LEGISLATIVE SUMMARY

The 2021 Legislative Session is now in full swing and the California Legislature is clearly taking advantage of the budgetary process to enact new employment laws. In addition to the law reinstating California's COVID-19-related supplemental paid sick leave (SB 95), Governor Gavin Newsom has also now signed a new law creating recall rights for employees working in certain industries that were laid off due to COVID-19-related impacts (SB 93). This new recall rights law took effect immediately and will remain effective until December 31, 2024.

The expiration of the April 30th deadline for bills to pass key policy committee votes has also brought further clarity to this legislative session. On the one hand, and as expected, many employment-related bills surpassed this initial hurdle, including bills that would:

- Amend the statewide Paid Sick Leave law to increase amounts available for employee accrual, usage, and carryover (AB 995) and allow usage to care for a "designated person" (AB 1041).
- Amend the Fair Employment and Housing Act (FEHA) to prevent discrimination based upon "family responsibility" (AB 1119).
- Amend the FEHA to allow employers to provide a voluntary hiring preference for veterans (SB 665).
- Expand the California Family Rights Act (CFRA) and to allow time off to care for a "parent-in-law" or a "designated person" (AB 1033 and AB 1041).
- Require employers to provide bereavement leave (AB 95).
- Create a presumption of COVID-19-related retaliation (SB 606).
- Prohibit confidentiality provisions in a settlement agreement involving any form of harassment or discrimination (SB 331).
- Expand from two years to four years the retention period for certain employment records (SB 807), and
- Require larger employers to provide "backup childcare benefits" (AB 1179).

On the other hand, bills that would provide clarity regarding telecommuting issues (AB 1028 and AB 513), allow employers to provide tax-favored student loan repayment assistance (AB 116) modify the Private Attorneys General Act (AB 530) and allow individualized alternative workweek schedules (AB 230) stalled but may be revisited in 2022.

Looking ahead, bills must pass their legislative chamber of origin by June 4, 2021, so there will likely be further amendments and key votes throughout the month of May.

In the interim, below is an overview of the recently enacted COVID-19 supplemental paid sick leave law (SB 95) and recall rights law (SB 93), followed by an overview of the key pending employment bills.

NEW LAWS

California Enacts Rehire Rights for Employees in Certain Industries Laid Off due to COVID-19 Impacts (SB 93)

On April 16, 2021 and using the expedited budgetary process, California Governor Gavin Newsom signed this new statewide law creating rehire rights for employees in the hospitality and business service industries who had been laid off for reasons related to the COVID-19 pandemic. Because it is a budget bill, it is immediately effective, and although presumably related to the COVID-19 pandemic, it will remain in effect until it automatically expires on December 31, 2024.

The key provisions of this new law are discussed below.

What Employers and Industries does it apply to?

This law applies to an "enterprise," which is specifically defined to mean hotels, private clubs, event centers, airport hospitality operations, airport service providers, or who provide building services to office, retail, or other commercial buildings. Each of these terms is further defined in SB 93 as follows:

- "**Hotel"** means a residential building for lodging and other related services for the public, and that contains 50 or more guest rooms, or suites of rooms (calculated based on the greater of the room count on the opening of the hotel or on December 31, 2019).

- **"Private club"** means a private, membership-based business or nonprofit organization that operates a building or complex of buildings containing at least 50 guest rooms or suites of rooms that are offered as overnight lodging to members (as with "hotels," the number of guest rooms/suites of rooms is calculated based on the greater of the room count on the opening of the hotel or on December 31, 2019).

- **"Event Center"** means a publicly or privately owned structure of more than 50,000 square feet or 1,000 seats that is used for public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums and convention centers.

- **"Airport hospitality operation"** means a business that prepares, delivers, inspects or provides any other service in connection with the preparation of food or beverage for aircraft crew or passengers at an airport, or that provides food and beverage, retail, or other consumer goods or services to the public at an airport.

- **"Airport service providers**" means a business that performs, under contract with a passenger air carrier, airport facility management, or airport authority, functions on the property of the airport that are directly related to the air transportation of persons, property or mail.

- "**Building Service**" means janitorial, building, maintenance or security services.

Please note, hotels, private clubs and event centers also include any contracted, leased or sublet premises connected to the "enterprise's" purpose.

What Employees are Covered?

This law applies to "laid off employees" which is defined as an employee who had worked for the employer six months or more in the 12 months preceding January 1, 2020 and whose recent separation from active service was due to the COVID-19 pandemic. "Employee" is further defined to include an individual who in a particular week perform at least two hours of work for an employer. Qualifying COVID-19-related impacts include public health directives, government shut-down orders, lack of business, a reduction in force, or other economic, non-disciplinary reasons due to the COVID-19 pandemic.

What do these Rehire Obligations include?

Broadly speaking, as covered employers begin creating or filling prior positions, they must notify laid-off employees about positions for which those employees would be qualified. Specifically, within five days of establishing a position, the employer must offer its laid off employees in writing all positions that become available for which the employee is qualified. These written notices must be by either hand delivery or sent to their last known physical address, and by email and text message to the extent the employer possesses such information. An employee is deemed qualified if they held the same or similar position at the employer at the time of the employee's most recent lay-off.

The employer will need to offer positions to laid-off employees in an order of preference corresponding to the law's qualification guidelines. If more than one employee is entitled to preference for the position, the employer must offer the position to the laid-off employee with the greatest length of service based on the employee's date of hire.

The laid-off employee will be entitled to five business days (i.e., any day except Saturday, Sunday, or any official state holiday) to accept or decline the position. Employers may make simultaneous, conditional offers of employment to laid off employees, with a final offer conditioned upon application of the law's preference system.

An employer that declines to recall a laid-off employee on the grounds of lack of qualifications and instead hires someone other than a laid-off employee will need to provide the laid-off

employee written notice explaining the reason for the decision and the length of service of the person hired instead. This written explanation must be provided within 30 days of the decision.

Record Retention Obligations

Employers are required to retain records for at least three years from the date of the written layoff notice for each employee. The records to be maintained are identified as follows:

- The employee's full legal name.
- The employee's job classification at the time of separation from employment.
- The employee's date of hire.
- The employee's last known address of residence.
- The employee's last known email address.
- The employee's last known telephone number.
- Copies of the written notice regarding the layoff; and
- All records of communication between the employee and the employer concerning offers of employment made to the employee pursuant to this new law.

Other Circumstances when these Recall/Rehire rights apply?

In addition to the broad definition of "enterprise," and the broad definitions of each term within that term, SB 93 also specifically applies to other instances. For instance, it applies to any of the following:

- The ownership of the employer changed after the separation from employment of a laid-off employee, but the enterprise is conducting the same or similar operations as before the COVID-19 state of emergency.
- The form of organization of the employer changed after the COVID-19 state of emergency.
- Substantially all the employer's assets were acquired by another entity which conducts the same or similar operations using substantially the same assets; or
- The employer relocates the operations at which a laid-off employee was employer before the state of emergency to a different location.

Retaliation Protections

As with almost all California employment laws, SB 93 precludes any discrimination or retaliation against laid-off employees seeking to enforce their rights, participate in proceedings or otherwise asserting their rehire rights. These protections also apply to any employee or laid-off employee who mistakenly, but in good faith, alleges noncompliance with this new law.

How will these rights be enforced?

The California Division of Labor Standards Enforcement (DLSE) has exclusive jurisdiction to enforce this new law. In response to an employee complaint filed with the DLSE, the agency may

award any or all the following: (a) hiring and reinstatement consistent with this new law; (b) front pay or back pay for each day a violation continues (calculated at the highest of three different enumerated options); or (c) the value of benefits the employee would have received under the employer's benefit plan.

While no criminal penalties are authorized, this law also enumerates statutory penalties to be imposed against the employer or its agents. These civil penalties include $100 for each employee whose rights are violated, and $500 in liquidated damages per employee per day for each violation until it is cured. These penalties will be deposited into the Labor and Workforce Development Fund and paid to the employee as compensatory damages.

The DLSE is also tasked with promulgating rules and regulations to implement this new law.

What about similar local ordinances?

California employers have already been attempting to comply with recall or retention ordinances enacted by various municipalities (e.g., Los Angeles, San Diego, Long Beach, Oakland, San Francisco, and Santa Clara). Unfortunately, and as with California's patchwork of municipal level paid sick leave laws, these recall/retention ordinances often vary, thus creating compliance challenges for statewide employers. Unfortunately, also, SB 93 specifically provides that it does not preclude local government agencies from enacting ordinances imposing greater standards or that establish additional enforcement provisions. It also provides that it does not preclude discharged or eligible employees from bringing a common law claim for wrongful termination.

However, and perhaps reflecting the influence of organized labor who supported SB 93, it also provides that these new rehire rights may be waived in a valid collective bargaining agreement that explicitly waives these protections in clear and unambiguous terms.

California Reinstates Expanded Version of its COVID-19 Supplemental Paid Sick Leave (SB 95)

On March 19, 2021, Governor Gavin Newsom signed a budget bill (SB 95), which:

(1) Largely reinstates California's supplemental paid sick leave law (AB 1867), which expired on December 31, 2020 -- the same time as the federal Families First Coronavirus Response Act (FFCRA).
(2) Expands this COVID-19 supplemental paid sick leave to more employers and allows it to be used for more qualifying reasons; and
(3) Took effect on March 29, 2021 and applies retroactive to January 1, 2021 but is only effective through September 30, 2021.

Each of these items is discussed in greater detail below.

For Context: Previous Federal and State Legislation as well as Local Ordinances

To understand this new state law, it is helpful to understand the legislative backdrop and the gaps it is trying to fill. In Spring 2020, the federal government enacted the FFCRA creating a paid sick leave entitlement for COVID-19 purposes that only applied to employers with fewer than 500 employees. The FFCRA also authorized health care or emergency responder employers to exclude certain health care providers and emergency responders from the FFCRA.

Concerned about the FFCRA's apparent exclusion of larger employers and various health care providers, California enacted AB 1867 to apply COVID-19 Supplemental Paid Sick Leave (COVID-19 SPSL) to larger employers (i.e., "hiring entities" with 500 or more employees) and the excluded health care providers/emergency responders. Simply put, AB 1867 was intended to fill in coverage gaps that existed under the federal FFCRA. In turn, several California cities and counties enacted their own versions of "supplemental paid sick leave" ordinances to also extend the FFCRA's provisions to larger employers within California, albeit each with their own variations and differing in some respects from AB 1867.

Perhaps assuming, however, that the FFCRA would be extended if needed, AB 1867 and these local ordinances consistently tied their sunset provisions to the FFCRA's expiration date. Accordingly, when the federal government subsequently only extended the FFCRA's tax credits for SPSL-related leave purposes if voluntarily extended but did not also actually extend the FFCRA's leave requirements beyond December 31, 2020, AB 1867 and nearly all these local ordinances similarly expired on December 31, 2020.

Understandably concerned that the need for COVID-19 SPSL did not automatically expire when a new calendar year dawned, California and these municipalities have attempted to reinstate and often expand their COVID-19 SPSL requirements to once again fill in the gaps caused by the FFCRA's expiration. For example, San Francisco, Oakland, Los Angeles (City and County), Sacramento, Long Beach, San Jose, San Mateo (County), Santa Rosa and Sonoma, have all extended their supplemental leave ordinances, and in many instances have expanded them to apply to employers previously covered by the FFCRA (i.e., those with 500 or fewer employees) and made these ordinances retroactive to January 1, 2021. Readers with operations within these (and perhaps other municipalities with similar ordinances) may wish to examine those local ordinances.

The new law just signed by Governor Newsom similarly reflects California's statewide effort to reinstate and expand its COVID-19 SPSL requirements to fill in for the now-expired FFCRA.

Employers Required to Provide COVID-19 SPSL

One of the immediate differences between this new law and the prior FFCRA and AB 1867 are the "employers" required to provide COVID-19 SPSL. While previously almost any employer had

to provide COVID-19 SPSL, with the only difference being whether it was required under the FFCRA (for employers with 500 or fewer employees) or AB 1867 (for employers with more than 500 employees), this new California law only applies to employers with more than 25 employees. Thus, any employer with more than 25 employees must provide COVID-SPSL under this new California law, and there is no longer any exclusion for so-called larger employers (i.e., with more than 500 employees).

Who is Eligible for COVID-19-SPSL?

Given the law's purpose of ensuring employees have paid time off related to COVID-19, it has a broad definition of eligibility. For instance, while AB 1867 defined "covered worker" to mean someone who left their home or residence to perform work, this law defines "covered employee" broadly as an employee "who is unable to work or telework for an employer" for any of the qualifying reasons discussed below. Also, as with AB 1867 and in contrast to the generally applicable statewide Paid Sick Leave law (Labor Code section 245), COVID-19-SPSL is immediately available to any eligible employee (i.e., unlike for general paid sick leave purposes, the employee need not have worked for 30 calendar days and need not wait 90 days before usage).

What Qualifies for COVID-19 SPSL?

One of the more dramatic changes with this newly effective state law is the expanded reasons for which COVID-19-SPSL can be taken. Under AB 1867 in 2020, a "covered worker" could only use COVID-19 SPSL for the following three reasons:

> (A) the worker was subject to a federal, state, or local quarantine or isolation order related to COVID-19.
> (B) the worker was advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
> (C) the worker was prohibited from working by the worker's hiring entity due to health concerns related to the potential transmission of COVID-19.

In contrast, the new law requires employers to provide COVID-19 SPSL under any of the following seven reasons:

> (A) The covered employee is subject to a quarantine or isolation order related to COVID-19 as defined by an order or guideline of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace (and if more than one of these applies, the employee is entitled to use the COVID-19 SPSL for the minimum quarantine or isolation period under the order or guidelines that provides the longest such minimum period).

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.
(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.
(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
(F) The covered employee is caring for a family member (as defined under the statewide Paid Sick Leave law [Labor Code section 245.5]) who is subject to an order or guidelines described in subparagraph (A) above or who has been advised to self-quarantine, as described in subparagraph (B).
(G) The covered employee is caring for a child (as defined under the statewide Paid Sick Leave law [Labor Code section 245.5(c)] whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

As noted, in contrast with the current statewide paid sick leave entitlement, this COVID-19 SPSL is available immediately (i.e., no 30-day employment requirement, or 90 days of employment before usage), and applies to those workers otherwise excluded from the general definition of "employee" for paid sick leave purposes in section 245.5(a) (e.g., CBA-covered employees, flight crew members, city/state employees, in-home support workers, etc.).

How Much COVID-19 SPSL is Available to Workers?

As under AB 1867, the amount of COVID-19 SPSL under the new law depends on whether the covered employee is essentially full-time or part-time. For instance, and consistent with AB 1867, covered employees are entitled to 80 hours of COVID-19 SPSL if either (a) the employer considers the covered employee to be "full time," or (b) the covered employee worked or was scheduled to work, on average, at least 40 hours per week for the employer in the two weeks preceding the date the worker took COVID-19 SPSL.

Also consistent with AB 1867, other covered employees are entitled to differing amounts of COVID-19 SPSL depending on the type of schedules they work and/or their length of service with the employer. For instance, covered employees with a **normal weekly schedule** are entitled to the total number of hours the covered worker is normally scheduled to work for the hiring entity over a two-week period. Employees with **variable schedules** are entitled to 14 times the average number of hours the employee worked each day for the hiring entity in the six months preceding the date the worker took supplemental paid sick leave. If the employee has worked less than six months but more than 14 days, this calculation is made over the entire period the worker has worked for the hiring entity. Finally, if the employee works a variable number of hours and has

worked for the hiring entity for 14 or fewer days, the employee will be entitled to the total number of hours worked for the hiring entity.

Moreover, as under AB 1867, workers can use the sick leave granted upon oral or written request (i.e., no need for medical certification) and the worker determines how much to use.

Two other points about the amount of COVID-19 SPSL are worth making. First, consistent with AB 1867, this "supplemental" paid sick leave is in addition to the amount of paid sick leave provided under California's currently existing statewide paid sick leave law. Second, while many of the recently extended municipal ordinances appear to only allow employees to use the balance of any SPSL not used in 2020 under that ordinance, this new statewide law appears to replenish the amount of COVID-19 SPSL, thus seemingly allowing the employee to use the full amount of COVID-19 SPSL in 2021 regardless of how much may have been used in 2020 under AB 1867.

What is the Applicable Rate for Supplemental Paid Sick Leave?

One difference between the new law and AB 1867 in 2020 is how to pay the employees who use COVID-19 SPSL. Specifically, while AB 1867 used a single standard for identifying the SPSL pay rate for both exempt and nonexempt employees, the new state law identifies different standards depending on whether the employee is exempt or nonexempt.

For nonexempt employees, the employer shall pay the SPSL at the highest rate of the following:

(A) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 SPSL, regardless of whether the employee worked overtime in that workweek.
(B) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.
(C) The state minimum wage.
(D) The local minimum wage to which the covered employee is entitled.

In contrast, for exempt employees, the COVID-19 SPSL is calculated in the same manner as the employer calculates wages for other forms of paid leave time.

As with the FFCRA and AB 1867, this new law restates the general rule that the employer need not pay more than $511 daily and $5,110 in the aggregate for the employee's COVID-19 SPSL usage. The new law, however, has two new exceptions to this general rule. First, it states these caps (which were originally copied from the federal FFCRA) will automatically be raised to the new levels identified in any federal legislation amending the FFCRA as of the date any such federal amendments take effect. Second, this new law also authorizes a covered employee who has

reached the maximum dollar amounts to utilize other available paid leave to fully compensate the employee for leave taken.

How Does COVID-19 SPSL Intersect with Other Paid Time Off?

As with AB 1867, the employer cannot require the worker to use other paid or unpaid leave, paid time off or vacation provided by the hiring entity before or in lieu of the worker using this supplemental paid sick leave. However, the new version has a provision regarding the interplay between COVID-19-SPSL and employees unable to work pursuant to the Cal-OSHA's Emergency Temporary Standards (ETS). Accordingly, to satisfy the ETS' requirement to maintain an employee's earnings when the employee is excluded from the workplace due to COVID-19 exposure, an employer may require a covered employee to first exhaust their COVID-19-SPSL under this new law.

As noted at the outset, the COVID-19 SPSL provisions took effect on March 29, 202, and apply retroactively to January 1, 2021. And as with AB 1867, employers may wonder how this retroactivity affects time off they may have already provided in the period between AB 1867's expiration on December 31, 2020 and this new law taking effect. Like AB 1867, if the employer paid the covered employee a supplemental benefit for leave taken after January 1, 2021 in an amount equal to or greater than that required under this new law and that was allowed for the same qualifying reasons as under this new law, then the employer may count the hours of this other benefit towards the total number of COVID-19-SPSL otherwise required under this new law. As under AB 1867, this can include paid leave the employer provided pursuant to any federal or local law that became effective on or after January 1, 2021. However, it bears repeating that the employer cannot take a credit for paid sick leave provided under California's generally applicable paid sick leave since the COVID-19 leave is intended to be "supplemental."

Other Retroactivity Issues

As under AB 1867, this new law also provides opportunities for an employer to retroactively compensate employees who may have taken unpaid or not fully paid time off between January 1, 2021 and this new law's enactment. For instance, if the employee took time off for a qualifying reason after January 1, 2021 and before this new law took effect, and the employer did not compensate the employee in an amount at least equal to the amount required under this new law, then the employer must provide a retroactive payment upon the oral or written request of the employee. This retroactive payment must be made on or before the payday for the next full pay period after the oral or written request of the employee and must be reflected on the itemized wage statement reflecting the amount of COVID-19 SPSL available.

Notice Requirements

California's general paid sick leave law requires (per Labor Code section 247) that employers post in a conspicuous place statutorily enumerated information about the Healthy Workplace, Health Families Act. AB 1867 similarly required employers to post a model template the Labor Commissioner would develop regarding COVID-19-SPSL, and it specifically noted employers could satisfy this notice requirement concerning COVID-19-SPSL for workers that do not frequent the workplace by electronic means, including email. This new law similarly requires the Labor Commissioner to develop an updated template for employer notice purposes, and authorizes employers to once again, for employees to do not frequent the workplace, to provide this notice through electronic means, including email. The Labor Commissioner has published this updated template.

Moreover, this new law's enforcement provisions once again incorporate section 246(i), requiring that employers provide notice within an itemized wage statement or separate writing of an employee's available COVID-19 supplemental paid sick leave. Such notice must be given each pay period and must set forth COVID-19-SPSL separately from paid sick days. As under AB 1867, this requirement is not enforceable until the next full pay period following the date that this section takes effect.

For employees with variable schedules (as defined when determining how many hours of COVID-19-SPSL are available for non-full-time employees), the employer can satisfy these available balance notice requirements by performing an initial calculation and then noting "variable" next to that calculation. However, this does not exempt an employer from providing the employee an updated calculation when such a covered employee requests to use COVID-19 SPSL or requests relevant records under the record-keeping requirements under Labor Code section 247.5.

When does this New Law Apply?

This new statewide law will remain in effect through September 30, 2021, which coincides with the most recent federal extension of FFCRA tax credits under the American Rescue Plan signed by President Biden. However, as with AB 1867, any employee who is taking COVID-19 SPSL when this law expires will be permitted to take the full amount of COVID-19-SPSL to which they otherwise would be entitled.

Please note, the various local ordinances (which are once again not preempted) often identify varying expiration dates for those ordinances, and it is possible some may already extend beyond that date or could be extended beyond that date.

How with the New Law be Enforced?

New Labor Code section 248.2(d) provides that any remedies available to enforce "any unlawful business practice" are available to help enforce these provisions. The Labor Commissioner is also authorized to enforce this new law as if COVID-19 SPSL constitutes "paid sick days," "paid sick leave" or "sick leave" under various enumerated Labor Code sections governing the statewide Paid Sick Leave law (e.g., sections 246, 246.5, 247, 247.5 and 248.5).

As with AB 1867, the DLSE has published FAQ's regarding this new law.

COVID-19 SPSL for "Firefighters" and In-Home Support Services Workers

As with AB 1867, this new law also enumerates slightly different amounts and guidelines applicable to "firefighters," as defined. These "firefighter" specific requirements are sprinkled within new Labor Code section 248.2, which also sets forth the more broadly applicable COVID-19 SPSL rules discussed above.

This new law also adds Labor Code section 248.3 identifying SPSL requirements applicable to "in-home supportive services workers. These industry specific requirements are beyond the scope of this Alert but are mentioned here in case any of the readers may be interested in consulting the statute for further questions.

PENDING BILLS

COVID-19-Related Proposals

Presumption of COVID-19 Retaliation, and Increased Cal-OSHA Enforcement of Safety Issues (SB 606)

While California law presently precludes retaliation against an employee who discloses certain COVID-19-related information, new Labor Code section 6409.7 would create a rebuttable presumption of retaliation if the employer takes an adverse action against an employee who does any of the following: (a) discloses a positive test or diagnosis of COVID-19 resulting from exposure at the place of employment or worksite; (b) requests COVID-19 testing as a result of exposure at the place of employment or worksite; (c) requests personal protective equipment that is legally mandated or currently recommended by official public health guidance; or (d) reports a possible violation of an occupational safety or health standard, order, special order or regulation.

This bill would also 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 Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

State Agency Publication of COVID-19 Information by Worksite (AB 654)

In 2020, California enacted AB 685 which, amongst other things, imposed various notice obligations upon employers related to COVID-19, including to report specified information to the local public health department. In turn, the State Department of Public Health is required to make this workplace industry information received from local public health departments available on its internet website to enable the public to track the number and frequency of COVID-19 cases and outbreaks by industry. This bill would require the state agency to publicize this information in a manner that enables the public to track the number of COVID-19 cases and outbreaks by both workplace and industry, not simply industry.

This urgency statute would take effect immediately if enacted.

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

Pay Retention Bonuses for Healthcare Workers (AB 650)

Entitled the Health Care Workers Recognition and Retention Act, this bill would require covered employers (as defined but generally health care providers) to provide hazard pay retention bonuses on January 1, 2022, April 1, 2022, July 1, 2022, and October 1, 2022 to each covered health care worker (as defined) it employs. These bonus amounts would be specified in the statute but vary depending on whether the employee works full time, part time or less than part time (as defined). These bonuses would be in addition to all other compensation owed but would not be considered part of the health care workers regular rate of pay or compensation.

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

Harassment/Discrimination/Retaliation

"Family Responsibility" Protections under the FEHA (AB 1119)

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 direct and ongoing care for a minor child or a "care recipient." In turn, "care recipient" would mean any person who (a) is a family member or a person who resides in the employee's household, and (b) relies on the employee for medical care or to meet the needs 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.

It would also amend FEHA's reasonable accommodation and interactive process provisions to require the employer to potentially determine reasonable accommodation for the known family responsibilities of an applicant or employee related to obligations arising from an unforeseen need to care for a minor child or care recipient whose school or place of care is closed or otherwise unavailable. It would also preclude retaliation against an employee for requesting familial responsibility accommodations, regardless of whether the request was granted.

Status: Passed the Assembly Labor and Employment and Judiciary Committees on party-line votes and is pending in the Assembly Appropriations Committee.

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 claim. 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 United States Department of Defense Form 214 to confirm eligibility for this preference.

However, even if signed into law, its provisions would not take effect until the federal ban on transgender military service is lifted, and until all individuals with any protected classification under FEHA's discrimination protections are permitted to serve.

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: Passed the Senate Judiciary Committee and is pending in the Senate Military and Veterans Affairs Committees.

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 of time 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: Passed the Senate Judiciary Committee and is pending in the Senate Appropriations Committee.

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

This bill would provide that communications between the DFEH attorneys and complainants/aggrieved persons would be protected under the attorney-client privilege.

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 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 that include violations other than under the CFRA.

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

Statewide Paid Sick Leave Increases (AB 995)

Presently, California's statewide Paid Sick Leave law (Labor Code section 245, *et seq.*) allows employees generally to accrue sick leave at the rate of one hour for every thirty hours worked or allows employers to use an alternative method ensuring up to three days or 24 hours of paid sick leave for usage by an employee by the 120th day of employment. This bill would modify these provisions and require employees be permitted to accrue up to at least five days or 40 hours by the employee's 200th day of employment or each calendar year, or in each 12-month period. Corresponding changes would be made regarding the employer's ability to use alternative accrual methods provided these new amounts (five days or 40 hours) are available by the 200th day. It would also raise the employer's authorized limitation on sick leave that is carried over from the current three days/24 hours to five days/40 hours and would specify an employer has no obligation to allow accrued sick leave to exceed ten days or 80 hours.

This bill would also modify the provision exempting employers from providing "paid sick days" if they have a "paid time off" policy meeting various criteria but would increase the accrual limits from three days/24 hours to six days/48 hours (rather than the five days/40 hours identified elsewhere in these amendments). It remains to be seen if this differential is intentional or inadvertent.

Lastly, this bill would increase the paid sick leave available to in-home supportive services employees (as defined), beginning January 1, 2026, from three days/24 hours to five days/40 hours.

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

Bereavement Leave (AB 95)

Entitled the Bereavement Leave Act of 2021, this bill would require employers to approve a request for bereavement leave upon the death of a spouse, child, parent, parent-in-law, sibling, grandparent, grandchild, or domestic partner (as these terms are defined either in this or other specified Labor Code sections). Employers with 25 or more employees would be required to provide up to ten business days of bereavement leave while employers with fewer than 25 employees would be required to provide up to three business days of 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. The bereavement leave would be unpaid

(unless the employer has an existing bereavement leave policy), but an employee may use otherwise accrued or available vacation, personal leave, or compensatory time off.

This law would apply to all employers (regardless of size) and to all employees (regardless of amount of time employed with the employer. However, it would not apply to employees covered by a collective bargaining agreement that contains specially enumerated provisions, including at least as much bereavement leave as required under this bill.

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.

An employee who believes they have been discriminated or retaliated against for exercising their bereavement leave rights would be entitled to file either a complaint with the Labor Commissioner or a civil complaint. A prevailing employee would be entitled to reinstatement, actual damages, as well as attorneys' fees and costs.

A similar bill (AB 2999) stalled in 2020.

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

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 thy 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 Labor and Employment Committee on a party-line vote and is pending the Assembly Insurance Committee.

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 in a separation agreement provisions that preclude the disclosure of unlawful acts in the workplace.

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 time 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 Judiciary Committee and is pending in the Senate Appropriations Committee.

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 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.

"Backup Childcare Benefits" Required for Larger Employers (AB 1179)

This bill would require larger private employers (i.e., with 1,000 or more employees) to provide up to 60 hours of paid "backup childcare benefits" to eligible employees. These backup childcare benefits would be provided either by: (a) contracting with a licensed childcare provider and providing direct payments to the licensed provider for the hours used by an employee; (b) directly paying a qualified backup childcare provider provided by the employee; or (c) reimbursing an employee for up to 60 hours for backup childcare paid by the employee.

This bill mirrors many of the statewide Paid Sick Leave law's provisions, including for default accrual and alternative accrual method purposes, except it accrues based on every 34 hours worked (rather than 30) and the employee must have up to 60 hours accrued by the 200th day (rather than 24 hours by the 120th day) to use for backup childcare benefits. Employers would be required to maintain for three years records documenting hours worked and paid backup childcare benefits accrued and used by the employee.

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

Annual Worker Metrics Reporting (AB 1192)

Citing a concern that employees lack objective information about how employers treat their employees, this bill would require larger employers (i.e., with more than 1000 employees in California) to submit a report to the Labor and Workforce Development Agency (LWDA) by March 31, 2023, and then annually, regarding worker-related statistics of its workforce for the prior calendar year. These reports would need to include worker-related statistics regarding: (1) pay; (2) hours; (3) scheduling; (4) prospects for internal advancement; (5) benefits; (6) the use of contractors; (7) workplace safety; (8) turnover; and (9) equity. Each of these categories are further defined to identify the specific information required (e.g., "pay" requires median pay for all workers in the United States and percentage of full-time workers earning above the United States living wage, etc.).

Public agencies and non-profit corporations would be exempted from these reporting requirements.

Employers would need to submit these reports in an electronic format and be certified under penalty of perjury by the chief executive.

The LWDA would be required to annually publish on its website all worker-related statistics submitted by all employers, classified by industry. This bill would also authorize the Director of Employment Development to provide the LWDA the names and relevant tax information of all private employers with more than 1,000 employees in California.

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

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 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 need to provide updated written information whenever these quotas or potential adverse employment actions change. Employers would also need to provide upon hiring notices of the employees right to comply with health or safety laws without retaliation, and the right to file a complaint.

Employees or their representatives would also have the right to inspect or receive a copy of the most recent three months of an employee's personal work speed data (as defined).

Employers would be prohibited from taking adverse employment action for not meeting a quota that has not been properly disclosed, or for not meeting a quota that does not allow the worker to comply with health and safety laws. It would also provide that any action taken by an employee to comply with health and safety laws be considered time on task and productive time under the quotas or monitoring system.

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.

Current or former employees would be entitled to bring actions for injunctive relieve to obtain compliance with these provisions, and to recover costs and reasonable attorney's fees.

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

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

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 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 provide to all H-2A farm workers a written notice of basic California labor rights on their first day of work in California or beings 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 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.

A very similar bill (SB 1102) passed the Legislature but was vetoed by Governor Newsom in 2020.

Status: Passed the Assembly Labor and Employment and Appropriations Committees on party-line votes and is pending on the Assembly floor.

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 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. 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 Public Safety Committee and is pending in the Assembly Appropriations Committee.

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 nay interests and costs that lawfully accrued on the original amount owed.

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

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 Labor and Human Service Committees and is pending in the Senate Appropriations Committee.

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 Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

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 include 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 Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

Fast Food Industry "Minimum Standards" Contemplated Forthcoming (AB 257)

Entitled the Fast Food Accountability and Standards Recovery Act (aka, the FAST Recovery Act), this bill would establish an 11-person Fast Food Sector Council to establish industry-wide minimum standards on wages, working hours, and other working conditions related to the health, safety and welfare of fast food restaurant workers (with fast food restaurant being defined as a set of restaurants consisting of 30 or more establishments nationally that share common characteristics [e.g., brand, logo, etc.]). These standards would be enforced by the Labor Commissioner.

This bill would also require a fast-food franchisor ensure that its franchisee complies with applicable employment and worker and public health and safety laws and orders. To help achieve this, franchisors would be jointly and severally liable for franchisee violations, and any applicable statutes and regulations could be enforced against the franchisor to the same extent as the franchisee.

New Labor Code section 1473 would also prohibit fast food restaurant operators from discriminating or retaliating against any fast-food restaurant employee who: (1) complained or disclosed information about safety issues to the fast food restaurant operator or a governmental agency; (2) instituted or participated in any proceeding relating to safety or the Fast Food Sector Council; or (3) refused to work in a fast-food restaurant because they reasonably believed the restaurants practices violated health and safety laws. As with many recent retaliation statutes, this bill will create a rebuttable presumption of retaliation if the employee suffers an adverse employment action within 90 days of the fast-food restaurant operator learning of the employee's protected actions listed above. Employees who prevail on any retaliation claim would be entitled to reinstatement, treble damages and attorneys' fees and costs.

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

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 Public Employment and Retirement Committee and is pending in the Assembly Appropriations Committee.

Labor Code Provisions Extended to the Legislature (SB 550)

This bill would generally extend all state laws regulating the employment practices of private employers to apply to the California Legislature. It would similarly apply all Labor Code provisions regulating employers to the Legislature, regardless of whether the Labor Code provision otherwise exempted state agencies or public employers from its requirements.

Status: SB 550 passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee. However, it is anticipated the Appropriations Committee will permanently keep the bill in its suspense file, thus ensuring it fails passage but without any Senator voting to stall the bill.

Small Business Relief from Regulatory or Statutory Penalties (SB 430)

This bill would require each state agency whose policies and activities may affect small businesses to establish a policy by January 1, 2023 to reduce or waive civil penalties for a "small business's" (as defined) violation of a statutory or regulatory requirement if the violation did not involve willful or criminal conduct and did not pose a serious health, safety, or environmental threat. This policy will need to include various factors the state agency must consider when determining whether to reduce or waive the civil penalty.

Status: Unanimously passed the Senate Governmental Organization and Business, Professions and Economic Development Committees and is pending in Senate Appropriations.

State-Provided Benefits

Workers' Compensation Coverage for Hospital Employees (SB 213)

This bill would define "injury" for workers compensation purposes regarding hospital employees providing direct patient care in acute care hospitals to include infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases. Beginning January 1, 2023, COVID-19 would also be included within this definition of infectious and respiratory diseases. It would create a rebuttable presumption these injuries arose out of the course and scope of employment, with the presumption extending for specified periods after the employee's termination of employment.

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

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: AB 74 unanimously passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

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

Presently, an individual may be disqualified for unemployment compensation benefits if the individually 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 Committee and is pending in the Assembly Appropriations Committee.

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 Insurance Committee and is pending in the Assembly Appropriations Committee.

EDD to Notify Employer of Claimant Information (AB 980)

This bill would require the Employment Development Department (EDD) to make available to an employer a list of claimants approved to receive benefits from that employer and provide a method for employers to object to the approved claim.

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

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

Workforce Development Board Equity Training (AB 572)

This bill would require the California Workforce Development Board, upon funding by the Legislature, to develop an outreach, education, and certification program to train restaurant employees, managers, and employers to identify and address disparities in their workforce and implement policies promoting equity of income and career pathways.

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

Miscellaneous

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 any 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.

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 Labor and Employment Committee and is pending in the Appropriations Committee.

Agricultural Worker Protections for Wildfire Smoke (AB 73)

This bill would require the Division of Occupational Safety and Health to establish by January 1, 2023, a stockpile of N95 facepiece respirators sufficient to adequately equip all agricultural workers (as defined) during wildfire smoke emergencies (as defined). Agricultural employers would be required to furnish regional Cal-OSHA offices with monthly employee totals to ensure

adequate amounts of N95 respirators are stockpiled. Agricultural employers who provide this information would be entitled to access these regional stockpiles during wildfire smoke emergencies.

Cal-OSHA would also be required to develop and distributed related training and information, and agricultural employers would be required to periodically conduct the training. Refresher training would also be required during wildfire smoke emergencies prior to distribution of these respirators.

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

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 Labor and Employment Committee and is pending in the Assembly Appropriations Committee.

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 require the contractor and subcontractor provide these payroll records no later than their final day of work performed on the project and identify new statutory penalties for failure to timely provide these records.

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

Large Group Health Insurance Policy Plans (SB 255)

This bill would authorize an association of employers to offer a large group health care service plan contract or large group health insurance policy consistent with ERISA, if certain requirements are met. This association would need to be an organization with business and organizational purposes unrelated to providing health care benefits, and the participating employers would need to have a commonality of interests from being in the same line of business (as defined).

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

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 Labor and Employment and Judiciary Committees on party-line votes and is pending in the Assembly Appropriations Committee.

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 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 to 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 Labor and Judiciary Committees on party-line votes and is pending in the Senate Appropriations Committee.

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.

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

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

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

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 Public Employment and Retirement and Appropriations Committees and is pending on the Assembly floor.

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 Judiciary Committee and is pending in the Senate Appropriations Committee.

Active Duty Pay for State Employees (AB 1032)

This bill would extend the period of pay and benefits for a state employee who is a member of the California National Guard or a United States military reserve organization and is ordered to active duty to 365 days and would authorize the Governor to extend that period for up to an additional 1,460 days by executive order.

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