LEGISLATIVE SUMMARY

The 2021 Legislative Session has now reached the halfway point with bills being required to pass the legislative chamber in which they were introduced. And as expected, a number of employment-related bills surmounted this key deadline, including bills that would:

- Amend the Fair Employment and Housing Act (FEHA) to allow employers to provide a voluntary hiring preference for veterans (SB 665).
- Expand the California Family Rights Act (CFRA) to allow time off to care for a "parent-in-law" (AB 1033)
- Amend the CFRA and California's Paid Sick Leave law to allow time off to care for a "designated person" (AB 1041).
- Prohibit confidentiality provisions in a settlement agreement involving any form of harassment or discrimination (SB 331), and
- Expand from two years to four years the retention period for certain employment records (SB 807).

However, and somewhat surprisingly perhaps, many proposed employment bills either failed passage or stalled for this year, including bills that would:

- Amend the statewide Paid Sick Leave law to increase amounts available for employee accrual, usage, and carryover (AB 995).
- Amend the FEHA to prevent discrimination based upon "family responsibility" (AB 1119).
- Require employers to provide bereavement leave (AB 95).
- Require larger employers to provide "backup childcare benefits" (AB 1179).
- Require larger employers to submit annual workplace metrics reports to the Labor Workforce Development Agency (AB 1192).
- Allow the State Department of Public Health to publish COVID-19-related information provided by employers (AB 654), and
- Create a Fast-Food Sector Council to establish industry-wide minimum standards on various fast food employment issues (AB 257)

Please note, since this is the first year of a two-year legislative cycle, these stalled bills may resurface in 2022.

Looking ahead, the California Legislature will be active before the annual summer recess (commencing July 16th) as these remaining bills proceed to key committee votes in the second legislative chamber.

In the interim, below is an overview of the key pending employment bills.

PENDING BILLS

Harassment/Discrimination/Retaliation

Veterans' Hiring Preference for Private Employers (SB 665)

While the FEHA presently allows employers to grant a hiring preference in favor of Vietnam War-era veterans and as a defense against sex discrimination claims, this bill (entitled the Voluntary Veterans' Preference Employment Policy Act) would update and expand this exemption for almost all veterans (regardless of when served) and as a defense against all FEHA discrimination claims. Such a preference would be deemed not to violate any state or local equal employment opportunity law, including the FEHA, if used uniformly and not established for purposes of unlawfully discriminating against any group protected by the FEHA.

"Veterans" would be defined as any person who served full time in the Armed Forces in time of national emergency or state military emergency or during any expedition of the Armed Forces and was discharged or released under conditions other than dishonorable. Employers would be permitted to require a veteran to submit a United States Department of Defense Form 214 to confirm eligibility for this preference. Employers adopting such a preference policy would also need to report this policy to the DFEH.

However, even if signed into law, its provisions would not take effect until the federal ban on transgender military service is rescinded, and this new preference provision would expire on January 1, 2029.

Similar bills (AB 160, AB 353, and AB 1383) have unanimously passed the Assembly before stalling in the Senate's Judiciary Committee in 2015, 2017, and 2019, even though similar preferences have been enacted in nearly 40 states.

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

FEHA Enforcement Changes, Including Four-Year Retention Period for Employment Records (SB 807)

This bill would amend several provisions related to the FEHA and the Department of Fair Employment and Housing Act's enforcement provisions. For instance, it would increase from two years to four years the period that employers must retain the employment records identified in Government Code section 12946 (e.g., applications, personnel, and employment referral records) after the records are created or received, or after an employment action is taken. It would also specify that upon the filing of any verified complaint under the FEHA, the employer would be required to preserve any records and files until the later of (1) the first date after the period for filing a civil action has expired; or (2) the first date after the complaint has been fully disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have terminated.

It would also amend FEHA's venue provision to allow actions involving class or group allegations on behalf of the DFEH to be filed in any county within California.

While the statute of limitations to file an initial charge with the DFEH for FEHA-related claims was recently extended to three years, this bill would amend the statute of limitations for filing other types of charges (e.g., Unruh Act, Equal Pay Act claims, etc.). It would also specify that the statute of limitations for filing a civil action is tolled with the filing of a DFEH charge until the DFEH either files a civil action or one year after the DFEH notifies the complainant it is closing its investigation. This tolling provision would apply retroactively but would not revive already-lapsed claims.

Presently, the DFEH may enforce the FEHA by petitioning a superior court to compel compliance with the DFEH's investigation of certain employment complaints. This bill would permit the DFEH to appeal superior court decisions to the appellate courts. Continuing a trend, it would also enable a prevailing party to recover their fees and costs but limit an employer's ability to recover its fees and costs (even if a CCP 998 offer was issued) only if it proves the DFEH's appeal was frivolous or unreasonable when brought or if litigated after it became so.

While the DFEH presently may convene a dispute resolution conference, this bill would require the DFEH to do so before filing a civil action, which would also potentially toll the deadline to file a civil action.

It would also identify new procedures and deadlines related to class actions related to FEHA allegations.

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

Attorney-Client Privilege Proposed for Communications with the DFEH (SB 774)

This bill would extend the attorney-client privilege to apply to communications between DFEH attorneys and complainants.

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

Leaves of Absence/Time off/Accommodation Requirements.

CFRA-Related Clarifications (AB 1033)

In 2020, California enacted SB 1383 materially expanding the California Family Rights Act (CFRA) both in terms of covered employers (i.e., employers with five or more employees instead of the prior 50 or more employees) and the definition of "family care and medical leave" (i.e., adding grandparents, grandchildren, and siblings for whom leave may be taken to provide care). This bill cleans up or clarifies a couple of the ambiguities from last year's amendment.

For instance, while SB 1383 had included a definition for "parent-in-law," it had not otherwise included any substantive provisions related to "parents-in-law," leaving it unclear whether they were intended to be included in this new expanded definition of "family care and medical leave."

AB 1033 resolves any such ambiguity by including "parent-in-law" within the definition of "family care and medical leave," meaning eligible employees at covered employers may take statutorily protected leave to care for a "parent-in-law" with a serious health condition.

A second bill (AB 1867) had enacted until January 1, 2024 a pilot program allowing small employers (i.e., between five and 19 employees) to request mediation through the Department of Fair Employment and Housing (DFEH) for any alleged CFRA-related violations. This bill would recast this program in several respects, including deleting the authorization to request mediation. Instead, it would require the DFEH, when an employee requests an immediate right to sue alleging a CFRA violation, to notify the employee of the requirement for mediation prior to filing a civil action if mediation is requested by the employee or employer. The bill would also identify various deadlines by which mediation-related activities would need to occur, including a 30-day period for a party to request mediation, and a 60-day period for the DFEH to initiate mediation following a request. The mediator would also be required to notify the employee of their ability to request information from the employer under Labor Code sections 226 (wage statements) and 1198.5 (personnel files), and to also help facilitate "reasonable requests" for information to assist with mediation.

Once mediation is deemed unsuccessful or "complete" (as defined) or if mediation did not occur within 60 days, the employee could initiate a civil suit, with the statute of limitations period tolled during the pendency of these mediation efforts.

This mediation program would not apply to requests for a right to sue for violations other than under the CFRA.

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

Expanded Entitlement under CFRA and Paid Sick Leave for "Designated Persons" (AB 1041)

Perhaps reflective of a concern that the statutory focus upon familial relationships for leave purposes ignores modern realities, this bill would amend the California's Family Rights Act (CFRA) and its Paid Sick Leave law to expand when the time-off provisions could be used.

Specifically, it would amend CFRA's definition of family care and medical leave to include (beyond the seven currently identified relationships for whom leave may be taken to care) a "designated person." An employee would be able to designate this individual at the time the employee requested family care and medical leave, but the employer may limit the employee to one designated person per 12-month period of family care and medical leave.

It would similarly amend the definition of "family member" in California's Paid Sick Leave law (Labor Code section 245.5(c)) to include a "designated person." As with the proposed CFRA changes discussed above, an employee could designate that person at the time they request to use paid sick days, while the employer could limit the employee to one designated person per 12-month period of paid sick days.

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

Human Resources/Workplace Policies

Expansion of Settlement Agreement Confidentiality Prohibitions, and Mandatory Time Period for Employees to Review (SB 331)

Presently, Code of Civil Procedure section 1001 precludes settlement agreement provisions restricting the disclosure of factual information related to claims of workplace harassment or discrimination based on sex. Entitled the Silenced No More Act, this bill would expand this provision to include all types of workplace harassment or discrimination, not just based on sex. It would also extend to employees who oppose harassment, discrimination, or retaliation, not simply those who report a complaint.

This bill would similarly amend Government Code section 12964.5, which presently precludes employers from requiring non-disparagement or non-disclosure provisions or that condition bonuses or raises upon signing an agreement restricting their ability to report unlawful acts in the workplace, including sexual harassment. This bill would extend this limitation to all types of unlawful acts, including any type of harassment or discrimination, not simply sexual harassment.

Addressing one current ambiguity, this bill would also preclude employers from including such confidentiality provisions in a separation or severance agreement.

However, these prohibitions will not preclude the inclusion of a general release or waiver of all claims in an employment separation agreement, provided that the release or waiver is otherwise lawful and invalid. Notably, this bill would require such employment separation agreements to notify the employee they have the right to consult an attorney and provide the employee with a reasonable period (but not less than five business days) in which to do so. Employees would be permitted to sign the release prior to the expiration of this review period, provided their decision to do so was not induced by employer fraud, misrepresentations, or a threat to withdraw or alter the offer, or by the employer offer different terms to employees to which such an agreement prior to the expiration of this review period.

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

Telecommuting Clarifications for Posting and Employee Acknowledgments (SB 657)

Various Labor Code provisions require that the employer post notices in conspicuous places at the physical workplace. Responding to questions about whether these posting obligations also apply in the homes of telecommuting employees, this bill would add new Labor Code section 1207 to allow employers to distribute these notices by email with the document or documents attached. This email distribution, however, would not, relieve employers of their obligation to physically post required posters in the workplace.

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

Written Disclosure Requirements of "Quotas" for Warehouse Distribution Center Employees (AB 701)

Citing concerns that "quota" requirements in large warehouses pose safety issues, this bill would require "warehouse distribution centers" (as defined) to provide to nonexempt employees, upon hire, a written description of each quota applicable to the employee. These notices will need to identify the quantified number of tasks to be performed, or materials to be produced or handled, within the quantified period and any adverse employment action that could result from not meeting the quota.

Employers would not be permitted to maintain a quota that prevents compliance with meal or rest periods or health and safety laws. An employer would also be prohibited from taking any adverse action against an employee for failing to meet a quota that precludes compliance with meal or rest periods, health or safety standards, or that was not disclosed. Any time spent by an employee complying with health and safety laws would be considered time on task and productive time under the quota system. If a current or former employee believes a quota caused a violation of meal/rest periods or health/safety laws, they may request a written description of each quota applicable to them as well as their most recent three weeks of personal work speed data. Employers would need to provide this requested information within 21 calendar days from the date of the request.

As with many recent new laws, this bill would create a rebuttable presumption of retaliation for any adverse employment action taken within 90 days of an employee (a) requesting information about a quota via the procedure discussed above; or (b) making a complaint related to a quota alleging a violation of these provisions to the Labor Commissioner, any local or state agency, or the employer.

If an employee files a complaint with the Labor Commissioner, the Labor Commission will be required to provide written notice to each employee in the workplace regarding their rights to report specified violations and about applicable retaliation protections. Upon receiving a complaint, a state or local government entity may request or subpoena records regarding these quotas and employee work speed data. A current or former employee may also bring an action for injunctive relief to obtain compliance with these requirements and, if successful, recover costs and attorneys' fees. For any potential PAGA actions, the employer would have the right to cure alleged violations.

Cal-OSHA would also be required to develop workplace standards designed to minimize the risk of illness and injury among employees working in warehouse distribution centers utilizing production quotas.

A related bill by this same author (AB 3056) stalled in the Senate in 2020.

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

Notice Requirements Regarding State or Federal Emergencies, plus Labor Notices for Federal H-2A Visa Farm Workers (AB 857)

Labor Code section 2810.5 presently requires employers to provide notices to most employees upon hire identifying certain statutorily enumerated items (e.g., rate of pay, regular paydays, employer name, etc.). This bill would also require these notices identify the existence of either a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed and that was issued within 30 days prior to the employee's first date of employment that may affect their health and safety during their employment.

The federal H-2A program provides a temporary federal visa to farm workers admitted into the United States for work in the agricultural industry, including in California. While the federal H-2A workers are covered by many federal, state, and local labor laws and are provided a "job order" summarizing some applicable federal laws, this bill attempts to address concerns that this job order does not identify key worker protections under California law.

Accordingly, new Labor Code section 2810.6 bill would require all of California's H-2A visa employers to provide all H-2A farm workers a written notice of basic California labor rights on their first day of work in California or beginning work for another employer after being transferred by an H-2A or other employer. The California Labor Commissioner would be required to develop by January 2, 2022, a template that H-2A employers may use to comply with these notice requirements, and the Labor Commissioner will have the discretion to decide whether this template will be included as part of the notices presently required under Labor Code section 2810.5.

This template would include in a separate and distinct section a "Summary of Key Legal Rights of H-2A Workers Under California Law," detailing many California labor rights, including the right to meal and rest periods, overtime, prohibited deductions, sexual harassment requirements, and anti-retaliation protections.

Echoing the proposed changes to Labor Code section 2810.5 regarding generally applicable hiring notices, section 2810.6 would also require this notice to identify any federal or state emergency or disaster declarations that may affect this H-2A employment. It would also prohibit any retaliation against H-2A employees who raise questions about such declarations.

To the extent any such disaster or emergency declaration would require additional steps regarding housing, required toilets, handwashing stations, drinking water, and heat working conditions, the H-2A employer would be required to notify the H-2A employee of these changes, and would be prohibited from retaliating against any H-2A employee who inquired about these changes.

Employers would also be required to notify every H-2A employee of any federal or state emergency or disaster declaration within seven days of it being issued that may affect the H-2A

employee's health or safety. Employers would also be prohibited from retaliating against H-2A employees that raise questions about the declaration's requirements or recommendations.

For employees required to work at night, the employer would be required to provide reflective garments and headlamps or other approved lighting for work areas, and to conduct safety meetings advising H-2A employees of the location of certain items, including bathrooms and rest areas.

Status: Passed the Assembly and is pending in the Senate. This bill appears heavily opposed and a very similar bill (SB 1102) was vetoed by Governor Newsom in 2020.

Wage and Hour

Wage Deprivation as "Grand Theft" (AB 1003)

Labor Code sections 215 and 216 presently specify that certain wage-related violations may constitute a misdemeanor. However, to address concerns some employers are intentionally keeping tips or otherwise intended for employees, this bill would add new Penal Code section 487m providing that the intentional theft of wages (including gratuities) in an amount greater than $950 from any one employee or $2,350 in the aggregate from two or more employees in any consecutive 12-month period may be punished as grand theft. It would define "theft of wages" to be the intentional deprivation of wages (as defined by the Labor Code), benefits or other compensation, by fraudulent or other unlawful means, with the knowledge that the wages, benefits or other compensation is due to the employee. For purposes of this new Penal Code section, independent contractors would be included within the definition of "employee," and hiring entities of independent contractors would be included within the definition of "employer."

Wages, benefits, or other compensation that are the subject of a prosecution under this new section would be recoverable in a civil action by the employee or the Labor Commissioner.

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

Labor Commissioner Liens on Real Property (SB 572)

While California law presently authorizes the Labor Commissioner to obtain a lien on real property owned by the debtor/employer to help recover amounts owed in favor of an employee, this bill would authorize the Labor Commissioner to obtain a real property lien to secure amounts due to the Commissioner under any final citation, hearing, or decision. This lien would exist for up to ten years, and the Labor Commissioner would be required to release the lien upon payment of the amount owed, including any interests and costs that lawfully accrued on the original amount owed.

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

Phaseout of the Sub-Minimum Wage for Employees with Developmental Disabilities (SB 639)

While California and federal labor laws presently authorize employers to pay employees with certain disabilities lower wages than other employees, including amounts below the otherwise applicable minimum wage, this bill would phase out this exemption under California law. Specifically, beginning January 1, 2022, California law would preclude any new special licenses from being issued to authorize the payment of lower wages, and beginning January 1, 2025, would prohibit employers from paying employees with disabilities less than the legal minimum wage.

While Labor Code section 1191.5 also presently authorizes the Industrial Welfare Commission to issue special licenses for nonprofit organizations and authorizes a special minimum wage for covered employees, this bill would repeal this provision effective January 1, 2025.

Status: Passed the Senate with bipartisan support and is pending in the Assembly.

Limits on Employer Collections against Public Sector Employees (SB 505)

This bill would amend Labor Code section 224 to impose new requirements before a public employer could involve a third-party collection service or commence a civil action to resolve a monetary obligation owed by the employee. Specifically, unless the money obligation was owed because of fraud, misrepresentation, or theft, the public employer would need to make a good faith effort to consult with the employee to obtain a written authorization allowing the employer to deduct from the employee's wages and before involving a third-party collection service or commencing a civil action. Amongst other things, this written authorization would need to avoid placing an "undue financial burden" upon the employee, and for payments over a period of time, not withhold or divert more than 5% of the employee's monthly gross wages, unless expressly waived by an employee or another applicable legal agreement. This good faith consultation would not be considered part of the time for the employer to initiate a civil action, which shall not exceed one year from the date the consultation commenced.

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

Additional Wage and Hour Protections in the Garment Manufacturing Industry (SB 62)

In 1999, California enacted AB 633 targeting wage theft in the garment industry and creating access to justice for victims. Citing concerns some manufacturers have attempted to frustrate the purpose of AB 633, including by adding layers of subcontracting, this bill is intended to strengthen the protections for garment workers.

Accordingly, it would expand the definition of garment manufacturing generally, including to add certain garment manufacturing process such as dyeing, altering a garment's design, and affixing a label.

Citing a concern that piece rate payments ensure workers receive less than the state-mandated minimum wage, this bill would prohibit employees engaged in garment manufacturing from

being paid by the piece or unit, or by a piece-rate, except in certain specified circumstances. It would also impose statutory damages of $200 payable to the employee for each pay period in which the employee is paid by the piece rate.

It would also define and include "brand guarantors" for purposes of these provisions, regardless of whether the brand guarantor performs the manufacturing or simply contracts with others. It would also specify that garment manufacturers or brand guarantors will share joint and several liability with any contractor or manufacturer who violates these protections.

It would also expand from three years to four years the period that garment manufacturers must retain certain business records, and it would create certain rebuttable presumptions in the employee's favor for claims filed with the Labor Commissioner.

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

Pay Equity for Under-Represented Groups (AB 316)

While California law presently prohibits private and public employers from paying employees lower wages than those of the opposite sex, or another race or ethnicity (except in statutorily enumerated circumstances), this bill states the Legislature's intent to enact legislation to achieve pay equity in state employment across gender, racial, ethnic, and under-represented groups. Amongst other things, it would require the California Department of Human Resources to publish a report by January 1, 2023 (and every two years thereafter) a report on gender and ethnicity pay equity in each classification under the Personnel Classification Plan (as defined) where there is an underrepresentation of women and minorities.

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

AB 5 Exemptions Proposed for Certain Industries and Professions (AB 1561)

In 2019 and 2020, various laws were enacted to exempt specific industries from AB 5's "ABC Test" for worker classification purposes. Continuing this trend, AB 1561 would extend the current licensed manicurists' exemption to January 1, 2025 and extend the current exemption for certain construction industry subcontractors also to January 1, 2025. It would also expand the exemption for individuals licensed by the Department of Insurance to include claims adjusting or third-party administration and would also modify the exemption in the data-aggregating context.

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

<u>State-Provided Benefits</u>

Direct Deposit for Unemployment Insurance Payments (AB 74)

Presently, California authorizes unemployment insurance payments to be directly deposited into a "qualifying account." Citing concerns that recipients should be able to receive these funds more broadly and more quickly, AB 74 would provide the recipient of unemployment or disability

insurance benefits the option to receive payment via direct deposit into a qualifying account of the recipient's choice, or by other disbursement methods such as checks.

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

Notice Requirement for Disqualification of Unemployment Insurance Benefits (AB 397)

Presently, an individual may be disqualified for unemployment compensation benefits if the individual willfully made false statements or representations to obtain unemployment insurance benefits. This bill would require the Employment Development Department (EDD) to provide advance written notice and an opportunity to the alleged false representations before disqualifying the individual from being eligible for unemployment compensation benefits.

Status: Unanimously passed the Assembly Insurance and Appropriations Committees and is pending on the Assembly Floor.

Additional Translations for Unemployment and Disability Insurance Programs (AB 401)

While the Employment Development Department (EDD) presently must provide unemployment and disability insurance information in eight languages (English and the other seven most used languages), this bill would require, commencing July 1, 2022, that the EDD provide translations of the materials in English and the other 30 top written languages used by California residents with limited English proficiency. The EDD would also have additional translation requirements to the extent a claimant's written language is not included within these 31 languages.

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

Increased Paid Family Leave Benefits (AB 123)

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, 2022.

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

<u>Miscellaneous</u>

Extensions of Fee Deadlines in Employment Arbitration Proceedings (SB 762)

In 2019, California enacted SB 707 requiring employers to pay arbitrator fees within thirty days of invoicing or risk allowing employees the option to return to court proceedings. This bill would require arbitrator fee invoices to be served upon all parties and require an extension of the due date to be agreed upon by all parties, presumably to avoid having the arbitrator provide the employer an extension without the employee being aware of the delay or extension.

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

Increased Cal-OSHA Enforcement of Safety Issues (SB 606)

This bill would expand Cal-OSHA's enforcement power in several respects. First, it would authorize Cal-OSHA to issue a citation to an "egregious employer" (as defined) for each willful violation, with each employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties. This change would track similar powers given to the federal OSHA to stack penalties and encourage workplace safety rather than issuing a single blanket violation by such employers.

Second, regarding employers with separate places of employment, it would create a rebuttable presumption that a written policy or procedure that violates the Labor Code or Health and Safety Code constitutes an enterprise-wide violation if Cal-OSHA has evidence of violations at more than one location. If the employer failed to rebut this presumption, Cal-OSHA would be permitted to issue an enterprise-wide citation requiring enterprise-wide abatement based upon that written policy or procedure. Enterprise-wide violations would also be subject to the same penalty provision as willful or serious violations.

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

Multi-threat Protective Gear for Emergency Ambulance Employees (AB 7)

This bill would require emergency ambulance providers to provide multi-threat body protective gear to an emergency ambulance employee upon their request and to make the protective gear readily available for the requesting employee when responding to an emergency call.

Status: Passed the Assembly with bi-partisan support and is pending in the Senate.

Agricultural Worker Protections for Wildfire Smoke (AB 73)

California law presently requires the State Department of Public health to implement various programs relating to public health, including the establishment of a personal protective equipment (PPE) stockpile for healthcare workers and essential workers (as defined) during a 90-day pandemic or other health emergency. This bill would include wildfire smoke events among health emergencies for these purposes and include agricultural workers in the definition of essential workers.

This bill would require the Division of Occupational Safety and Health by January 1, 2023, to develop and distribute air quality training and information, including related to N95 respirator safety, and require agricultural employers to periodically conduct the training.

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

Expansion of Displaced Janitor Opportunity Act (AB 1074)

California's Displaced Janitor Opportunity Act requires contractors and subcontractors who are awarded contracts or subcontracts to provide janitorial or building maintenance services to

retain for a period of 60 days certain employees who were employed at that site by the previous contactor/subcontractor and to offer continued employment if the retained employees' performance is satisfactory. This bill would change this Acts name to be the Displaced Janitor and Hotel Worker Opportunity Act and essentially extend these protections to certain hotel workers.

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

Public Works Disclosures by Contractors/Subcontractors (AB 1023)

Presently, Labor Code section 1771.4 requires contractors and subcontractors working on "public works" (as defined) to furnish payroll records to the Labor Commissioner at least monthly or more frequently if specified in the applicable contract. This bill would make a contractor or subcontractor who fails to furnish these records related to its employees liable for a penalty of $100 per day, but not to exceed $5,000 per project, to be deposited in the State Public Works Enforcement Fund. The Labor Commissioner would not be able to levy these penalties until 14 days after the deadline for furnishing records and would need to ensure these penalties accrue to the actual contractor or subcontractor that failed to provide these records.

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

Foreign Labor Contractor Registration (AB 364)

While the Labor Commissioner is presently required to register and supervise foreign labor contractors who perform foreign labor contracting activities to recruit or solicit foreign workers, these requirements presently apply only to nonagricultural workers, exempting farm labor contractors and agricultural employers. This bill would repeal Business and Professions Code section 9998, thus expanding the application of the foreign labor contractor registration provisions.

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

Cal-OSHA Protections Extended to Most Household Domestic Service Employees (SB 321)

This bill would remove the current exclusion for household domestic service employees from the California Occupational Safety and Health Act (Cal-OSHA) except for such household domestic service that is publicly funded unless certain regulatory provisions are applied and except for family daycare homes. It would also require Cal-OSHA's head to convene an advisory committee relating to industry-specific regulations related to household domestic service, and to adopt such industry-specific regulations by January 1, 2023.

It would also establish a protocol for Cal-OSHA representatives to investigate complaints of alleged serious violations in workplaces that are residential dwellings. It would also require the residential dwelling "employer" to investigate and, if needed, correct the violation, and report its efforts to Cal-OSHA, and provide copies of all correspondence received from Cal-OSHA to the domestic service employee. It would also authorize Cal-OSHA representatives to enter the

residential dwelling with permission or with an inspection warrant to investigate complaints alleging death or serious injuries in household domestic service. However, such inspections of residential dwellings would need to be conducted in a manner that avoids unwarranted invasions of personal privacy.

Governor Newsom vetoed a very similar bill (SB 1257) in 2020.

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

Worker Protections for Direct Patient Care Providers Regarding Technology (AB 858)

This bill would provide that "technology" (as defined) shall not preclude a worker providing direct patient care from exercising independent clinical judgment regarding patient care or from acting as a patient advocate. It would also prohibit employer retaliation against patient care workers who request to override health information technology and clinical practice guidelines and allow employees to file a complaint with the Labor Commissioner.

It would also require employers to notify all workers who provide direct patient care (and their union representatives, if applicable) before implementing new information technology that may materially affect the workers or their patients and require employers to provide adequate training on such new technology. General acute care hospitals would also be required to allow workers providing direct patient care to provide input in the implementation process for new technology impacting patient care delivery.

A very similar bill (AB 2604) was introduced in 2020 but stalled due to the pandemic-related shutdown of the Legislature.

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

Public Sector/Labor Relations

Proposed Changes for Selecting Agricultural Labor Representatives (AB 616)

While agricultural employees presently may select their collective bargaining representatives through secret ballot election, this bill would permit these employees to also select their labor representatives by submitting a petition to the board supported by representation ballot cards signed by a majority of employees in the bargaining unit.

Secondly, while a party may presently appeal a final order regarding an unfair labor practice, this bill would require an employer who appeals orders involving make-whole, backpay or other monetary awards to employees to post an appeal bond for the entire economic value of the order.

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

Public Employer Health Coverage During Strikes (AB 237)

Entitled the Public Employee Health Protection Act, this bill would require "covered" public employers (i.e., those that provide health/medical benefits for non-occupational illnesses) to maintain or pay an enrolled employee's health care/medical coverage during an authorized strike at the same level as if the employee had continued to work. It would also make it an unlawful practice for the covered employer to fail to collect and remit the employee's contributions to this coverage, or to maintain any policy violating these provisions or that otherwise threaten an employee's or their dependents' continued access to health or medical care during the employee's participation in a strike. The Public Employment Relations Board would be responsible for adjudicating any alleged violations of these protections.

Status: Passed the Assembly with bi-partisan support and is pending in the Senate.

Employee Information in Public Employment Context (SB 270)

Presently, certain California public employers must provide labor representatives with the names and home addresses of newly hired employees, as well as certain work information (e.g., job title, department, contact information) within 30 days of hire, and must also provide this information for all employees in a bargaining unit at least every 120 days. To address concerns public employers are not providing this information, this bill would, commencing July 1, 2022, authorize an exclusive representative to file an unfair labor practice charge provided certain conditions are first met (e.g., written notice of a violation and an opportunity to cure certain violations).

Status: Passed the Senate is pending in the Assembly.