual Harassment Claims (HR 4445)

On March 3, 2022, President Biden signed into law HR 4445, which allows a claimant to void an arbitration agreement or collective action waiver in connection with a sexual assault dispute or a sexual harassment dispute. The new law defines "sexual assault dispute" as "a dispute involving a nonconsensual sexual act or sexual contact" and "sexual harassment dispute" as "a dispute relating to conduct that is alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." Regardless of whether an arbitration agreement or collective action waiver is otherwise enforceable, a claimant can choose to void the agreement in connection with a covered dispute and pursue the claim in state or federal court. The law further provides that the validity or enforceability of an arbitration agreement or collective action waiver will be determined by a court rather than an arbitrator, despite the existence of a contractual term to the contrary. This law applies to any dispute or claim that arises or accrues on or after the enactment date of the law (March 3, 2022). Thus, the law may be invoked to invalidate arbitration agreements or collective action waivers that were signed before the new law came into effect, but it should not be used to avoid arbitration of disputes that are *already pending* in an arbitral forum. For more information, see WKT's Special Alert here.

California

Reinstatement of and Changes to COVID-19 Supplemental Paid Sick Leave Law (SB 114)

The California legislature passed – and Governor Newsom signed – a bill reinstating California's COVID-19 Supplemental Paid Sick Leave (SPSL) law on terms that are slightly different from the prior SPSL law. The law became effective February 19, 2022, but is retroactively applicable back to January 1, 2022, and will remain in effect through September 30, 2022.

The 2022 COVID-19 SPSL law applies to all California employers who employ more than 25 employees and to all employees who are "unable to work or telework" for any of the specified qualifying reasons. Full-time employees are entitled to a maximum of 80 hours of COVID-19 SPSL leave between January 1, 2022 and September 30, 2022, but the leave allocation is broken into two "buckets." Full-time employees are entitled to up to 40 hours of leave for the following reasons:

- The employee is experiencing symptoms of COVID-19, is in quarantine or in an isolation period related to COVID-19 or has been advised by a healthcare provider to quarantine due to COVID-19.
- The employee is caring for a family member who is experiencing symptoms of COVID-19, has been subjected to a quarantine or isolation period related to COVID-19 or has been advised by a healthcare provider to quarantine due to COVID-19; or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- The employee is attending a vaccine or booster appointment for themselves or a family member; or the employee or a family member for whom they provide care is experiencing symptoms from a vaccine/booster (but an employer may request a note from a healthcare

provider if an employee seeks more than 24 hours of leave in connection with a single vaccine or booster).

Full-time employees are entitled to another 40 hours of leave if they or a family member for whom they provide care test positive for COVID-19. The employee can determine which "bucket" of leave to use for an absence, subject to the employer's right to request documentation of a positive COVID-19 test before an employee may access the second bucket of leave; and an employee may use the second bucket of leave for a positive test before using the first, generally applicable bucket of leave.

Part-time employees and employees with variable schedules are essentially entitled to one week's worth of leave for each of the two buckets, and the law sets out specifics regarding calculation of their entitlement to leave.

The law specifies the rate at which employees should be paid for SPSL, which mirrors the rates at which they are paid for other sick leave. Pay is capped at $511 per day and $5,100 in the aggregate for each employee. Employers must post or distribute via email a fact sheet regarding the new law and must provide notice of the amount of COVID-19 SPSL each employee has used on the employee's wage statement or a separate writing each pay period. The new COVID-19 SPSL law applies retroactively to January 1, 2022, and employees can request retroactive pay for time off for a qualifying reason or may request that the employer credit them for any other sick time or PTO used prior to the effective date of the law. The California Department of Industrial Relations has issued (and updated) a series of "Frequently Asked Questions" that provide guidance regarding the SPSL law. The FAQs are available here. For more information, see WTK's Special Alert here.

PENDING BILLS

COVID-19-Related Proposals

Employer Tax Credit to Offset Costs of Complying with COVID-19 SPSL Law (AB 1890 and AB 1920)

These bills would allow qualified taxpayers, as defined, to claim a tax credit for the expenses of complying with California's COVID-19 Supplemental Paid Sick Leave law. Both bills would apply to employers who employ more than 25 employees, but AB 1920 would *not* apply to employers who employ more than 500 employees or to public employers. The credit under AB 1890 would apply for taxable years beginning after January 1, 2021 and before January 1, 2023, while AB 1920 is limited to the taxable year January 1, 2022 to January 1, 2023. In both bills, in the event the tax credit exceeds the net tax, the excess may be carried over to reduce the tax in the following tax year and the succeeding four years, until the credit is exhausted.

Status: Both AB 1890 and AB 1920 are pending in the Assembly Tax and Revenue Committee.

COVID-19 Vaccine Mandate for Employees and Independent Contractors (AB 1993)

This bill would require employers to obtain proof of vaccination from all employees and independent contractors by January 1, 2023, except persons ineligible to receive the vaccine due to medical condition or disability or because of a sincerely held religious belief, as specified. The bill would impose a monetary penalty on any employer who violates the law. It would also automatically repeal this new rule when the CDC determines that COVID-19 vaccinations are no longer necessary for health and safety.

Status: Pending in the Assembly Labor and Employment Committee.

Allowing Proof of Vaccination in Paper or Digital Format (AB 2539)

Over the course of the past several years, Governor Newsom has issued several executive orders requiring individuals in specified employment, health care, school, or other settings to provide proof of COVID-19 vaccination status. This bill would require that any public or private entity that requires a member of the public to provide documentation regarding the individual's COVID-19 vaccine status must accept either a written medical record or a government-issued digital medical record, as specified.

Status: Pending in the Assembly but has not yet been assigned to a Committee.

Extended Employer Notice Requirements Regarding COVID-19 Exposure and Expanded Cal-OSHA Powers (AB 2693)

In 2020, California enacted new mandatory employer notification requirements related to potential COVID-19 exposures in the workplace. (AB 685, codified at Labor Code section 6409.6 and 6325.) Specifically, if an employer or a representative of the employer receives a "notice of potential exposure to COVID-19," the employer must provide statutorily enumerated notices within one business day of the notice of potential exposure, and potentially may also have to provide separate notice to local public health agencies within 48 hours. Cal-OSHA also can prohibit employer access to and usage of portions of the worksite that may constitute an imminent hazard to employees due to potential COVID-19 exposure. These requirements are set to expire on January 1, 2023. The new bill would extend these requirements through January 1, 2025.

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

Extension of Presumption of Workers' Compensation Coverage for COVID-19 (AB 1751)

On September 17, 2020, California created a rebuttable presumption of workers' compensation coverage for employees who contracted a COVID-19-related illness under certain circumstances, with slightly different rules depending on whether the workplace exposure occurred before or after July 6, 2020. (SB 1159, codified at Labor Code sections 3212.86, 3212.87, and 3212.88.) The original law is set to expire January 1, 2023. This new bill would extend the rules regarding the rebuttable presumption of coverage through January 1, 2025.

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

Harassment/Discrimination/Retaliation

"Family Responsibility" Protections under the FEHA (AB 2182)

This bill would amend the Fair Employment and Housing Act (FEHA) to preclude discrimination or harassment based upon an employee's "family responsibilities. "Family responsibilities" would be defined to mean "the obligations of an employee to provide care for a minor child or a "care recipient." In turn, "care recipient" would mean "a family member or household member of an employee or applicant who relies on the employee or applicant for medical care or for assistance with activities of daily living." "Family member" would be broadly defined to include not only the seven relationships currently identified under the California Family Rights Act (CFRA) (e.g., spouse, child, parent, sibling, grandparent,

grandchild, domestic partner) but also "any other individual related by blood or whose close association with the employee is the equivalent of a family relationship."

On the one hand, this bill would also specify that it would not require employers to make reasonable accommodations for family responsibilities generally, if the employer's policies and practices (including those related to leave, scheduling, absenteeism, work performance and benefits) are applied in a non-discriminatory manner.

On the other hand, however, it would amend FEHA's reasonable accommodation and interactive process provisions (Government Code section 12940, subsections (m) and (n) respectively) to require the employer to potentially determine reasonable accommodation for the known family responsibilities of an applicant or employee related to obligations arising from needing to care for a minor child or care recipient because of the unforeseen closure or unavailability of a minor child or care recipient's school or care provider, excluding planned holidays. As with other accommodation obligations, the employer would not be required to provide accommodations constituting an undue hardship, but it would be prohibited from retaliating against any employee requesting such accommodation, regardless of whether the accommodation is provided.

This bill is very similar to AB 1119 which stalled in 2021 after passing two committee votes.

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

Cannabis Discrimination Protections (AB 2188)

This bill addresses concerns that some employer drug testing focuses on the presence of so-called "nonpsychoactive cannabis metabolites" that does not indicate actual impairment at work as opposed to simply revealing an employee may have smoked marijuana at some point and away from the workplace. Accordingly, it would amend the FEHA to preclude discrimination against an employee or applicant based upon (a) the person's use of cannabis off the job and away from the workplace; or (b) an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids.

To address previously cited employer concerns, this bill would not permit employees to be impaired by or to use cannabis at work, nor would it affect an employer's rights or obligations to maintain a drug and alcohol-free workplace, as specified under Health and Safety Code section 11362.45. This bill would also not apply to employees in the building and construction trades, and would not preempt state or federal laws requiring employee testing for controlled substances, including laws requiring employee testing as a condition of receiving federal funding or federal licensing-related benefits.

This bill is similar to AB 1256 which stalled in 2021.

Status: Pending in the Assembly Labor and Employment and Judiciary Committees.

Revival of Sexual Assault and Other Claims (Including Wrongful Termination and Sexual Harassment) (AB 2777)

Entitled the Sexual Abuse Cover Up Accountability Act, this bill would permit claims of sexual assault "or other inappropriate conduct, communication, or activity of a sexual nature" that would otherwise be barred because the statute of limitations expired before January 1, 2023 to be filed between January 1,

2023 and December 31, 2023. To qualify for this claim revival, a plaintiff would be required to allege all of the following: (a) they were sexually assaulted or subjected to other inappropriate conduct, communication, or activity of a sexual nature; (b) one or more entities are legally responsible for damages arising out of this alleged conduct; and (c) the entity or entities (including their agents or employees) engaged in or attempted to engaged in a "cover up" of this alleged misconduct.

For purposes of this new law, "cover up" would mean a deliberate effort to hide or disregard information of this alleged misconduct, including (a) moving an alleged perpetrator to another position at the entity or a subsidiary entity; (b) assisting an alleged perpetrator in gaining employment at another entity following allegations of this misconduct; or incentivizing others to remain silent or preventing disclosure of this information, including through non-disclosure or confidentiality provisions.

To address employer concerns about making it too easy to revive lapsed claims, this bill would impose heightened pleading and certification standards (including at least one opinion from a mental health practitioner) within 60 days of filing a complaint alleging otherwise lapsed claims. However, if revival occurs, it will apply to any "related claims" arising out of the misconduct, including for wrongful termination and sexual harassment, except for claims (a) litigated to finality in a court of competent jurisdiction before January 1, 2023, or (b) that have been compromised by a written settlement agreement between the parties entered into before January 1, 2023.

Status: Pending in the Assembly Judiciary Committee.

Retaliation Protections Related to Natural Disasters (SB 1044)

This bill responds to media reports of employees killed or injured during recent natural disasters (e.g., warehouse employees affected the December 2021 tornado outbreak, or domestic workers forced to work during California's fire outbreaks). Accordingly, it would preclude employers from taking or threatening adverse action against employees who refuse to report to or who leave a workplace within the affected area because the employee felt unsafe due to a "state of emergency" (as defined) or an "emergency condition." It would also preclude employers from preventing employees from accessing their mobile devices or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

For purposes of this bill, "state of emergency" would be defined as any of the following that is declared in the county where a worker lives or works, and poses an imminent and ongoing risk of harm to the worker, the worker's home or the worker's workplace: (1) a Presidential declaration of a major disaster or emergency caused by natural forces, (2) a declared state of emergency under the Government Code; or (3) or a federal, state, regional or county alert of imminent threat to life or property due to a natural disaster or emergency. "Emergency condition" would mean the existence of either (1) an event that poses serious danger to the structure or a workplace or to a worker's immediate health and safety; or (2) an order to evacuate a workplace, a worker's home or the school of a worker's child. However, the bill also provides that it is intended to apply only to emergency conditions positing an imminent risk of harm and not simply to an official state of emergency that remains in place (i.e. COVID-type restrictions).

As in other time-off contexts, an employee will be required, when feasible, to notify the employer of the state of emergency or emergency condition requiring the employee to miss or leave work. If such notice is not feasible, the employee shall notify the employer of these conditions afterwards.

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

Preventing Harassment of Customers (AB 2448)

California's Unruh Civil Rights Act (Civil Code section 51 *et seq.*) prohibits business establishments from discriminating (i.e., withholding services or denying accommodations) based on specified characteristics, including sex, race, religion, sexual orientation, medical condition, national origin or immigration status. Citing concerns about increased bias-based harassment of the public (particularly against Asians following the pandemic), this bill would require certain businesses to address the harassment of their customers on their premises and to provide training to their employees regarding how to identify bias-based discrimination and harassment.

Specifically, private businesses with a physical presence in California that are open to the public and have 100 or more employees in California, would be required to address the harassment (as defined) of customers on their "premises," whether by the businesses' employee or a third-party not affiliated with the business. A business's premises would include areas inside the building that are under the business's possession, management or control, as well as areas outside of the building if under the business's possession, management or control, such as parking lots and outdoor eating areas.

"Harassment" would be defined as "words, gesture, or actions directed at a specific person without the consent of the person on account of any characteristic listed or defined in [the Unruh Civil Rights Act], or because the person is perceived to have one or more of those characteristics or because the person is associated with a person who has or is perceived to have one or more of these characteristics." As presently drafted, this definition of "harassment" appears to differ from the physically violent behavior needed for temporary restraining order purposes, and from the "severe or pervasive" standard used for FEHA harassment purposes.

Covered businesses will be required to do all of the following: (1) post in a visible and conspicuous space a DFEH-created sign notifying customers of their rights and how to report harassment, (2) ensure employees receive training regarding such third-party bias-based harassment, and (3) develop a policy regarding how the business collects and maintains data related to such third-party harassment, collect and maintain data in accordance with this policy, notify employees of the policy, and provide this data to the DFEH upon request. Businesses would not be required to affirmatively intervene in harassment upon their premises, but would be precluded from retaliating against any employee for actions taken or not take pursuant to these new requirements.

Similar to current FEHA harassment training requirements, the DFEH will be required by June 30, 2024, to develop and make available online training courses for both supervisory and nonsupervisory employees regarding bias-based discrimination and harassment at businesses (two hours for supervisor employees and one hour for nonsupervisory employees). The DFEH will also be required to provide certificates of training that would be portable across employers. By January 1, 2025, covered businesses will be required to provide such bias-based training to all employees in the state who interact with the public. Thereafter, businesses must provide refresher training every two years to employees who interact with the public and provide this training to new employees within six months of being hired or promoted, unless the

employee has received the training from a prior employer within the two years preceding their hire. Such training would need to take place during regularly scheduled work hours, on paid time and at a time dedicated solely to the training.

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

DFEH Acting in Public Interest (AB 2662)

This bill would declare that in enforcing the FEHA, the DFEH represents the state and effectuates the declared public policy of California to protect the rights of all persons to be free from unlawful discrimination and other violations of the FEHA. The bill states that it is intended to be declarative of existing law and to codify the holding in *Department of Fair Employment and Housing v. Cathy's Creations, Inc*. (2020) 54 Cal.App.5th 404, 410.

Status: Unanimously passed the Assembly Judiciary Committee and is pending on the Assembly Floor.

Human Resources/Workplace Policies

Expansion of Limits on Settlement Agreement Confidentiality (SB 1149)

Existing law prohibits settlement agreements from containing confidentiality agreements that prevent disclosure of factual information related to specified claims or causes of action, including harassment. This bill would prohibit confidentiality provisions in settlement agreements that limit disclosure of factual information related to actions for damages regarding a defective product or environmental condition that poses a danger to public health or safety – that is, a product or condition that has caused, or is likely to cause, significant or substantial bodily injury or illness or death. This bill does not preclude a confidentiality provision regarding medical information or personal identifying information regarding an injured person, the amount of the settlement, or trade secrets (but disclosure of trade secrets may only be restricted based on a court order). Although not obviously applicable to most common disputes between employers and employees, practitioners should take note as public safety could be implicated by certain settlements of employment disputes, and this bill would provide that an attorney's failure to comply with these provisions is a ground for professional discipline. Notably, any person, including a representative of the media, can challenge any provision that restricts disclosure of covered information.

Status: Passed the Senate Judiciary Committee.

Extend Exemptions to California Privacy Rights Act for Employers (AB 2871/AB 2891/SB 1454)

These bills would extend an exemption for employers from the California Consumer Privacy Act (CCPA) regarding certain information gathered by a business about a person in the course and scope of that person's employment.

As background, the CCPA was enacted in 2018 and took effect in 2020 to enable "consumers" to request the personal information a "covered business" (as defined) collects or sells about the consumer, and to request that the business delete any personal information collected about them. Responding to concerns the broadly worded CCPA would apply to information about employees and enable them to request their employer delete information about them (e.g., a sexual harassment charge made against the employee), the CCPA has been amended several times to create – and extend – a partial exclusion from the CCPA for information about individuals acting within their scope as employees. In 2019, AB 25 established a one-

year exclusion (to January 1, 2021) for personnel information collected by employers about applicants, employees, and contractors; emergency contact information; and information used to administer benefits (currently codified at Civil Code section 1798.145, subd. (m)). In 2020, Proposition 24 extended this exemption to January 1, 2023. Three bills would extend the extension again. AB 2891 would extend the exemptions three years (to January 1, 2026), while AB 2871 and SB 1454 would extend the exemptions indefinitely.

Status: AB 2871 and 2891 are pending in the Assembly Committee on Privacy and Consumer Protection; SB 1454 is pending in the Senate Judiciary Committee.

Changes Regarding Pay Scale Postings, Promotion Opportunity Postings, and Annual Pay Data Reporting (SB 1162)

Pay equity concerns have been a primary legislative focus recently, and this law would update several recently enacted laws regarding pay scales and pay data reporting.

- Pay Scale Posting

Labor Code section 432.3 presently requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant after the applicant has completed an initial interview with the employer. This bill would require employers to post the pay scale within any job posting, and to provide the pay scale to any third party engaged to announce/post/publish a job posting The third party would be required to provide the pay scale to applicants who view the job posting. While section 432.3 presently only requires employers provide such pay scales to "applicants," this bill would also require employers, upon request, to provide pay scale information to current employees in connection with the employee's current position. For purposes of this new requirement, "pay scale" means a salary or hourly wage range.

Employers would also be required to maintain records of job descriptions and wage rate history for each employee for the duration of employment plus three years after the end of employment. The Labor Commissioner would also be entitled to inspect these records.

The bill would allow aggrieved individuals to file a civil action or a written complaint with the Labor Commissioner, establish a civil penalty of $500 to $10,000 per violation, and create a rebuttable presumption in favor of an employee's claim if an employer fails to keep required records.

- Promotion Opportunity Posting

Citing concerns about unfair promotion processes, this bill would also require all employers to announce any opportunity for promotion and the pay scale for the position to all current employees on the same calendar day and prior to making a promotion decision. As with the proposed changes regarding hiring decisions, employers utilizing a third party to announce a promotion opportunity would need to provide the pay scale to the third party, and the third party would provide the pay scale to any person viewing the promotion-related posting.

Employees would be entitled to the same rights and remedies for violations of these promotion-related postings as they would be for violations of the new pay scale requirements.

- Annual Pay Data Reporting

In 2020, California enacted SB 973 requiring private employers with 100 or more employees to file an annual Employer Information Report (EEO-1) pursuant to federal law and to submit a pay data report to the DFEH, including the number of employees by race, ethnicity, and sex in specified job categories. SB 973 allowed employers to comply with this new reporting requirement by submitting an EEO-1 to DFEH containing the same or substantially similar pay data information.

As often happens in California, SB 1162 would amend these new reporting requirements in several respects. First, while private employers with 100 or more employees must annually submit a pay data report to DFEH, this bill would also require employers with 100 or more employees to submit a separate pay data report for employees hired through labor contractors, and to disclose on the pay data report the ownership names of all labor contractors used to supply employees. The bill's author states this expansion to include labor contractor-related hiring is to combat employers trying to circumvent the current pay data reporting limited to employees, and to expand the information collected when assessing pay equity issues. For purposes of this new law, a "labor contractor" means an individual or entity that supplies, either with or without contract a client employer with workers to perform labor within the client employer's usual course of business.

Second, the pay data report would also now be required to include median and mean hourly rates for each combination of race, ethnicity, and sex within each job category. Third, employers would no longer be permitted to submit an EEO-1 in lieu of a pay data report. Fourth, while the authors of SB 973 had previously stated these pay data reports would not be published, this bill would require the DFEH to publish each private employer's pay data report on a public internet website, but it would not publish any individually identifiable information associated with a specific person. Fourth, this bill would impose new civil penalties of $100 per employee on an employer who fails to file the required report for a first offense, and $200 per employee for subsequent violations. Lastly, it would require these reports be due by the second Wednesday of May of each year (beginning in May 2023) rather than the current March 31st deadline.

Please note, while the pay data reporting requirements apply only to employers with 100 or more employees, the changes regarding pay scale posting and promotion opportunity announcements would apply to all employers.

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

Requirement for Large Employers to Report Extensive Employee Statistics (AB 2095)

This bill would require larger private-sector employers (i.e., with more than 1,000 employees in California), beginning by March 31, 2024, to annually submit reports to the Labor and Workforce Development Agency (LWDA) detailing various work-related statistics, which the LWDA will then score and rank to help identify "high-road employers." These work-related statistics include the following categories (each of which are further detailed in the bill): (1) worker-related statistics for the employer's workforce throughout the United States (e.g., number of full vs. part-time workers, number of hourly vs. salaried employees, number of employees [limited to California]), (2) pay information (e.g., median pay for all employees, number of employees earning above living wage), (3) hours worked information, (4) worker scheduling, (5) benefits, (6) ratio of nonsupervisory employees to independent contractors and temporary employees, (6) safety statistics, (7) annual turnover rate, and (8) equity information.

This report will need to be signed by the chief executive officer under penalty of perjury. The LWDA will also annually publish on its website the worker-related statistics submitted by all employers. To aid with compliance, the Employment Development Department must annually provide the LWDA the names and addresses of all employers subject to this annual reporting requirement.

As mentioned, the LWDA will annually score the submitted information under a to-be-determined methodology to identify and certify so-called "high road employers" potentially eligible for state-provided incentives, including procurement contracts, tax benefits, and workforce development funding.

Presently, the term "employer" is defined in this bill to include solely larger private sector employers that hire and remunerate persons for their labor or services, but does not include public agencies, non-profit corporations or temporary staffing companies.

A similar but narrower bill seeking to identify "high road employers" in the restaurant industry (AB 572) stalled in 2021.

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

Student Loan Repayment Assistance under California Tax Code (AB 1729)

While California and federal law presently allow employers to annually provide up to $5,250 of payments for an employee's ongoing educational assistance that is exempted from state and federal income taxes, this bill would similarly allow employers to annually provide up to this same amount on a tax-favored basis under California law to help repay existing student loan debt. In this regard, it is like the recent provisions in the federal Coronavirus Aid, Relief and Economic Security (CARES) Act that enable employers to provide tax-favored repayment assistance for existing student loan debt that would not be considered income for federal income tax purposes.

Similar bills have been introduced on several occasions, including AB 2478 (2017) and AB 152 (2019), which passed the Tax and Revenue Committee before stalling.

Status: Pending in the Assembly Tax and Revenue Committee.

Biometric Information Policies (SB 1189)

Beginning with the Constitutional codification of an individual right of privacy and continuing up through the 2018 enactment of the California Consumer Privacy Act (Civil Code section 1798.100 *et seq.*), California has been very protective of an individual's personal information. Drawing heavily upon Illinois' groundbreaking Biometric Information Privacy Act (2008), this bill would enact California's version of the Biometric Information Privacy Act (BIPA) to enact "guardrails" around the collection, use, disclosure, and retention of biometric information by private entities in California.

For purposes of this proposed new law, "biometric information" would be defined as "the data of an individual generated by automatic measurements of an individual's biological or behavior characteristics", including a faceprint, fingerprint, voiceprint, retina or iris image or any other biological characteristic that can be used to authenticate the individual's identity. (For employment purposes, this could include fingerprint activated time clocks, facial/voice recognition software, etc.). SB 1189 also specifically enumerates various items that are not included within "biometric information," including a writing sample or written signature, a photograph or video and a physical description

By September 1, 2023, private entities in possession of "biometric information" would need to develop and make available to the public a written policy establishing a retention schedule and guidelines for permanently destroying the biometric information, and would need to comply with this policy. Except for information subject to a warrant or court-issued subpoena, the information would need to be destroyed on or before the earliest of: (a) the date on which the initial purpose for collecting or obtaining the biometric information is satisfied; (b) one year after the individual's last intentional interaction with the private entity; or (c) within 30 days after the private entity receives a verified request to delete the biometric information submitted by the individual or the individual's representative.

While "private entity" would be broadly defined to include most business entities "however organized," it would specifically not include a federal, state, or local government agency or an academic institution.

Private entities would also be prohibited from collecting, capturing, purchasing, receiving or otherwise obtaining a person's biometric information unless certain conditions are met. First, the private entity would need this information to provide a service requested/authorized by the subject of the information, or for another valid business purposes specified in its written policy. Second, the private entity would also need to inform the person or their representative of the biometric information being collected/used and the specific purpose and length of time for which the biometric information is being collected/used. Third, the private entity would need to obtain a written release executed by the subject or their legal representative, and the release would need to be separate from other releases or employment contracts.

It would also preclude private entities from selling, using or profiting from the disclosure of biometric information, and would prohibit the disclosure of biometric information unless certain conditions are met (including a written release, a subpoena/warrant). It would also prohibit conditioning the provision of services on the collection, use, sale, etc. of biometric information unless biometric information is strictly necessary to provide this service. Lastly, it would require private entities to store, transmit and protect from disclosure biometric information using a reasonable standard of care within the private entity's industry and in a manner that is the same as, if not more protective than, storing other confidential and sensitive information.

This bill would also authorize civil actions against a private entity for violating these provisions and allow the greater of any actual damages or statutory damages ranging from $100 to $1,000 per day, as well as reasonable attorneys' fees.

Opponents have expressed concern about potential class action lawsuits against employers, citing the litigation trends in Illinois since its BIPA's enactment.

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

Expansion of Businesses Required to Post Human Trafficking Notice (AB 1661)

Existing law requires specified businesses and other establishments, including, among others, airports, rail stations, certain medical facilities, and hotels, to post a notice, as developed by the Department of Justice, which contains information relating to slavery and human trafficking, and imposes penalties for failing to comply. This bill would additionally require businesses providing hair, nail, and skin care (as defined) to post the notice.

Status: Unanimously passed the Assembly and is pending in the Senate.

Background Checks Involving Date of Birth and Driver's License Information in Court Records (SB 1262)

Background check companies typically use an individual's date of birth or driver's license information to effectively locate information related to an applicant or employee when performing a background check through court records, and to avoid the risk of returning information about another person with the same name. However, a recent California appellate court decision in *All of Us or None of Us v. Hamrick* (2021) 64 Cal.App.5th 751, held that California Rule of Court 2.507 precluded electronic access to such information in court records. Responding to concerns that this interpretation would complicate background checks and potentially lead to unverifiable "false hits" based on common names, this bill would specifically authorize searches and filtering of publicly accessible court records based on a criminal defendant's driver's license number or date of birth, or both.

Status: Pending in Senate Public Safety Committee.

Creation of Ultrahigh Heat Standard and Revision of Wildfire Smoke Standard (AB 2243)

Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires employers to comply with certain safety and health standards, including a heat illness standard to prevent heat-related illness in outdoor places of employment and a standard for workplace protection from wildfire smoke. This bill would require the Division of Occupational Safety and Health to submit a rulemaking standard to revise the heat illness standard to include an "ultrahigh" heat standard for employees in outdoor places of employment for heat in excess of 105 degrees Fahrenheit, which will include mandatory work breaks every hour, accessible cool water, shade structures that include cooling features such as misters, and increased employer monitoring of employees for symptoms of heat-related illnesses, and to require employers to provide a copy of the Heat Illness Prevention Plan to all new employees when temperatures exceed 80 degrees and to all employees on an annual basis. The bill would also require a rulemaking proposal to revise the wildfire smoke standard to reduce the existing air quality index threshold at which respiratory protective equipment becomes mandatory and to remove the requirement that the employer reasonably anticipates the employees may be exposed to wildfire smoke. Finally, the bill would require the division to consider developing regulations related to additional protections related to acclimatization to higher temperatures, training programs for outdoor employees in administering first aid related to extreme heat-related illnesses, and additional protections for piece-rate workers. The bill would require the division to submit these rulemaking proposals before January 1, 2024, and require the standards board to review and adopt revised standards before July 1, 2024.

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

Creation of Advisory Committees Re: Extreme Heat and Humidity (AB 1643)

This bill would require the Labor and Workforce Development Agency to establish an advisory committee to study the effects of extreme heat and humidity on California's workers and to recommend regulatory changes to improve the state's understanding of the effects of extreme heat and humidity on California's workers and economy and report its findings no later than January 1, 2025.

Status: Pending in the Assembly Labor and Employment Committee.

Employee and Subcontractor Compliance with Workplace Safety Requirements at Live Events (AB 1775)

This bill applies to "contracting entities," defined as bodies that contract with an entertainment events vendor to set up, produce, and tear down a live event at a public events venue – including state or county fairgrounds, state parks, the University of California or California State University. The bill requires the contracting entities to require an entertainment events vendor to certify for their employees and subcontractors that those individuals have complied with specified training, certification, and workforce requirements, including that employees involved in setting up, tearing down, or the production of a live event at the venue have completed proscribed OSHA training. The bill imposes civil penalties for violation of the requirement.

Status: Pending in the Assembly Labor and Employment Committee.

Establish Juneteenth as a State Holiday (AB 1655)

This bill would add June 19, known as "Juneteenth," as a state holiday. Community colleges, the California State University, and public schools would be required to close. The University of California would be requested to close. State employees, with specified exemptions, would be given time off with pay.

Status: Passed Assembly Governmental Organization Committee; referred to Assembly Higher Education Committee.

Establish Election Day as a State Holiday (AB 1872)

This bill would add Election Day (the first Tuesday after the first Monday in November of any even-numbered year) as a state holiday. Community colleges, the California State University, and public schools would be required to close. The University of California would be requested to close. State employees, with specified exemptions, would be given time off with pay. The bill also provides that Washington Day (the third Monday in February) would only be observed in odd-numbered years.

Status: Passed Assembly Elections Committee; referred to Assembly Governmental Organization Committee.

Leaves of Absence/Time Off/Accommodation Requests

Bereavement Leave Proposed Again (AB 1949)

An emerging criticism of the California Family Rights Act (CFRA) and the Family Medical Leave Act is that they provide time off to care for a seriously sick family member but provide no time off to the employee in the event the family member passes away.

Accordingly, this bill would require employers to provide up to five days of bereavement leave following the death of an employee's "family member" (e.g., spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law). This bill would apply to private employers with five or more employees and to any state or civil subdivision of the state (e.g., counties and cities), and employees would need to have been employed at least 30 days prior to the commencement of the leave to be eligible. However, it would not apply to employees covered by a collective bargaining agreement that contains specially enumerated provisions, including bereavement leave.

The days of bereavement leave would not need to be consecutive but would need to be completed within three months of the date of the person's death. For most employers, this bereavement leave would be

unpaid (unless the employer has an existing bereavement leave policy requiring paid time off), but an employee may use otherwise accrued or available vacation, personal leave, or compensatory time off. If an employer has an existing leave policy providing less than five paid days of bereavement leave, the employee would still be entitled to five days of bereavement leave, consisting of the number of days of paid leave under the policy and the remaining days of unpaid bereavement leave under this new law.

For permanent state employees, the first three days of bereavement leave would be paid, and those employees would be entitled to request an additional two days without pay, but without the current requirement that these two additional days only apply for out-of-state deaths.

Notably, although this new law would be codified in a new section (Government Code section 12945.7) immediately after the statute creating CFRA, bereavement leave would be considered separate and distinct from time off under the CFRA.

If requested by the employer, an employee would need to provide within 30 days of the first day of the leave documentation of the person's death, including a death certificate or a published obituary or written verification of death, burial, or memorial service from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. Employers would need to maintain the confidentiality of employees requesting this leave and to treat any documentation obtained as confidential and not disclosed except where required by law.

Because this new right would be codified at new Government Code section 12945.7, employees who believe they have been discriminated or retaliated against (or denied available time off) would presumably be entitled to the same remedies available for violations of the CFRA and/or the FEHA. However, alleged violations of this new section against smaller employers (i.e., with between five and nineteen employees) would also be subject to the recently created mediation pilot program for CFRA claims against such smaller employers.

Similar bills (including AB 2999 in 2020 and AB 95 in 2021) have stalled. However, several other states (e.g., Oregon and Maryland) and the City of Pittsburgh have recently enacted bereavement leave laws, suggesting this may be an emerging trend.

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

Paid Parental Leave for California State University Employees (AB 2464)

New Education Code section 89519.3 would entitle California State University "employees" (as defined in Government Code section 3562) to a leave of absence with pay for one semester of an academic year, or an equivalent duration, in a one-year period following the birth of a child or placement of a child with an employee for adoption or foster care The leave would need to be taken in consecutive periods unless otherwise agreed to by mutual consent between the employee and an appropriate administrator, and only working days would be charged against the leave of absence.

Status: Pending in the Assembly Higher Education Committee.

Pay and Benefits for State Employees for National Guard Drills (SB 984)

Presently, state employees of reserve military units and the National Guard are entitled to an unpaid leave of absence to attend scheduled reserve drill periods or to perform other inactive duty reserve obligations.

This bill would repeal these provisions regarding unpaid time off. Instead, state employees, who are already entitled to up to 30 days of compensation for short-term military leave for active-duty military duty, including scheduled reserve drill periods, would also be entitled to similar compensation for National Guard drill periods.

Status: Unanimously passed the Senate Labor Committee and is pending in the Senate Military and Veterans Affairs Committee.

Changes to Active-Duty Compensation and Benefits for State Employees (AB 1768)

Existing law references specific provisions of federal law for purposes of identifying events that establish how long state employees may receive compensation and benefits while serving as members of the California National Guard or a United States military reserve organization. This bill would delete the references to federal law but would leave in place the maximum period of compensation, which is 180 days.

Status: Unanimously passed the Assembly Military Affairs and Public Employment Committees and is pending in the Assembly Appropriations Committee.

Wage & Hour

PAGA Ballot Initiative Being Considered

Efforts are presently underway to gather signatures to qualify for the November 2022 general election ballot an initiative that would materially amend California's Private Attorneys General Act (PAGA). Entitled the California Fair Pay and Accountability Act, this initiative would reinstate the California Labor Commissioner as the primary vehicle for enforcing alleged Labor Code violations rather than employees (or their legal representatives) as so-called "private attorneys general."

https://oag.ca.gov/system/files/initiatives/pdfs/210027A1%20%28Employee%20Civil%20Action%29.pdf

Simply summarized, the initiative would require the state agencies be fully funded (thus removing the stated rationale for PAGA) and would require the state agencies to handle any complaints received. The initiative would also provide that 100% of the award recovery would go to the employees, rather than the current 75% allocation to the LWDA. It would also create a consultation unit to enable employers to resolve potential violations without penalty, but it would also enable the Labor Commissioner to obtain double penalties for willful Labor Code violations.

In short, the initiative is intended to remove the potential "in terrorem" threat of class action violations for technical Labor Code violations, in exchange for increased state agency funding, increased recovery directly to the employees and increased penalties against bad actor employers.

If it obtains sufficient signatures by the June 6, 2022 deadline, the initiative will appear on the November 2022 general election ballot.

Four-Day Workweek for Overtime Purposes (AB 2932)

While California presently defines a "workweek" as 40 hours for overtime purposes, this bill would change that threshold to 32 hours per week for employers with more than 500 employees. For such employers, any work performed beyond eight hours daily or 32 hours weekly will be considered overtime and would be paid at one and one-half times the employee's regular rate of pay. Notably, this bill would specify that

the compensation rate of pay at 32 hours shall be the same compensation rate of pay at 40 hours, and employers would be prohibited from reducing an employee's regular rate of pay because of this reduced hourly workweek requirement.

Employers with 500 or fewer employees would continue to apply the prior overtime rates, including work performed beyond eight hours daily or forty hours weekly.

The bill also states it would apply to employees not exempted from overtime pursuant to Labor Code sections 515.5 (computer software professionals), 515.6 (physician/surgeon employees), 515.7 (higher education laboratory instructors) and 515.8 (elementary and secondary teachers).

Status: Pending in the Assembly Labor and Employment Committee.

Fast Food Industry Regulations (AB 257)

This bill would establish the Fast-Food Sector Council within the Department of Industrial Relations (DIR), whose purpose would be to establish minimum standards on wages, working hours, and other working conditions related to the health, safety, and welfare of fast-food restaurant workers. It would define a fast-food restaurant, including that it is a part of a set of restaurants consisting of 30 or more establishments nationally that share a common brand or standards, and that it primarily provides food or beverages in disposable containers for immediate consumption either on or off the premises with limited to no table service.

The bill would also require that fast food restaurant franchisors be responsible for ensuring that franchisees comply with a variety of employment, worker, and public health and safety laws and orders, including those related to unfair business practices, employment discrimination, the California Retail Food Code, a range of labor regulations, emergency orders, and standards issued by the council. Franchisors would also be jointly and severally liable for violations of these same laws by their franchisees and the specified laws could be enforced against a franchisor to the same extent that they may be enforced against a franchisee. The bill would prohibit a fast-food franchisee from waiving this provision or from agreeing to indemnify its franchisor for liability.

The bill would give fast food franchisees a cause of action against franchisors for monetary or injunctive relief if the terms of a franchise prevent or create a substantial barrier to a fast food restaurant franchisee's compliance with the specified laws, orders, and regulations, and would establish a rebuttable presumption that any changes in the terms of a franchise that increase the costs of the franchise to the franchisee create a substantial barrier to compliance with these laws and orders.

It would also be unlawful for a fast food restaurant operator to discharge or discriminate or retaliate against any employee because the employee made a complaint or disclosed information regarding employee or public health and safety; the employee instituted, testified in, or participated in a proceeding relating to employee or public health or safety; or the employee refused to perform work in a fast food restaurant because the employee had reasonable cause to believe the practices or premises of the fast food restaurant would violate any specified worker and public health and safety laws, regulations or orders, or would pose a substantial risk to the health and safety of the employee, other employees, or the public. The bill would create a private right of action for violation of this provision and allow treble damages for lost wages and work benefits, along with attorney's fees and costs. There would be a rebuttable presumption of unlawful discrimination or retaliation if a fast-food restaurant operator

discharges or takes any other adverse action against one of its employees within 90 days following the date the operator had knowledge of the employee's protected action.

Status: Passed the Assembly and is pending in the Senate.

Further Garment Manufacturing Changes (SB 1260)

In 2021, California enacted SB 62 to address wage and hour violations in the garment manufacturing industry by, amongst other things, requiring that various entities in the garment manufacturing process (e.g., manufacturers, contractors, brand guarantors, etc.) be jointly and severally liable for damages and penalties flowing from such violations. This bill would specify that such damages for joint and several liability purposes include liquidated damages in an amount equal to the wages unlawfully withheld and liquidated damages in an amount equal to the unpaid overtime compensation due.

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

Wage Payments Involving Multiple Employers (AB 2643)

Presently, under Labor Code section 204a, when workers are engaged in employment that normally involves working for several employers in the same industry, those employers may cooperate to establish a plan for the payment of wages at a central place in accordance with certain procedures. This bill would reduce from 10 days to five business days the point at which section 204a applies after these employers have notified the Labor Commissioner of their intent to establish such a plan.

Status: Pending in the Assembly Labor and Employment Committee.

Extension of Meal and Rest Period Requirements to Employees of Public Hospitals (SB 1334)

Existing law requires an employer to provide specified meal and rest periods to employees of private sector hospitals and provides a remedy of one hour of premium pay for missed meal and rest breaks, while excepting employees in the public sector from these requirements. This bill would apply to employees who provide direct patient care or support direct patient care in a general acute care hospital, clinic, or public health setting and who are employed by the state, political subdivisions of the state, municipalities, and the regents of the University of California. Employees would be entitled to one unpaid 30-minute meal period on shifts over 5 hours and a second unpaid 30-minute meal period on shifts over 10 hours, as well as a rest period based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours worked or major fraction thereof. Employers would be required to pay one hour of pay at the employee's regular rate of compensation for each meal period violation and rest period violation.

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

Changes to Final Pay Rules for Seasonal Employees (AB 2133)

Labor Code section 201 currently regulates the payment of wages after an employer discharges an employee and provides that if an employer lays off a group of seasonal employees employed in the curing, canning, or drying of fruit, fish, or vegetables, the employer must pay final wages within a reasonable time, not to exceed 96 hours. This bill would reduce the time limit on payment of such wages to 48 hours.

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

Minimum Wage Citations (AB 2955)

Labor code section 1197.1 authorizes the Labor Commissioner to issue a citation for payment of less than the minimum wage. The citation must be in writing and describe the nature of the violation. This bill would require each citation to also include the date of the violation.

Status: Pending in the Assembly Labor and Employment Committee.

Workplace Flexibility

Individual Alternative Workweek Schedules Proposed (AB 1761)

Known as the Workplace Flexibility Act of 2022, this bill would permit individual non-exempt employees to obtain an "employee-selected flexible work schedule" providing for workdays up to ten hours without daily overtime between eight to ten hours worked, and to do so without completing the more detailed alternative workweek schedule procedure in section 511 when implementing a work-unit-wide alternative schedule.

Both the employer and the employee would have the ability to discontinue these schedules by giving written notice, with the notice becoming effective either on the first day of the next pay period or the fifth day after the notice is given if there are less than five days before the next pay period. Employers would be permitted to express their willingness to consider such schedules, but they would be prohibited from inducing employee requests either by offering benefits or threatening detrimental action.

In response to opponents' concerns that employers might coerce employees into such schedules, this bill contains several safeguards, including that the schedules be in writing, that these schedules be signed by the employee and the employer, and that the schedule is voluntary.

This bill is similar to AB 2482, which stalled in 2018, and AB 230, which stalled in 2021.

Status: Pending in the Assembly but appears to have stalled again.

Shorter Reporting Time for Alternative Workweek Election Results (AB 2110)

This bill would shorten from the current 30 days to 15 days the period for an employer to report to the Division of Labor Standards Enforcement the results of a secret ballot election regarding a proposed alternative workweek.

Status: Pending in the Assembly Labor and Employment Committee.

Tax Credits for Employers who Allow Telecommuting (AB 2620)

This bill would allow, from January 1, 2023 until January 1, 2028, certain employers (so-called "qualified taxpayers") to claim a tax credit of $1,000 per employee that telecommutes if certain enumerated conditions are met. "Qualified taxpayers" would be statutorily defined, but generally means smaller "independently owned and operated businesses" (i.e., less than 100 employees and average gross receipts of $10,000,000 or less over the prior three years) located in California, or a manufacturer with 100 or fewer employees. The credit could also only be claimed for "qualified employees" who work on a full-time basis (e.g., at least 30 hours per week) and who are permitted by the employer to telecommute. Employers claiming this credit would also need to retain documentation, including a signed

telecommuting agreement demonstrating the employee telecommutes at least 25 hours per week in the taxable year the credit is claimed.

Status: Pending in the Assembly Revenue and Tax Committee.

Independent Contractor/Worker Classification

Indefinite Exemption from ABC Test Proposed for Licensed Manicurists (AB 1818)

In 2021, California enacted AB 1561 extending to January 1, 2025, the exemption for licensed manicurists from the so-called ABC Test for worker classification purposes. This bill would delete the January 1, 2025, expiration date for this exemption, providing licensed manicurists an indefinite exemption from the ABC Test.

Status: Pending in the Assembly Labor and Employment Committee.

Public Sector/Labor Relations

Penalties and Potential Liability for Discouraging Union Membership (SB 931)

Government Code section 3550 currently prohibits a public employer from deterring or discouraging employees or applicants from becoming members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fees to an employee organization. This bill would authorize an employee organization to bring claim before the Public Employment Relations Board alleging violation of these rules and would establishing a civil penalty up to $1000 for each affected employee, not to exceed $100,000 in total, as well as attorney's fees and costs, recoverable by the Board.

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

Shortening the Timeframe for Employee Organizations to Provide Financial Records (AB 2261)

Section 3515.7 of the Government Code provides that once an employee organization is recognized as the exclusive representative of an appropriate unit, it may enter into an agreement with the state employer providing for organizational security in the form of maintenance of membership or fair share fee deduction. The existing law requires the employee organizations to keep itemized financial records and to make those records available within 90 days after the end of its fiscal year, as specified.

This bill would shorten that timeframe and instead require the financial records to be made available within 60 days after the end of the fiscal year.

Status: Pending in the Assembly.

New Labor Relations Rules for Agricultural Employers (AB 2183)

This bill make several changes to regulation of labor relations for agricultural employees. First, it would allow a labor organization to obtain an agricultural employer's employee list upon notice of an intention to organize. The employer would have to submit an employee list to the Agricultural Labor Relations Board within five days from the date of filing the notice and, if the employer contends the unit named in the notice is inappropriate, the employer would have to submit written arguments in support of its contention. The bill would also permit agricultural employees, as an alternative to holding a secret ballot election, to select labor representatives through representation ballot card election by submitting cards signed by majority of employees in a bargaining unit. It would create civil penalties for employers who

commit unfair labor practices of up to $10,000. The bill would also require an employer who appeals or petitions for writ of review of any order of the board involving make-whole, backpay or other monetary awards to employees to post an appeal bond in the amount of the entire economic value of the order.

***Status*:** Pending in the Assembly Labor Committee.

State-Provided Benefits

Increase Paid Family Leave Benefits (SB 951)

To address concerns the current Paid Family Leave benefits paid by the state Disability Fund are insufficient to enable many lower wage workers to take family leave, this bill would increase the weekly benefits from 60% to up to 90% of an employee's wages (subject to certain caps). These increased benefits would begin January 1, 2023. The bill would also remove a limitation on workers' contributions to the Unemployment Compensation Disability Fund. This is a slightly modified version of AB 123, which passed the Legislature last year but was vetoed by the Governor.

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

Workers' Compensation Coverage for Hospital Employees (SB 213)

This bill would define "injury" for workers' compensation purposes regarding hospital employees providing direct patient care in acute care hospitals to include infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases. It would create a rebuttable presumption these injuries arose out of the course and scope of employment, with the presumption extending for specified periods after the employee's termination of employment.

Status: Passed the Senate and is pending in the Assembly.

Pilot Program Regarding Unemployment Assistance for Undocumented Workers (AB 2847)

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 lawfully admitted for permanent residence, was lawfully present for the purposes of performing work, or was permanently residing in the United States under color of law. This bill would establish, until January 1, 2025, the "Excluded Workers Pilot Program" to provide income assistance to excluded workers who are not eligible for state or federal unemployment benefits. The bill would make individuals eligible to receive $300 per week for each week of unemployment between January 1, 2023 and December 31, 2023. The program would be funded by an appropriation of $690,000,000 from the General Fund.

Status: Pending in the Assembly Insurance and Revenue and Tax Committees.

Increase Disability Benefits by Disparity in Earning Between Genders (SB 1458)

This bill would increase the payment of disability benefits by the percentage of disparity in earnings between genders as reported by the applicant's employer in its pay data report to the DFEH if the applicant's average weekly wage is less than the average weekly wage of the opposite gender. It would apply prospectively to injuries occurring on or after January 1, 2023.

Status: Pending in the Senate Labor Committee.

Treatment by Licensed Clinical Social Workers under Workers' Compensation (SB 1002)

Existing workers' compensation law requires employers to provide medical services reasonably required to cure or relieve an injured worker from the effects of covered injuries. This bill would expand the meaning of medical treatment to include the services of a licensed clinical social worker (LCSW) and would authorize an employer to provide an employee with access to an LCSW. The bill would authorize medical provider networks to add LCSWs as providers and would prohibit an LCSW form determining disability, as specified.

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

Acknowledgement of Penalties for False Statements in Unemployment Insurance Applications (AB 2621)

Existing law prohibits employers or employees from willfully making false statements or representations, or willfully failing to report a material fact in connection with an unemployment insurance application. This bill would require claimants and employers to sign an acknowledgement that they understand they may be subject to penalties under the unemployment insurance law if they violate these provisions.

Status: Unanimously passed Assembly Insurance Committee; currently pending in the Assembly Appropriations Committee.

Changes to Workers' Compensation Liability Presumptions, Coverage, and Penalties (SB 1127)

Existing law provides that if an employer does not reject liability within 90 days after receiving an injured employee's claim form, an injury is presumed compensable under the workers' compensation system. This bill would reduce that period to 60 days, except for certain injuries for law enforcement or first responders, in which case the time period would be reduced to 30 days. In addition, the bill would increase the number of compensable weeks for specified firefighters and peace officers for illness or injury related to cancer from 104 weeks to 240 weeks. Finally, the bill would increase the penalty for unreasonably rejecting specified claims for law enforcement or first responders from the current amount (25% of the unreasonably delayed or refused claim or a minimum of $10,000) to five times the amount of the benefits unreasonably delayed, up to a maximum of $100,000.

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

Requirement that Employers Procure Workers' Compensation Policies for Contracted Workers in the Manufacturing and Mercantile Industries (AB 2614)

This bill applies to "client employers," defined as businesses that obtain workers to perform labor *within their usual course of business* from a labor contractor and which employ 25 or more workers (at least six of who are supplied by labor contractors). Labor contractors (sometimes known as staffing agencies) are individuals or entities that supply, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business, with certain exceptions, including for motion picture payroll services companies and parties to employee leasing arrangements. The bill's stated goal is to ensure all contracted workers performing labor within a client employer's usual course of business are covered by a valid worker's compensation insurance policy *of the client employer* instead of

the policy of the labor contractor. Thus, the bill provides that client employers must procure a valid workers' compensation policy for contracted workers performing labor within the client employer's usual course of business who are classified as employees under Wage Order No. 1-2001 (Manufacturing Industry) or Wage Order No. 7-2001 (Mercantile Industry). The client employer shall not use the labor contractor, or the labor contractor's policy, rate, or discount to secure coverage. The bill does not remove or modify any joint liability of the client employer and labor contractor.

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

Provision of Unemployment Compensation for Self-Employed Individuals (SB 1138)

Existing law authorizes any individual who is self-employed and who receives the major part of their remuneration from the trade, business, or occupation in which they are self-employed to elect that their services be deemed services performed by an individual in employment for the purposes of *disability compensation only*, subject to approval of the Director of Employment Development. This bill would authorize a self-employed individual to elect that their services be deemed services performed by an individual in employment for an employer for purposes of *unemployment compensation*. Regardless of actual earnings, for purposes of computing benefit rights an contributions, the individual would be deemed to have received the highest amount of wages required to be entitled to the maximum benefit amount.

Status: Pending in the Senate Labor Committee.

Clarification that Unemployed Individuals Not Ineligible for Unemployment Benefits if Available for Telework, Flexible Schedule, or Delayed Start (AB 2184)

Unemployment Insurance Code section 1253 presently provides that an unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the person was able to work and available for work that week. This bill would specify that an otherwise eligible individual shall be considered as able to and available for work in any week when: (1) the claimant is available exclusively for telework for which the claimant is "reasonable fitted"; (2) the claimant is available for work on a flexible schedule; or (3) the claimant is delayed in starting or accepting a suitable offer of work because of a reasonable delay in seeking assistance in meeting current family responsibilities. Several key definitions are the same as those in AB 2182, discussed herein. For example, "Family responsibilities" is defined to mean obligations to provide care for a minor child or care recipient. "Care recipient" is defined as a member of the claimant's family or household member who relies on the claimant for medical care or assistance with the activities of daily living. "Family member" is defined as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose close association with the claimant is the equivalent of a family relationship. In addition, the bill specifies that a "reasonable delay" shall be based on current market restrictions on accessing assistance for the claimant's specific family responsibilities.

Status: Pending in the Assembly Insurance Committee.

Extension of Provisions for Electronic Application for Work Sharing Program Under Unemployment Insurance Law (AB 1854)

Existing unemployment compensation law deems an employee unemployed in any week if the employee works less than their usual weekly hours of work because of the employer's participation in a work sharing plan that meets specified requirements, pursuant to which the employer, in lieu of a layoff, reduces employment and stabilizes the workforce. Existing law creates an alternative process for submitting and approving employer work sharing plan applications, allowing applications to be submitted electronically. This law is in effect until January 1, 2024. This bill would extend these provisions indefinitely.

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

Public Posting of Information Regarding Federal Unemployment Tax Act Tax Credit (AB 1805)

This bill would require the Employment Development Department to post on the department's internet website a hyperlink to information about the Federal Unemployment Tax Act tax credit and to indicate whether the Unemployment Fund owes money to the federal government, and if so, the implications of that outstanding debt on employers' unemployment insurance costs.

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

Public Posting of Information Regarding Timeframes for Handling Unemployment Claims (AB 1821)

This bill would require the Employment Development Department to post on the department's internet website information about timeframes for processing unemployment insurance claims, issuing a first payment when the department does not request additional or clarifying information, and making final determinations of eligibility benefits.

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

State Tracking of Applicant Data for Disability Benefit Recipients (SB 1058)

This bill would require the Employment Development Department (EDD) to collect data regarding the race and ethnicity of individuals who claim state disability benefits as partial wage loss compensation due to a disability. The bill does not presently specify, but presumably the EDD would obtain this information directly from the employee rather than the employer.

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

Requirement that DIR Report State Work Injuries by Ethnicity, Race, and Gender (AB 1651)

Existing law requires the Department of Industrial Relations to publish an annual report containing statistics on state work injuries and occupational diseases and fatalities by industry classifications. This bill would require the report to include subcategories separated by the ethnicity, race, and gender of affected individuals.

Status: Pending in the Assembly Labor and Employment Committee.

Miscellaneous

Call Center Job Protections (AB 1601)

This bill would require employers (as defined) of customer service employees working in a call center to provide at least 120 days' notice to the Labor Commissioner before relocating the call center from California to a foreign country. If a violation occurs, the Labor Commissioner would be authorized to award either a civil penalty up to $10,000 for every day of violation, or to award damages proportionate to the impact on the community as determined by a community impact study, for which the employer shall pay.

The Labor Commissioner will also compile and publish a list of employers providing notice regarding an intent to relocate, and the list will be made available to specified state entities. Employers appearing on the list will be ineligible for state grants, state-guaranteed loans, or tax benefits for five years after the date that the list is published and would be required to remit the unamortized value of any existing grant, guaranteed loan, or tax benefit, as specified.

It would also require that private entities that have contracted with the state of California for call center services as of January 1, 2023 ensure that a certain percentage of services are performed in California.

Similar bills (AB 1677 in 2019 and AB 2317 in 2020) have previously stalled.

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

Public Access to Employer Restrooms (AB 1632)

Since 2005, 17 states have passed laws requiring businesses to allow members of the public experiencing a medical emergency to use employee-only restrooms. AB 1632 would enact a similar requirement in California.

Accordingly, places of business open to the public for the sale of goods or services and that have a toilet facility for their employees would need to permit certain individuals who are lawfully on the business' premises to use that toilet facility during business hours, even if the business does not normally allow public usage of the employee restrooms. Such access would need to be provided if all of the following conditions are met: (1) the individual requesting access has an "eligible medical condition" or uses an ostomy bag; (2) three or more employees are working onsite when the employee requests access; (3) the employee toilet facility is not located in an area where access would create an obvious health/safety risk to the requesting individual or an obvious security risk to the place of business; (4) use of the employee toilet facility would not create an obvious risk or safety risk to the requesting individual; and (5) a public restroom is not otherwise immediately accessible.

"Eligible medical condition" would be defined as Chron's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medication condition that requires immediate access to a toilet facility.

Businesses would be permitted to require the individual to present reasonable evidence of an eligible medical condition or the use of an ostomy device. Such evidence would include a signed statement issued to the requesting individual by a physician, nurse practitioner or physician assistant on a form to be developed by California's State Department of Public Health. Businesses also would not be required to make any physical changes to the employee toilet facility to comply with this bill.

Willful or grossly negligent violations of these requirements would be subject to a civil penalty up to $100 per violation.

Status: Unanimously passed the Assembly Business and Professions Committee and is pending in the Assembly Health Committee.

New Lease Disclosure Requirements Regarding Employee Parking (AB 2206)

To combat air pollution, Health and Safety Code section 43845 presently requires that in certain "air basins designated as a nonattainment area," employers with 50 or more employees that provide a parking subsidy to employees must also offer a "parking cash out program" to employees that do not use this parking. This bill would require that for leases entered into or renewed after January 1, 2023, the lessor shall list the amount of parking costs as a separate line item in the lease or provide a list of parking costs within 30 days after the lease is entered into or renewed.

Status: Pending in the Assembly Transportation Committee.

Tax Credits for Hiring Food Service Employees (AB 2035)

California's tax laws allow "qualified taxpayers" (including employers) to obtain tax credits for hiring a "qualified full-time employee" (as defined) if certain criteria are met. While presently employers engaged in certain services, including food services, are specifically excluded from these credits, this bill would expand the definition of "qualified taxpayer" to include these excluded entities and allow them to claim the credit under certain circumstances. Amongst other things, the employer would need to pay "qualified wages" for an average of 25 hours per week to the employee, depending on the type of services the employer provides. It would also identify additional conditions an employee must satisfy to be considered a "qualified full-time employee." It would also include within the definition of "designated pilot areas" for tax credit purposes those areas with an average unemployment rate greater than the state average unemployment rate (as measured against enumerated criteria).

Status: Pending in the Assembly Revenue and Tax Committee.

Tax Credits for Hiring Injured or Recovering Workers (AB 2378)

Along the lines of AB 2035 discussed above, this bill proposes a tax credit of up to 40% of the wages paid or incurred by the employer (up to $6,000) for employees hired on or after January 1, 2023 who are a vocational rehabilitation referral, a qualified SSI recipient or a qualified SSDI recipient (as those terms are defined).

Status: Pending in the Assembly Revenue and Tax Committee.

Tax Credits for Hiring Homeless of Foster Youth (AB 1484)

Continuing the theme of tax credits to encourage employer hiring in certain respects, AB 1484 would provide a tax credit of up to 40% of the first-year wages if an employer hires an employee who is a homeless youth, foster youth, or former foster youth (as defined).

Status: Pending in Senate Governance and Finance Committee.

Changes to Personal Service Contracts for "Musical Talent" (AB 2926)

Labor Code section 2855 governs so-called personal services contracts (including generally limiting them to seven-year periods) and has provisions specifically applicable to personal services related to phonorecords. This bill would broaden these provisions beyond simply the "phonorecord" context and instead focus on "musical talent" and "musical products" and implement changes related to personal services contracts applicable to them. Amongst other things, it would limit the length of option periods, authorize a "musical talent" to terminate their personal services agreement under certain circumstances, and identify the new coverage period if the musical talent willingly renegotiates an existing record contract.

Status: Pending in the Assembly Labor Committee.

Remote Work for Finance Lender Employees (AB 2001)

While California's Financing Law presently precludes finance lenders from transacting business at a location other than that identified in its license, this bill would authorize licensed finance lenders to designate employees who could work at a remote location provided certain criteria are met (e.g., prohibiting consumer's personal information from being stored at the remote location unless stored on an encrypted device or encrypted media).

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

Prevention of Workplace Violence for Emergency Medical Services Workers (AB 2729)

Existing law requires emergency ambulance employees to receive employer-paid training in specified areas, including preventing violence against employees and patients, and imposes safety responsibilities on employers and employees, including maintaining an effective injury prevention program. This bill would require the Division of Occupational Safety and Health to develop educational materials about the regulation of workplace violence in the context of emergency medical services and medical transport, which materials shall be posted on the division's website. The division would also commission a study to determine best practices to address and mitigate workplace violence against emergency medical services and medical transport workers.

***Status*:** Pending in Assembly Labor Committee.