

## 2020 California Labor & Employment Legislative Roundup

California's legislative session closed with the state Assembly and Senate signing nearly 40 bills related to employment. Below we summarize the key legislation Governor Gavin Newsom ultimately signed into law, including respective effective dates and recommended action items for employers and companies utilizing independent contractors in California.

### COVID-19 Legislative Actions

- [SB 1159](#). *Effective date:* September 17, 2020. This legislation provides that a "disputable presumption" of workers' compensation liability exists if an employee has an illness or death resulting from COVID-19 during the period of July 6, 2020, to January 1, 2023. The bill includes reporting requirements for employers when an employee has tested positive. *Action item:* Employers should be prepared to promptly and timely provide information to the workers' compensation claims administrator related to positive COVID-19 diagnosis. Further detail is available [here](#).
- [AB 1867](#). *Effective date:* Retroactive to April 16, 2020. This legislation formalizes COVID-19-related paid sick leave requirements for large employers. *Action item:* Employers who are not covered under the Families First Coronavirus Response Act should ensure they are complying with California's new COVID-19-related sick leave mandate. Further detail is available [here](#).
- [AB 685](#). *Effective date:* January 1, 2021. The bill requires employers to provide written notice to employees and employers of subcontractors of all potential exposure to COVID-19 within one business day of receiving notice of the potential exposure and notify the local public health agency of outbreaks. In addition, it enhances the State of California's Division of Occupational Safety and Health's (Cal/OSHA) enforcement powers, including the ability to shutter businesses experiencing COVID-19 outbreaks. *Action item:* Employers should consult counsel to develop compliant notification procedures in the event of a positive employee test. Further detail is available [here](#).
- [AB 2043](#). *Effective date:* This legislation requires Cal/OSHA to disseminate information on best practices for COVID-19 infection prevention and to work with community, employee, and employer organizations to conduct a statewide outreach campaign, targeted at agricultural employees, to assist with the statewide dissemination of the best practices information. Certain public service announcements will be provided in Spanish. The legislation automatically repeals these provisions when the state of emergency has been officially terminated. *Action item:* None.

### Expanded CFRA Leave and Paid Family Benefits

- [SB 1383](#). *Effective date:* January 1, 2021. This expands the California Family Right Act (CFRA) to include smaller employers. *Action item:* Update policies to ensure compliance. Further detail is available [here](#).
- [AB 2017](#). *Effective date:* January 1, 2021. Labor Code section 233, California's Kin Care law, requires employers to permit employees to use at least half of their annual accrual of sick leave to care for a family member. The legislation amends Section 233 and provides that the designation of sick leave taken for such purposes shall be made in the employee's sole discretion. *Action item:* Update policies to ensure

compliance.

- **[AB 2399](#)**. *Effective date:* January 1, 2021. AB 2399 revises the definitions of "care recipient," "care provider," and "family care leave" to include qualifying exigency provisions and adds a definition of "military member." There also are documentation requirements related to leave because of a qualifying exigency. *Action item:* Update policies to ensure compliance.

## **Additional Workplace Protections**

- **[AB 2992](#)**. *Effective date:* January 1, 2021. AB 2992 expands existing protections prohibiting retaliation against employees who are victims of crime, abuse, or public offenses that cause physical or mental injury or the threat thereof (regardless of whether any person is arrested, prosecuted, or convicted of the associated crime). The bill revises the categories of time off permitted to crime victims to include time used to seek medical attention or counseling for injuries or to participate in safety planning to avoid future crimes or abuse. Employees seeking leave should give advance notice or provide certification of the need for leave as soon as practicable. *Action item:* Update policies to ensure compliance.
- **[AB 1947](#)**. *Effective date:* January 1, 2021. This legislation extends the statute of limitations to file a complaint with the State of California's Division of Labor Standards Enforcement from six months after the occurrence of the alleged violation(s) to within one year after the occurrence of the alleged violation(s). It also authorizes courts to award reasonable attorney's fees to a plaintiff bringing a successful action for the violation of existing law under Labor Code section 1102.5, which, among other things, prohibits employers and their agents from adopting or enforcing policies that prevent employees from testifying before a public body conducting a hearing, investigation, or inquiry. *Action item:* None.

## **Independent Contractors**

- **[AB 323](#)**. *Effective date:* likely January 1, 2021 but the exemptions apply retroactively to existing claims to the maximum extent permitted by applicable law. This legislation expands the exemption to the ABC test for independent contractors relating to newspaper distributors and newspaper carriers. The legislation removed the condition that a newspaper carrier work under contract either with a newspaper publisher or newspaper distributor and extends the exemption period from January 1, 2021, to January 1, 2022. *Action item:* Companies contracting with newspaper distributors or newspaper carriers should consult with legal counsel regarding the independent contractor/employee determination and review applicable contracts for compliance.
- **[AB 2257](#)**. *Effective date:* September 4, 2020. This bill replaces and expands the initial exemptions from the ABC test and introduces new exemptions covering the music industry and services provided at single-engagement events. *Action item:* Employers should consult counsel to review rationale for classifying individuals as independent contractors. Further detail is available [here](#).
- **[AB 1963](#)**. *Effective date:* January 1, 2021. This legislation expands the list of mandated reporters under the Child Abuse and Neglect Reporting Act to include human resources employees and direct supervisors in businesses that: (1) employ minors and (2) have five or more employees. *Action item:* To comply with the legislation's requirements, employers must provide all mandated reporters with training on the identification and reporting of child abuse and neglect.

## **Rest Break Clarifications for Security Officers and Petroleum Safety Employees**

- [\*\*AB 1512\*\*](#). *Effective date:* Under this legislation, security officers registered pursuant to the Private Security Services Act, whose employer is a registered private patrol operator, can be required to (1) remain on the premises, (2) remain on call, and (3) carry and monitor a communication device during rest periods without a break violation. Such security officers must be permitted to restart a rest period anew "as soon as practicable" if the rest period is actually interrupted. Standard penalties apply. *Action item:* Affected employers should review their rest break policies to ensure compliance as of the new year, as no claims are permitted for violations prior to January 1, 2021.
- [\*\*AB 2479\*\*](#). *Effective date:* January 1, 2021. This legislation extends the existing exemption from rest period requirements for specified safety employees at petroleum facilities under section 226.75 of the Labor Code until January 1, 2026. *Action item:* Ensure updated policies if applicable to your business.

## **New Employer Reporting Requirements**

- [\*\*SB 973\*\*](#). *Effective date:* January 1, 2021. No later than March 31, 2021, employers with 100 or more employees must submit a pay data report—like what the U.S. Equal Employment Opportunity Commission (EEOC) currently mandates—to the State of California's Department of Fair Employment and Housing (DFEH) that contains specified wage information. The DFEH must maintain the pay data reports for a minimum of 10 years and will have increased ability to investigate pay equity claims. *Action item:* Employers should consult counsel for additional details on the reporting requirements and format.
- [\*\*AB 3075\*\*](#). *Effective date:* January 1, 2022, or upon certification by the California secretary of state that California Business Connect is implemented, whichever is earlier. The law requires business entities filing a statement of information with the secretary of state to disclose whether any officer or director, or, in the case of a limited liability company, any member or manager, has an outstanding final judgment for the violation of a wage order or the Labor Code. The legislation also provides that a successor to any judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment. Finally, the legislation expressly authorizes local jurisdictions to enforce more stringent local standards relating to the payment of wages. *Action item:* Ensure any filings with the secretary of state are compliant with the new legislation and consult counsel for advice regarding any wage disputes.

## **Labor Commissioner Representation at Arbitration**

- [\*\*AB 1384\*\*](#). *Effective date:* January 1, 2021. When the labor commissioner has determined a claim has merit, a court has compelled arbitration, and the claimant is financially unable to represent themselves, the labor commissioner may represent the claimant at arbitration. *Action item:* Any petition to compel arbitration pursuant to Labor Code sections 98, 98.1, and 98.2 must be served on the labor commissioner.

## **No Rehire Provisions Permissible Where Good Faith Finding of Criminal Conduct**

- [\*\*AB 2143\*\*](#). *Effective date:* January 1, 2021. Section 1002.5 of the California Code of Civil Procedure generally prohibits including a "no rehire" provision in any employment settlement agreement when an "aggrieved person" files a claim against their employer. The law modifies the preexisting exception for sexual harassment/sexual assault to include criminal conduct where an employer has made a documented and good faith determination that the individual engaged in sexual harassment, sexual assault, or any criminal conduct **before** the aggrieved person filed a claim. The legislation also modifies the definition of

"aggrieved person" such that an employee must file a claim against the employer "in good faith" for the prohibition against no rehire provisions to apply. *Action item:* Employers settling claims with employees should work with counsel when drafting settlement agreements, particularly if there is a desire to use a "no rehire" provision.

Consult with legal counsel for more information regarding how these legislative changes and may affect your business and to make sure your business is current on the latest California developments.

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