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New California Employment Laws Effective Now and Coming January 1, 2021

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It's November, which means the leaves are turning red and orange, pumpkin spice treats are plentiful, everyone's starting to wear their cozy sweaters — and new employment laws are here! September 30, 2020, was the last day for California Governor Gavin Newsom to sign new bills into law — and he signed a flurry of them, but vetoed a few as well.

New laws have been passed in workers' compensation, paid sick leave and workplace safety as they related to COVID-19; leaves of absence; worker classification; discrimination, harassment and retaliation protections; privacy; and wage and hour. Unless otherwise stated, the new laws take effect January 1, 2021.

The governor signed COVID-19-related workers' compensation, paid sick leave and workplace safety laws.

COVID-19-Related Laws

The Legislature responded to the COVID-19 pandemic with several new laws that impact employers in the context of workers' compensation, paid sick leave and workplace safety.

Workers' Compensation: SB 1159 establishes a rebuttable workers' compensation presumption for workers that contract COVID-19 under certain conditions by first, codifying Newsom's workers' compensation executive order for workers who contracted COVID-19 between March 19, 2020, and July 5, 2020, and, second, creating a rebuttable presumption for first responders and health care personnel who contract COVID-19 after July 6, 2020.

SB 1159 also creates an "outbreak" presumption for employers with five or more employees, covering workers who test positive for COVID-19 during an "outbreak" at the employee's place of employment. The statute specifically defines "outbreak" as any of the following:

- If the employer has 100 employees or fewer at a specific place of employment, four employees test positive for COVID-19 within two weeks.
- If the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees test positive within two weeks.
- Public authorities order the place of employment closed due to a risk of COVID-19 infection.
- Employers have limited time to reject claims under the new law.

Additionally, when an employer with five or more employees "knows or reasonably should know" that an employee tests positive for COVID-19, SB 1159 requires the employer to inform its workers' compensation carrier and provide specified information within three business days. SB 1159 was an urgency measure that went into effect September 17, 2020.

Paid Sick Leave: AB 1867 also took effect immediately upon being signed on September 9, 2020. This bill expands supplemental paid sick leave for COVID-19-related reasons for certain employers not already covered by the federal Families First Coronavirus Response Act (FFCRA) — specifically, employers with 500 or more employees nationwide, as well as health care providers and first responders that are excluded from FFCRA.

Employees who work for covered employers can take COVID-19 supplemental paid sick leave if the worker is:

- Subject to a federal, state or local quarantine or isolation order related to COVID-19;
- Advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or
- Prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19.

Employees working from home are not eligible for supplemental paid sick leave.

Beginning January 1, 2021, stringent COVID-19 recording and reporting requirements must be followed.

The California Division of Labor Standards Enforcement (DLSE) has issued guidance on the new leave requirements that answers employers' common questions about coverage, eligibility, calculating leave amounts and pay, and how previously provided paid sick leave, under local ordinances, for example, may be credited toward the new law's requirements.

For employers to comply with the law's notice requirements, the DLSE created two model posters: one for food sector workers and a second for all other covered employers. The supplemental paid sick leave law will expire when the FFCRA does (currently set to expire on December 31, 2020).

Workplace Safety: AB 685 establishes stringent COVID-19 recording and reporting requirements when employers receive "notice of a potential exposure to COVID-19" at the workplace. Among other things, AB 685 requires employers to provide a number of notices to different groups of employees within one business day after receiving notice of a potential COVID-19 exposure.

AB 685 also requires employers to notify their local public health agency within 48 hours of a COVID-19 "outbreak," as defined by the California Department of Public Health (CDPH). At the time of publication, the CDPH defined an outbreak in most instances as three lab-confirmed cases within two weeks, though the department could revise this definition. Because the definition of "outbreak" under this law differs from the definition under SB 1159, employers should be mindful of the circumstances and which definition should apply. (See our story on page 10 for details about the CDPH-issued guidance on this new notices law.)

AB 2043, another urgency measure that went into effect immediately when signed on September 20, 2020, requires the California Division of Occupational Safety and Health (Cal/OSHA) to disseminate to agricultural employers and employees information on best practices for preventing COVID-19 infections, both in English and Spanish. This law remains in effect only until the end of the state of emergency.

Finally, the governor signed two bills related to personal protective equipment (PPE): AB 2537 and SB 275. AB 2537 requires public and private employers of workers in a hospital to supply certain employees with PPE, maintain a three-month stockpile of PPE and provide inventory information to Cal/OSHA upon request. SB 275 requires the state to develop a stockpile of PPE, and, beginning January 1, 2023, certain employers must maintain PPE stockpiles as specified.

Leaves of Absence

SB 1383 significantly expands the California Family Rights Act (CFRA) beginning January 1, 2021.

Currently, the CFRA applies to employers with 50 or more employees, just like the federal Family and Medical Leave Act (FMLA), while a separate California law, the New Parent Leave Act (NPLA), requires employers with 20 or more employees to provide parental leave (baby-bonding leave).

Enter SB 1383, which expands CFRA's coverage to include all employers with five or more employees — effectively eliminating the NPLA, the obligations of which will be folded into the expanded CFRA. This expansion will have a major impact on small businesses, which must quickly get up to speed on CFRA's requirements to be ready by January 1.

Small businesses with five to 19 employees should note that a separate bill, AB 1867, created a pilot CFRA mediation program allowing small employers, when a dispute arises, to request mediation through the Department of Fair Employment and Housing's (DFEH) dispute resolution program.

Beginning January 1, 2021, the California Family Rights Act applies to employers with five or more employees.

SB 1383 also expands the definition of "family members" beyond what's covered under the FMLA. Currently, both the FMLA and the CFRA allow leave to care for a parent, spouse or child; on January 1, the CFRA will expand family members to also cover grandchildren, grandparents, siblings and parents-in-law. This expansion will impact larger employers already covered by the CFRA and the FMLA who will in some cases have to administer the two leaves separately. For example, an employee can take 12 weeks of leave to care for a sibling under the CFRA and then another separate 12 weeks to cover a spouse's illness or their own illness under the FMLA for total of 24 weeks of protected leave.

Employers, big and small, should become familiar with the law's details and be prepared to revise or implement compliant policies and practices by 2021.

Another bill makes a clarification related to "kin care," which under current law, allows an employee to use up to half of their accrued sick leave to care for a family member. AB 2017 revises the law to clarify that the employee has the right to designate sick leave as kin care — or not — in order to avoid a designation error and unintentional draw down of kin care time when the sick days were actually taken for personal sick leave.

Lastly, AB 2992 expands the prohibition on discrimination and retaliation against employees who are victims of crime or abuse when they take time off for judicial proceedings or to seek medical attention or related relief for domestic violence, sexual assault, stalking or other crime that causes physical or mental injury.

Worker Classification

It was only last year that the biggest labor law development was AB 5, the worker classification law that codified the California Supreme Court's *Dynamex* ruling. The controversial bill adopted the court's strict ABC test to determine whether a worker is an employee or independent contractor and created numerous exceptions to this test.

Early in this year's legislative session, more than 30 bills were introduced to either repeal or revise AB 5. In the end, only one bill survived and was signed into law: AB 2257. The bill didn't change the ABC test or AB 5's general framework, but it made revisions and clarifications to some existing exceptions and added new ones. For an in-depth look at the ABC test and the numerous industry exceptions to that test, under which the common law classification test applies, download CalChamber's free white paper, A Roadmap to Worker Classification in California.

AB 2257 went into effect when it was signed on September 4, 2020.

Revisions and clarifications to AB 5 went into effect immediately upon being signed by the governor on September 4, 2020.

Discrimination, Harassment and Retaliation Protections

AB 1947 extends the time an individual can file a complaint of discrimination or retaliation with the DLSE, also known as the Labor Commissioner. Under current law, workers alleging they were discriminated or retaliated against in violation of any law enforced by the Labor Commissioner have six months to file a complaint with the Labor Commissioner; beginning **January 1, 2021**, however, AB 1947 extends that time to one year.

Wage and Hour

Enforcement: Another bill, SB 1384, expands the Labor Commissioner's ability to represent claimants under certain circumstances. Currently, the Labor Commissioner can, upon request, represent a claimant in proceedings to appeal a wage claim award if the claimant couldn't afford counsel. SB 1384 extends the commissioner's authority to also represent a claimant who's financially unable to represent themselves in a hearing where a court order has compelled arbitration to determine the claim.

Lastly, AB 3075 specifically makes a successor employer liable for its predecessor's unpaid wage judgments and establishes specific criteria to establish successorship. The bill also allows local jurisdictions to enforce state labor standards requirements regarding payment of wages.

Rest Breaks: A couple of narrow industry-specific rest break bills were signed this year. AB 1512 allows security guards to remain on the premises during rest periods and to remain on call during the rest period. If work interrupts the rest period, the security guard must be permitted to restart the rest period as soon as practicable. This exception applies to security guards registered under the Private Security Services Act working for employers registered under the same law. AB 2479 extends a limited on-call rest break exception for safety sensitive positions at petroleum facilities to 2026.

Pay Data

Another notable bill is SB 973. This bill requires a private employer with 100 or more employees — that is also required under federal law to file an annual Employer Information Report (EEO-1) — to submit a pay data report to the DFEH that contains information about their employees' race, ethnicity and gender in various job categories (similar to the now-rescinded federal EEO-1 Component 2 report) on or before **March 31, 2021**.

The law doesn't specify exactly how the reporting process will be implemented; it only states that employers must submit the report in a searchable and sortable electronic format. The bill gives the DFEH related enforcement authority, and employers likely will hear more from the department in the coming months.

California Consumer Privacy Act

The California Consumer Privacy Act (CCPA) gives California consumers rights over how and whether the personal data they provide to businesses is collected, retained and sold. Because its definitions are broad, the CCPA applies to employee data collected by employers for employment purposes — which is problematic because, under the rights established by the CCPA, employees could potentially request to have their personal information deleted.

By March 31, 2021, certain employers must submit a pay data report to the California Department of Fair Employment and Housing.

To address this issue, the Legislature passed AB 25 in 2019, largely exempting employee data from the CCPA's requirements for one year; this year's AB 1281 extends the exemption for an additional year to the end of 2021. Take note that employers must still comply with the additional CCPA requirements that include providing notice either before or at the time of collecting personal information from an applicant or employee. That notice must describe every category of information that will be collected and the purposes for which it will be used. CCPA regulations describing how employers can give a compliant notice are now in effect. The California Attorney General has begun enforcement of the CCPA, which you can read more about on page 13.

Corporate Boards of Directors

Following from 2018's SB 826 — which requires publicly held corporations with principal executive offices in California to have a minimum number of female directors on their boards of directors — is AB 979, which requires those same corporations to have a minimum of one director from an underrepresented community no later than the close of the 2021 calendar year.

By 2022, a corporate board with four to nine directors must have two directors from underrepresented communities, and a board with nine or more directors must have three directors from underrepresented communities. The bill defines a director from an underrepresented community as "an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender."

Bills Related to Minors

The governor also signed bills related to the employment of minors, including AB 908, which makes it easier for minors to obtain work permits during COVID-19-related school closures. Specifically, it authorizes issuance of a work permit without the appearance of the minor or their parent or guardian when the school is closed due to a "natural disaster, pandemic or other emergency." It also allows for electronic submission/collection of required documents.

In the entertainment industry, a work permit could not be issued to a minor until the minor and their parent or guardian completed the state's mandatory harassment prevention training; AB 3175 revised this to specify that the minor's parent or legal guardian also must accompany the minor during the training and certify to the Labor Commissioner that the training was completed as specified. It also requires the training to be in the language understood by the participants whenever reasonably possible. This bill was an urgency statute that took effect on September 25, 2020.

Related to the last bill is AB 3369, which exempts minors — who received a work permit from the Labor Commissioner within the last two years — from the current state harassment prevention training deadline of January 1, 2021. Like employees who completed training in 2019, they must complete the state's harassment prevention training every two years based on their last training. This urgency bill took effect when signed on September 28, 2020.

Vetoes

Finally, Newsom vetoed some CalChamber-opposed bills, including AB 3216. That bill would have imposed a "right to recall" mandate on certain industries in California, meaning employees who were laid off or furloughed as a result of COVID-19 must be hired back by the company according to seniority. This bill would have imposed burdensome mandates on some of the industries hit hardest by the pandemic. Recognizing the issues with the bill, Newsom vetoed it.

To ensure compliance with the new laws covered in this story, employers should consult with legal counsel. For complete details on these new laws and all other employment laws with which California employers must comply, preorder your *2021 California Labor Law Digest* today.

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