CALIFORNIA LEGISLATIVE SUMMARY

MARCH 2022

The 2022 Legislative Session is officially underway and has already resulted in new laws at the federal level limiting employment arbitration agreements regarding sexual assault/harassment claims (HR 4445) and in California reinstating COVID-19 Supplemental Paid Sick Leave (SB 114). [Click links to jump to further discussion.]

In Sacramento, the deadline to introduce new bills has now passed, and several initially contradictory trends are present. On the one hand, the California Legislature has announced that it has lifted the COVID-19 limitations on the number of bills that can be considered, so there is an increase in 2022 of the number of new employment bills introduced compared to 2020 and 2021. On the other hand, with the recent retirement of the two elected representatives most responsible for new employment legislation (Senator Hannah Beth Jackson and Assemblywoman Lorena Gonzalez-Fletcher), there seem to be fewer earthshaking bills compared to prior years. Of course, since California is California, employers and human resources professionals should continue to monitor the employment bills under consideration, 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).
- 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) and potentially four-day workweeks more generally (AB 2932).
- Expand the current exemptions from the California Consumer Privacy Act for information obtained in the employment context (AB 2871 and AB 2891),
- Require employers to allow the general public to access restrooms provided to employees under certain circumstances (AB 1632).

There were also several so-called "spot bills" introduced (i.e., bills pledging only "non-substantive" changes that can be materially amended later) on various employment subjects, so the scope of material proposed employment changes may still expand.

Looking ahead, the deadline for bills to pass key substantive committee hearings is April 29th, so significant amendments and votes can be expected shortly.

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

TABLE OF CONTENTS FOR NEW LAWS AND PENDING BILLS

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. For more information, see WTK's Special Alert here.

PENDING BILLS

COVID-19-Related Proposals

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's Advisory Committee on Immunization Practices determines that COVID-19 vaccinations are no longer necessary for health and safety.

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.

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.

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.

Harassment/Discrimination/Retaliation

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

This bill would amend the Fair Employment and Housing Act (FEHA) to include protections for "family responsibilities," including in its discrimination and harassment provisions. "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.

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

Cannabis Discrimination Protections (AB 2188)

This bill addresses concerns that some employer drug testing fails to show if an employee is actually impaired 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 preclude employers or prospective employers from administering a performance-based impairment test, or from taking corrective action against an employee who is determined to be impaired by cannabis on the property or premises of the place of employment or during employment hours, based on a performance-based test. Also, it would not preclude employers or prospective employers from administering a blood, oral fluid, breath, or other chemical test that detects the active presence of tetrahydrocannabinol (THC, or the principal psychoactive constituent in cannabis) in the employee's or applicant's system and would not preclude corrective action if the employee tests positive for the active presence of TCH on the property or premises of the place of employment during employment hours. Lastly, it would not preclude a screening test for nonpsychoactive cannabis if: (a) federal law requires such testing; or (b) the employer would lose a federal funding or federal licensing-related benefit for failing to do so.

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

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 before January 1, 2023, because of the statute of limitations 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: (1) 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.

Perhaps 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 for 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 has been compromised by a written settlement agreement between the parties entered into before January 1, 2023.

Retaliation Protections Related to Natural Disasters (SB 1044)

This bill appears to respond to media reports of warehouse employees killed and injured during the December 2021 tornado outbreak in Kentucky. Accordingly, it would preclude employers from taking or threatening adverse action against employees who refuse to report to or for leaving a workplace within the affected area because the employee felt unsafe due to a natural disaster (as defined). It would also preclude employers from preventing employees from accessing their mobile devices to use for emergency purposes during the natural disaster.

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

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 regarding a defective product or environmental condition that poses a danger to public health or safety, as defined. 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.

Extend Exemptions to California Privacy Rights Act for Employers (AB 2871 and AB 2891)

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. Two new bills would extend the extension again. AB 2891 would extend the exemptions three years (to January 1, 2026), while AB 2871 would extend the exemptions indefinitely.

Two other "spot bills" in the Senate (SB 1388 and 1454) presently reference only non-substantive changes to these provisions but may also serve as the basis to extend these deadlines should the Assembly bills not do so.

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 Act (CARES) that enables 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 116 in 2021, which passed the Tax and Revenue Committee before stalling.

Biometric Information Policies (SB 1189)

This bill would require private entities in possession of biometric information to develop and make available to the public a written policy establishing a retention schedule and guidelines for permanently destroying the biometric information. It would also preclude private entities from disclosing biometric information unless certain criteria are satisfied, including the authorization by the subject of the biometric information. It 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 violation per day. "Biometric information" would be defined to include imagery of fingerprints, the face, voice, and the iris/retina, as well as other types of information.

While not crafted as a bill specifically targeting employers, the concern is that it could be interpreted as applying to employers who obtain such information (e.g., fingerprint activated time clocks, facial/voice

recognition software, etc.), especially given class action lawsuits filed in other states with such biometric privacy laws (e.g., Illinois, etc.).

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, that 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.

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. 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. 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.

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.

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.

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 amend the CFRA and 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. 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.

Notably, bereavement leave provided under this new law would be considered separate and distinct from time off under the California Family Rights Act (Government Code section 12945.2).

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 be required 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, violations of this new section would also be subject to the recently created mediation pilot program for CFRA violations against smaller employers (i.e., with between five and 19 employees).

Similar bills (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.

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) 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.

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.

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.

Wage & Hour

Publication of Pay Scale in Job Posting and New Requirements Regarding Pay Data Reporting (SB 1162)

Existing law 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 or third parties posting job openings to provide the pay scale for a position in the job posting itself. 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 bill would allow aggrieved individuals to file 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.

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 relatively new reporting requirements in several respects. First, it would require private employers with 100 or more employees to submit a pay data report to DFEH and to submit a separate pay data report for employees hired through labor contractors. Second, employers would no longer be permitted to submit an EEO-1 in lieu of a pay data report. Third, the pay data report would be required to include median and mean hourly rates for each combination of race, ethnicity, and sex within each job category. Fourth, employers with multiple establishments would be required to submit a report covering each establishment. It also establishes civil penalties for violations of the reporting requirement and requires DFEH to publish each private employer's pay data report on a public website, excepting any individually identifiable information associated with a specific person.

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.

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 one 10-minute paid rest period for every four hours worked. Employers would be required to pay one hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

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.

Four-Day Workweek Contemplated (AB 2932)

This bill states the California Legislature's intent to enact legislation creating a four-day workweek but does not yet specify any details.

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.

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 is 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.

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, essentially providing licensed manicurists an indefinite exemption from the ABC Test.

Public Sector/Labor Relations

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

Existing law 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.

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

Existing law 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. 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.

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.

Workers' Compensation Coverage for Hospital Employees (SB 213)

This bill was originally introduced in 2021 and has been passed by the Senate. It is currently pending in the Assembly. It 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.

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.

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 but requires a referral from a licensed physician before an injured worker may receive treatment from a licensed clinical social worker (LCSW). This bill would delete the requirement that an employee must receive a referral before treating with an LCSW and would require an employer to provide an employee with access to an LCSW. The bill would prohibit an LCSW form determining disability, as specified.

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.

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, the 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.

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.

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

This bill would require Employment Development Department to post on the department's internet website specified information related to the Federal Unemployment Tax Act tax credit, including a notice that the tax credit is expected to be reduced starting January 1, 2023, as specified, and each year thereafter that the state has not fully repaid debt owed by the Unemployment Insurance Fund to the federal government, the estimated total debt owed by the fund, a brief explanation regarding why fraudulent claims increase that debt and how to report fraudulent claims, and additional relevant information as the director deems appropriate.

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, completing interviews, and making final determinations of eligibility benefits.

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.

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.

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, which the employer shall pay for.

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.

Public Access to Employer Restrooms (AB 1632)

This bill would require a place of business that is open to the public and that has a toilet facility for its employees to allow 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. These individuals would need to have an "eligible medical condition" (as defined, but generally speaking a medical condition requiring immediate access to a toilet facility) and not providing access would create an obvious health or safety risk to the individual and a public restroom would not be immediately accessible. Businesses would be permitted to require the individual present reasonable evidence of an eligible medical condition or the use of an ostomy device.

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.

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. 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).

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).

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).

Changes to Personal Service Contracts for "Musical Talent" (AB 1484)

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.

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).

Spot Bills

The Legislature has also introduced several so-called "spot bills" which initially reference only "technical" or "non-substantive" changes to a particular existing statute, but which may be materially and substantively amended later, including as key committee votes approach. These spot bills suggest future amendments may be forthcoming regarding, amongst other things, the California Labor Commissioner's authority (AB 1643), California's Wage Orders (AB 205), the payment of final wages (AB 2133), minimum wage violations (AB 2955), wage payments generally (AB 2167), labor services contracts (AB 2524), eligibility for unemployment insurance benefits (AB 2184 and AB 2570), domestic workers (AB 2643), the Private Attorneys General Act (SB 943), and itemized wage statements (SB 1351).