

Employment & Labor Law Alert

February 2023

A Recap of the New California Employment Laws That Took Effect in 2023

California introduced several important employment laws that took effect in 2023. Here is a summary of what employers should know.

Minimum Wage and Salary Requirements

The California minimum wage amount increased to \$15.50 for all employers, regardless of the number of workers. Additionally, exempt employees must now earn an annual salary of no less than \$64,480.

Some cities and counties in California have a local minimum wage that is higher than this state rate, so employers are encouraged to review their local requirements.

Leaves of Absence

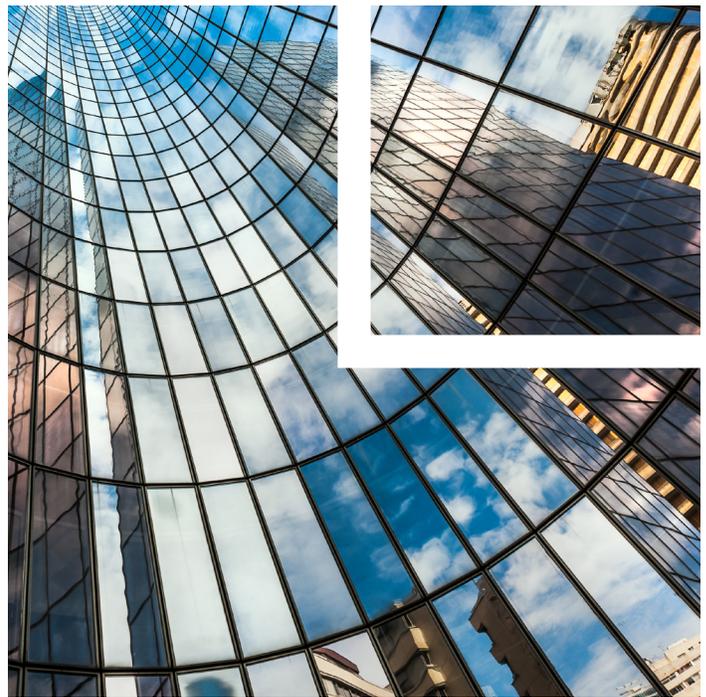
AB 1041 expanded the class of people for whom California employees can take leave to provide care under the California Family Rights Act (CFRA) and Paid Sick Leave to include a “designated person.”

CFRA defines a “designated person” as any individual related by blood or whose association with the employee is the equivalent of a family relationship who is identified at the time the employee requests the leave. Under Paid Sick Leave, “designated person” means a person identified by the employee at the time the employee requests paid sick days.

Employers may limit an employee to one designated person per 12-month period.

Bereavement Leave

AB 1949 ensures that employees who are employed for at least 30 days by an employer with five or more workers are eligible for up to five days of bereavement leave upon the death of a family member. Plus:



- The days of bereavement leave need not be consecutive but shall be completed within three months of the date of death of the family member, which is defined as a spouse or child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.
- The employer may request that an employee provide documentation of the death of the family member.
- The bereavement leave shall be taken pursuant to any existing bereavement leave policy of the employer.
 - If an existing leave policy provides for less than five days of paid leave, the employee shall be entitled to no less than a total of five days of leave, consisting of the number of days of paid leave under the existing policy, and the remainder of days of leave may be unpaid.
 - If an existing leave policy provides for less than five days of unpaid leave, the employee shall be entitled to no less than five days of unpaid leave.
 - If there is no existing leave policy, the leave may be unpaid.

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An employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

Pay Transparency Requirements

SB 1162 requires employers to disclose more pay data as well as provide pay ranges to requesting employees and in job postings, with the aim of increasing pay transparency for applicants and employees.

More specifically:

- Private employers with 100 or more employees must submit a pay data report that includes the median and mean hourly rate for each combination of race, ethnicity and sex within each job category. The report must be submitted on or before the second Wednesday of May of each year beginning May 10, 2023.
- Private employers with 100 or more employees hired through labor contractors must submit a separate pay data report for those employees within the same time frame.
- Employers must submit a report for each establishment.
- Employers with 15 or more employees must include the pay scale for a position in any job posting, including providing pay scale information to any third parties that post those jobs.
- Employers must maintain records of job title and wage rate history for each employee for the duration of employment plus three years. These records may be inspected by the California Labor Commissioner.
- Upon request, an employer shall also provide an employee the pay scale for the position in which the employee is currently employed.
- Employers who fail to file the required report could face a civil penalty of up to \$100 per employee for initial failure to file, not to exceed \$200 per employee for subsequent failures to file the required report.
- Failure by employers to comply with these requirements may result in civil penalties ranging from \$100 to \$10,000 per violation.

COVID-19 Notice Requirements

AB 2693 makes changes to California's COVID-19 notice requirements, which have been extended to Jan. 1, 2024. Instead of providing written notice to employees who may have been exposed to COVID-19, employers can provide notification of COVID-19 exposure by prominently displaying a notice in the workplace. The notice must contain the location of the exposure and the dates during which the COVID-19 case was at the worksite. Additionally, the notice must be posted within one business day of receiving the notification of potential exposure and must remain posted for 15 days. If an employer posts other workplace notifications on an existing employee portal, the notice shall be posted on the employee portal.

Employers must further comply with the following:

- The notice must be prominently displayed in all places where notices to employees concerning workplace rules or regulations are customarily posted.
- The notice must include the contact information of the person able to provide information regarding COVID-19-related benefits to which the employee may be entitled under applicable federal, state or local laws.
- The notice must include the contact information of the person or entity able to provide the cleaning and disinfection plan that the employer is implementing.
- The notice shall be in English and the language understood by the majority of employees.
- The employer shall keep a log of all the dates the notice was posted at each worksite of the employer, and shall allow the Labor Commissioner to access these records when requested.
- The employer shall provide a written notice to the exclusive representative, if any, of confirmed cases of COVID-19 and of employees who had close contact with the confirmed cases of COVID-19 within one business day.

Workplace Safety Measures

SB 1044 prohibits employers, in the event of an emergency condition, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within an affected area because the employee has a reasonable belief that the workplace or worksite is unsafe.

Employers are also prohibited from preventing any employee from accessing the employee's mobile device or other communications device for the purpose of seeking emergency assistance, assessing the safety of the situation or communicating with a person to confirm their safety.

When feasible, an employee leaving or refusing to report to the workplace or worksite is required to notify the employer of the emergency condition causing the employee to leave or refuse to report. When such notification is not feasible, the employee shall notify the employer of the emergency condition as soon as possible.

"Emergency condition" is defined as the existence of (1) a condition of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act, or (2) an order to evacuate a workplace, a worksite, a worker's home or the school of a worker's child due to natural disaster or a criminal act. "Emergency condition" does not include a health pandemic.

Additionally, under another workplace safety measure, AB 2068, anytime a Cal/OSHA citation or special order or action is required to be posted, an employer must post it in multiple languages. Cal/OSHA shall provide the employee notification to the employer in English and in the top seven non-English languages as specified.

Contraceptive Equity Requirements

SB 523 makes it an unlawful employment practice for employers to require, as a condition of employment, a condition of continued employment or a benefit of employment, that applicants or employees disclose information relating to reproductive health decision-making, or for employers to discriminate against applicants or employees based on reproductive health decision-making.

Mandated Retirement Plans

SB 1126 expands the definition of eligible employer, under the state-run retirement savings program (known as CalSavers Retirement Savings Program) to include a person or entity that has at least one employee who is not the owner of the business.

Further, employers with five or more employees and do not offer a retirement savings program are required to have a payroll deposit savings arrangement to allow employee participation in the state-run retirement savings program within 36 months after the CalSavers Retirement Savings Board opens the program for enrollment. By Dec. 31, 2025, employers with one or more employees that do not provide a retirement savings program are required to have a payroll deposit savings arrangement to allow employee participation in the state-run program.

Privacy Rights

In November 2020, California voters approved Proposition 24, the California Privacy Rights Act (CPRA), which amended the California Consumer Privacy Act (CCPA) and added new privacy protections. There are no more exemptions for employment-related personal information, so employees, applicants and independent contractors now have a number of new rights, including:

- The right to correct inaccurate personal information that a business has about them
- The right to limit the use and disclosure of sensitive personal information collected about them

Businesses that are subject to the CCPA have several responsibilities, including responding to consumer requests to exercise these rights and making certain disclosures to consumers about their privacy practices, such as posting a privacy policy.

What Employers Are Encouraged To Do Now:

- Actively review current policies and practices, and make any necessary updates to confirm they are compliant with these new California employment laws.
- Create any policies or practices relating to any of these new California employment laws that they currently do not have.
- Review local minimum wage laws.
- Determine if there are yearly reporting requirements under the new pay transparency law.
- Inform management of new workplace safety protections in emergencies.

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