JUNE 2024
CALSHRM LEGISLATIVE REPORT

PREPARED BY

MICHAEL S. KALT,
CALSHRM GOVERNMENT AFFAIRS DIRECTOR
WILSON TURNER KOSMO LLP

mkalt@wilsonturnerkosmo.com
https://twitter.com/michaelkalt_law

KATHERINE M. MCCRAY
PARTNER
WILSON TURNER KOSMO LLP

kmccray@wilsonturnerkosmo.com

2024 CALIFORNIA LEGISLATIVE SUMMARY

June 4, 2024

With the arrival of summer, Sacramento is heating up – both literally and figuratively – as the Legislature completes key votes prior to its summer recess. It has been particularly busy as the Legislature is considering the highest number of bills in the last decade, and the crucial deadline for these bills to pass the first legislative chamber has just expired.

While a large number of employment bills surpassed this hurdle, a few significant ones stalled, including bills that would have given employees a "right to disconnect" (AB 2751), substantially amended California's Fair Chance Act regarding criminal history information (SB 1345) and further expanded liability in the labor contractor context (AB 2741).

For tracking purposes, we have identified the top bills that – if passed – would have the most significant impact on California employers. These bills would:

- Regulate the use of Automated Decision Tools **and Artificial Intelligence** [AB 2930]
- Expand protections for **time off to victims of crime and violence** [AB 2499]
- Prohibiting **Mandatory Employee Attendance** at Certain Employer-Sponsored Meetings (SB 399)
- Eliminate employers' ability to require employees to use **PTO before paid family leave** [AB 2123]
- Expand employer responsibility to issue **COBRA Notices** [AB 2494]
- Increase Protection for Certain Independent Contractors (**Freelance Workers**) [SB 988]
- Expand **Unemployment Insurance** to Cover **Workers on Strike** [SB 1116]
- Restrict the use of **Self-Check Out** and other **Technology** in Grocery Stores and Pharmacies [SB 1446]

And, of course, if it is summer, that means a number of California cities and counties are increasing their minimum wage effective July 1, 2024. Speaking of the minimum wage, on May 31, 2024, Governor Gavin Newsom signed SB 828 extending the effective date for the new minimum wage for health care employees from June 1, 2024 until July 1, 2024.

The California and federal agencies have also been quite active, issuing a number of proposed regulations or final rules, including:

- The County of Los Angeles' Predictable Scheduling Ordinance (taking effect July 1, 2025)
- The California Civil Rights Council's proposed regulations regarding Artificial Intelligence and Automated Decision Systems
- The federal EEOC's final regulations regarding the Pregnant Workers' Fairness Act
- The FTC's ban on almost all non-compete provisions
- The DOL's increase of the salary threshold for the professional, administrative, and executive exemptions
- The EEOC's new harassment guidance
- The DOL's principles on artificial intelligence

In addition, two employment-related initiatives will appear on the November ballot: one would repeal PAGA and has the potential to upend the enforcement of the Labor Code if enacted, and another would increase the minimum wage to $18.00 per hour.

Looking ahead, the California Legislature will return from its summer recess on August 5, 2024, and will be pressed for time to pass all bills by the August 31st deadline to send them to Governor Gavin Newsom.

In the pages below, we identify the new minimum wage increases California employers should consider, detail the "top" employment bills under consideration, summarize the remaining employment-related bills, and cover the key state and federal agency developments.

CONTENTS

NEW MINIMUM WAGE LAWS AND ORDINANCES 4

TOP PROPOSED EMPLOYMENT LAW CHANGES 5

1. Regulation of the Use of Automated Decision Tools (Artificial Intelligence) (AB 2930) 5
2. Changes and Expansion to Prohibition on Discrimination re: Time off for Victims of Crime and Violence (AB 2499) 9
3. Prohibiting Mandatory Employee Attendance at Certain Employer-Sponsored Meetings (SB 399) 12
4. Eliminate Authorization to Require Employees to Use Vacation Before Paid Family Leave (AB 2123) 12
5. New COBRA Notice Requirements (AB 2494) 13
6. Increased Protection for Certain Independent Contractors (Freelance Workers) (SB 988) 13
7. Expansion of Unemployment Insurance to Cover Workers on Strike (SB 1116) 14
8. Grocery and Drug Store Self Service Checkout (SB 1446) 14

ADDITIONAL PENDING CALIFORNIA BILLS 16

Harassment/Discrimination/Retaliation 16

Leaves of Absence/Time Off/Accommodation Requests 19

Human Resources/Workplace Policies 21

Occupational Safety and Health 25

Wage and Hour 27

Public Contracts/Prevailing Wage 28

Public Sector/Labor Relations 30

State Provided Benefits 33

Miscellaneous 35

NEW LOCAL ORDINANCES 36

NEW STATE REGULATIONS AND GUIDANCE 36

NEW FEDERAL REGULATIONS AND GUIDANCE 37

NOVEMBER 2024 BALLOT 42

NEW MINIMUM WAGE LAWS AND ORDINANCES

New Minimum Wage Ordinances

The California statewide minimum wage is $16.00, but a number of cities and counties impose higher minimum wages. The following localities will increase their minimum wages as of July 1, 2024:

City or County	Minimum Wage Effective July 1, 2024
Alameda	$17.00
Berkeley	$18.67
Emeryville	$19.36
Fremont	$17.30
Los Angeles (City)	$17.28
Los Angeles (County, unincorporated areas)	$17.27
Malibu	$17.27
Milpitas	$17.70
Pasadena	$17.50
San Francisco	$18.67
West Hollywood	$19.61 (hotel employees only)

Please note that other cities/counties increased their minimum wages in January, and be sure to investigate any applicable minimum wages for cities in which you operate.

New Health Care Work Minimum Wage Delayed for 30 Days (SB 828)

Signed by Governor Gavin Newsom on May 31, 2024, this immediately effective law delays the annual health care workers minimum wage phase-in schedule by one month. Last year, Governor Newsom signed SB 525 (later codified at Labor Code sections 1182.14 and 1182.15), which established a new healthcare-specific minimum wage with various phase-in schedules based upon a classification system using factors

such as health care facility size, type of facility and the governmental payor mix percentage. The original law increased the minimum wage annually (beginning June 1, 2024) until it reached $25.00 per hour by 2026, 2028, or 2033 (depending on hospital type). The newly enacted amendment delays this annual increase from June 1 of each year to July 1 of each year. Thus, the first new health care minimum wage will not go into effect until July 1, 2024; and subsequent increases will occur on July 1 of subsequent years. The rationale behind the amendment is to ensure employers are able to accurately implement the new minimum wage requirements.

These amendments became law May 31, 2024, before the first minimum wage phase-in schedule was to become effective June 1, 2024.

TOP PROPOSED EMPLOYMENT LAW CHANGES

1. Regulation of the Use of Automated Decision Tools (Artificial Intelligence) (AB 2930)

This bill is a part of recent trend reflecting increased concern regarding the use of artificial intelligence (AI) and Automated Decision Tools (ADTs) in ways that may discriminate against workers, students, participants in the criminal justice system, and other users of public services. It is very similar to AB 331, which was introduced in 2023 and passed several Assembly committees on party-line votes before stalling in the Appropriations Committee.

The bill would create a new chapter in the Business and Professions Code to regulate ADTs and impose requirements on both the users and developers of such tools. While employers who use ADTs *are* covered by this bill, the scope of the proposed new law is not limited to the employment context. California employers thus may also need to consider possible impacts of this bill on their use of ADTs with respect to consumers and other members of the public in addition to their employees.

- *What is an Automated Decision Tool?*

The bill defines an Automated Decision Tool (ADT) as a system or service that uses artificial intelligence and which has been specifically developed or modified to make, or be a substantial factor in making, consequential decisions. "Artificial intelligence" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

"Consequential decisions" are defined as decisions or judgments that have a legal, material, or similarly significant effect on an individual's life relating to the access to government services or benefits, assignments of penalties by government, or the impact of, or the cost, terms, or availability of many things, including:

- Employment, with respect to pay or promotion, hiring or termination, and automated task allocation that limits, segregates, or classifies employees for the purpose of assigning or determining material terms or conditions of employment;
- Education;

- Housing or lodging;
- Essential utilities;
- Family planning, adoptions services, and health care or health insurance;
- Financial services;
- The criminal justice system; and
- Legal services, private arbitration, mediation and voting.

- *Who Would Have New Obligations Under this Bill?*

This bill would apply to both "Deployers" and "Developers" of ADTs. A "Deployer" is a person, partnership, local government agency, developer, or corporation that uses an ADT to make a consequential decision. Separate requirements would apply to "State Government Deployers," defined as state government agencies that use an ADT to make a consequential decision. A "Developer" is a person, partnership, state or local government agency, or corporation that designs, codes or produces an ADT or substantially modifies AI for the purpose of making, or being a substantial factor in making, consequential decisions.

Thus, because of the breadth of the definitions of "Deployer" and "Consequential Decision," this new bill apparently would apply to (among others) *any* employer in California who uses an ADT to make practically any decision about any aspect of employment or worker management.

- *Obligation to Perform Impact Assessment*

All Developers and all Deployers who have <u>at least 25 employees</u> or use an ADT that impacts more than <u>999 people per year</u> would be required to prepare an "impact assessment" for any ADT they use or develop before using it and annually thereafter. For ADTs in use before January 1, 2025, the first assessment would be required to be completed by January 1, 2026. The bill includes detailed lists of the elements of the "impact assessments," which include (but are not limited to): a statement of the purpose of the ADT and its intended benefits, uses, and deployment contexts; a description of the ADT's outputs and how they are used in making consequential decisions; a summary of the information collected and processed by the ADT (including but not limited to personal information and sensitive personal information, as defined in the California Consumer Privacy Act, and information related to a natural persons' receipt of sensitive services, as defined in the Confidentiality of Medical Information Act); an analysis of the potential adverse impacts on the basis of sex, race, color, ethnicity, religion, age, national origin, limited English proficiency, disability, veteran status, or genetic information from the Deployer's use of the ADT; and a description of the safeguards implemented to address reasonably foreseeable risks of algorithmic discrimination from the use of the ADT. "Algorithmic discrimination" would be defined to mean the condition in which an ADT contributes to unjustified differential treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex, religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, reproductive health, or any other classification protected by state law.

In addition, Developers would be required to provide a statement to a Deployer regarding the intended uses of the ADT and documentation regarding, among other things, the known limitations of the ADT, including any reasonably foreseeable risks of algorithmic discrimination arising from its intended use. In its impact statement, the Deployer would be required to describe the extent to which their use of the ADT is consistent with or varies from the Developers' statement of intended use.

Developers and Deployers would be required to provide the impact assessments to the Civil Rights Department (CRD) within seven days upon request., and the CRD could provide a copy to a public prosecutor to assist in initiating or litigating a civil action. This bill (unlike last year's version) would clarify that the disclosure of an impact assessment pursuant to this rule would not constitute the waiver of any attorney-client privilege or work product protect that might exist with respect to the impact assessment; and if the CRD complies with a California Public Records Act request in connection with an impact assessment, it shall redact any trade secrets (as defined) from the impact assessment. A deployer or developer who fails to produce an impact assessment as required would face an administrative fine up to **$10,000 *per day*.** The CRD would be authorized to share impact assessments with other state entities.

- *Disclosure/Notification Obligations*

All Deployers (regardless of the number of employees) would be required to notify any natural person that is the subject of a consequential decision that an ADT is being used. The disclosure must be made at or before the time the ADT is used to make a consequential decision. And the disclosure would be required to include a statement of the purpose of the ADT, contact information for the deployer, a plain language description of the ADT that includes a description of any human components and how any automated component is used to inform a consequential decision, and information sufficient to enable the person to request to be subject to an alternative selection process or accommodation.

- *Accommodation Requirement*

If a consequential decision is made *solely* based on the output of an automated tool, a Deployer (regardless of the number of employees) would be required to accommodate a natural person's request to *not* be subject to the ADT and to be subject to an alternative selection process or accommodation *if technically feasible*.

- *Creation of Governance Programs*

All Developers and all Deployers who have <u>at least 25 employees</u> or use an ADT that impacts more than <u>999 people per year</u> would be required to establish, document, implement, and maintain a governance program with reasonable administrative and technical safeguards to map, measure, manage, and govern the reasonably foreseeable risks of algorithmic discrimination associated with the use or intended use of an ADT. The bill includes specific requirements for the governance program, including designation of at least one employee to be responsible for overseeing and maintaining the governance program and compliance with the new law, conducting an annual and comprehensive review of policies, practices, and procedures to ensure compliance, and maintaining results of an impact assessment for at least five years.

- *Required Policy*

Every Developer and Deployer would be required to make *publicly available*, in a readily accessible manner, a clear policy with a summary of the types of ADTs in use or made available to others, and how the Deployer or Developer manages the reasonably foreseeable risks of algorithmic discrimination.

- *State Government Compliance*

State Government Deployers would effectively have an extension to January 1, 2031 to come into full compliance with the new law's requirements re: impact assessments, notification of affected persons, statements of intended use, governance programs, and policies. By January 1, 2026, State Government Deployers would be required to provide the Civil Rights Department (CRD) with a list of all ADTs deployed prior to January 1, 2024 by the State Government Deployer. The CRD would then establish a staggered schedule for implementation, with full compliance required by January 1, 2031.

- *Prohibition on Algorithmic Discrimination*

The bill would specifically prohibit the use of an ADT in a manner that results in algorithmic discrimination, and would prohibit developers from making available ADTs that result in algorithmic discrimination. Algorithmic discrimination means the condition in which an ADT contributes to unjustified differential treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex, religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, reproductive health, or any other classification protected by state law.

Unlike last year's version of the law, this bill does not create a private right of action to enforce this provision (although a public prosecutor could bring an action and recover a penalty of $25,000 per violation). However, employers should note that even without this bill becoming law, it is possible that use of AI or an ADT could lead to a discrimination claim. In May 2022, the federal Equal Employment Opportunity Commission and Department of Justice issued guidance regarding the use of algorithms and artificial intelligence to assess job applicants and employees and warned that use of AI may violate the Americans with Disabilities Act. (The Americans with Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees | U.S. Equal Employment Opportunity Commission (eeoc.gov) and Guidance Document: Algorithms, Artificial Intelligence, and Disability Discrimination in Hiring (ada.gov)) And in May 2004, California's Civil Rights Council initiated a 45-day comment period in connection with proposed amendments to the regulations implementing the Fair Employment and Housing Act which would regulate the use of Automated Decision Systems in employment and specifically define the ways in use of such systems could constitute unlawful discrimination. (See discussion below re: New State Regulations.)

- *Retaliation*

It would be unlawful for a deployer, state government deployer, or developer to retaliate against a person for the exercise of rights provided under this new law.

- *Enforcement and Potential Penalties/Liability*

In addition to the penalties for failure to submit an impact assessment, Deployers and Developers would be subject to civil actions brought by the state Attorney General, the CRD, a district attorney, county counsel, city attorney, or city prosecutor for any violation of the new law, in which a court could award injunctive relief, declaratory relief, and attorney's fees and costs. In addition, in an action for a violation involving algorithmic discrimination, a court could award a civil penalty of $25,000 per violation. Deployers and Developers would have an opportunity to cure violations before an action could be brought for injunctive relief. Prior to commencing an action for injunctive relief, the public attorney or CRD must provide 45 days' written notice, and the Deployer or Developer could avoid suit by curing the noticed violation and providing a statement under penalty of perjury.

- *Cybersecurity Exemption*

The bill specifies that it does not apply to cybersecurity-related technology but does not define this term.

- *Does Not Supersede Other Laws*

The bill specifies that the rights, remedies, and penalties established by the new law are cumulative, and do not supersede the rights, remedies, or penalties established under other laws including, but not limited to, the Fair Employment and Housing Act (Cal. Gov. Code § 12940, *et seq.*) and the Unruh Civil Rights Act (Cal. Civ. Code § 51).

Status: Passed the Assembly over significant opposition and is pending in the Senate.

2. **Changes and Expansion to Prohibition on Discrimination re: Time off for Victims of Crime and Violence (AB 2499)**

Presently, sections 230 and 230.1 of the Labor Code prohibit employers from discharging or discriminating against an employee for taking time off for specified purposes that include serving on a jury, appearing in court if the employee is a victim of a crime, or obtaining or attempting to obtain certain victim relief; and prohibit discrimination because an employee is a victim of a crime or abuse. The existing law imposes additional requirements on employers with 25 or more employees, prohibiting them from discharging or discriminating against victims who take time off to seek medical attention, obtain services related to crime or abuse, or participate in safety planning and other actions to increase safety from future crime or abuse. Additionally, the existing law requires employers to provide reasonable accommodations to certain victims.

This bill would essentially repeal Labor Code Sections 230 and 230.1 and recast these rules as unlawful employment practices within the California Fair Employment and Housing Act (FEHA) as new Government Code section 12945.8, which would make violations of these rules a violation of FEHA, and place enforcement in the jurisdiction of the Civil Rights Division (rather than the Division of Labor Standards Enforcement) thus changing the procedures and remedies available for a violation.

In addition, this bill would substantially expand the employee protections in many ways.

- While the existing law provides rights and protections to any employee who is a victim of staking, domestic violence, sexual assault, or a crime that caused physical injury or death, this bill would redefine "victim" to be a person against whom a qualifying act of violence is committed (or, solely with respect to the right to take time off to appear in court, a person against whom a crime is committed). A "qualifying act of violence" would be defined to include domestic violence, sexual assault, stalking, *or* an act, conduct or pattern of conduct including any in which an individual causes bodily injury or death; a dangerous weapon is exhibited, drawn, brandished, or used; or an individual uses, or makes a reasonably perceived or actual threat to use force against another individual to cause injury or death. Thus, this new bill would apply to a much broader category of "victims."

- Existing law (Labor Code section 230.1) requires employers with 25 or more employees to not discharge or discriminate or retaliate against an employee who is a victim for taking time off for certain purposes. This bill would expand that rule in numerous ways.

    - First, it would apply the broadened definition of "victim" discussed above.

    - Second, it would prohibit employers from taking these actions against an employee who *has a family member who is a victim* and who takes time off to assist that family member in various ways. "Family member" would be defined to mean a child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person. A "designated person" would be any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer could limit an employee to one designated person per 12-month period for this type of leave.

    - Third, it expands the list of protected reasons for time off to include:

        - obtain or attempt to obtain any relief for the family member. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the family member of the victim;

        - seek or assist a family member to seek medical attention;

        - seek, or assist a family member to seek various victim services;

        - seek or assist a family member to seek mental health services;

        - participate in safety planning;

        - relocate or find new housing;

        - provide care to a family member who is recovering from injuries;

  - seek or assist a family member to seek civil or criminal legal services;
  - seek or assist a family member to seek financial services;
  - prepare for, participate in or attend civil, criminal, or administrative legal proceedings;
  - seek, obtain, or provide childcare or care to a dependent adult; or
  - make modifications to a home or vehicle
  - (all in connection with a qualifying act of violence).

- While existing law specifies that an employer shall not take action against an employee in connection with an unscheduled absence if the employee, within a reasonable time after the absence provides a specified certification, the new bill would only require the certification to be provided *upon the employer's request*.

- Prior law allowed employees to use vacation, personal leave, or compensatory time off for any of the time taken off under the law; this bill would also confirm that employees may use paid sick leave, but would specify that the law does not create a right of an employee to take unpaid leave that exceeds the unpaid leave time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act (FMLA).

- The bill would permit an employer to limit the total leave taken pursuant to these provisions to 12 weeks and specify that the leave taken by an employee pursuant to these provisions shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) if the employee would have been eligible for that leave.

- This bill would also expand the employer's obligation to provide reasonable accommodations to include not only employees who are victims but also employees who are the family members of victims of a qualifying act of violence who request an accommodation for safety at work. In addition, the definition of reasonable accommodations would be expanded to include – in addition to the previously listed accommodations – permission to carry a telephone at work.

- This bill would also require an employer to inform each employee of their rights under the bill, to be provided to new employees upon hire, to all employees annually, at any time upon request, and any time an employee informs an employer that the employee or the employee's family member is a victim. Finally, this bill would require the department to develop and post, on or before January 1, 2025, a form, as prescribed, that an employer may use to comply with this requirement.

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

3. Prohibiting Mandatory Employee Attendance at Certain Employer-Sponsored Meetings (SB 399)

Entitled the "California Worker Freedom from Employer Intimidation Act," this bill would enact new Labor Code section 1137 to preclude an employer from discharging, discriminating against, retaliating against, or taking adverse action against an employee (or threatening to take any such action) because the employee declines to attend an employer-sponsored meeting or declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinions about religious or political matters.

"Political matters" would be defined as "matters relating to elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political or **labor organization**." "Religious matters" would be defined as "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."

This bill would not prohibit the following: (1) employers from communicating to employees information the employer is required by law to convey, but only to the extent of that legal requirement; (2) employers from communicating information that is necessary for employees to perform their job duties; or (3) higher education institutions or their agents from meeting with or participating in communications with employees that are part of coursework, any symposia or an academic program at that institution.

This prohibition also would not apply to the following: (1) religious entities (as enumerated) with respect to speech on religious matters to employees who perform work connected with the activities of the religious entity; (2) a political organization or party with respect to communication of the employer's political tenets or purposes; or (3) an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the institution's regular coursework.

The Division of Labor Standards Enforcement will be responsible for enforcing this section and responding to employee complaints. However, employees who have been subjected or threatened to be subjected to discharge, discrimination or retaliation or other adverse action for refusing to attend a prohibited employer-sponsored meeting may bring a civil action for damages and punitive damages. In such actions, an employee or their exclusive representative may also petition for injunctive relief. Because the bill creates a new section of the Labor Code, it could also lead to PAGA liability.

Status: Passed the Senate on a party-line vote and has passed the Assembly Labor and Judiciary Committees on party-line votes and is pending in the Assembly Appropriations Committee.

4. Eliminate Authorization to Require Employees to Use Vacation Before Paid Family Leave (AB 2123)

Existing law authorizes an employer to require an employee to take up to two weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of family temporary disability insurance benefits during any twelve-month period in which the employee is eligible for these benefits. This bill would eliminate the authorization and related provisions of the existing law.

Status: Unanimously passed the Assembly and is pending in the Senate Labor, Public Employment and Retirement Committee.

5. New COBRA Notice Requirements (AB 2494)

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with 20 or more employees to provide former employees continuation of benefits and provide notice of continued benefit eligibility upon certain qualifying events (e.g., termination, etc.). Depending on the terms of the health plan, this notice may be provided by the health plan administrator or the employer.

Citing concerns that notice from the health plan administrator may be delayed and result in a gap in coverage, this bill would require all employers, whether public or private, to provide notice to the employee upon termination or a reduction in hours that would otherwise require COBRA notice, stating that the employee may be eligible for coverage under COBRA and that the employee will receive a notice from the plan administrator or group health plan. Specifically, under new Labor Code section 2808.05, employers (whether public or private) would be required to provide this notice via either hard copy or email if the employee elects to receive electronic statements or materials as specified. The deadline to provide the notification would be the same day on which the employee's final wages are due pursuant to Labor Code sections 201 and 202. The bill would prohibit an employer from discharging or taking other adverse action against an employee who does not elect to receive electronic statements or materials.

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

6. Increased Protection for Certain Independent Contractors (Freelance Workers) (SB 988)

Existing California law specifies various tests to determine whether a worker is an independent contractor or an employee (codified at Labor Code sections 2775 through 2787). This bill would not change the tests but would create additional protections for certain independent contractors characterized as "freelance workers." The bill is motivated by concerns that freelance workers do not have the same protection against wage theft as employees, and it is similar to recent laws enacted in New York and Illinois and Los Angeles's Freelance Worker Protections Ordinance.

As noted, this bill would apply to "Freelance Workers," defined as persons or organizations with only one person (whether or not incorporated or employing a trade name) who are hired as independent contractors to provide professional services (as defined in Labor Code section 2778(b)) for at least $250. The test for "professional services" in Labor Code section 2778(b) is complex, but it includes certain marketing, human resources, travel agent, graphic design, and fine arts work, among others. The bill would only apply to contracts entered into or renewed on or after January 1, 2025.

If a hiring entity hires a Freelance Worker, the hiring party would be required to:

- Have a contract in writing, furnish a signed copy to the Freelance Worker, and retain a copy for four years. The contract would be required to include, among other things, an itemized list of all services to be provided, the value of services, the rate and method of compensation, and the date on which the contracted compensation shall be paid or the mechanism to determine such date.

- Pay the Freelance Worker on the date specified in the contract, or no later than 30 days after the completion of the Freelance Worker's services.

- Not require that the Freelance Worker accept less compensation than specified in the contract or provide more goods or services or grant more intellectual property rights than agreed to in the contract after commencement of services.

The hiring entity would be prohibited from discriminating or taking adverse action against a Freelance Worker or from taking any action that is reasonably likely to deter a Freelance Worker from opposing any practice prohibited by the law, participating in proceedings related to enforcement of the law, seeking to enforce the law, or otherwise asserting or attempting to assert rights provided.

An aggrieved worker, the Labor Commissioner, or a public prosecutor could bring a civil action to enforce the law, and could recover attorneys' fees and costs, injunctive relive, and damages including $1,000 if the worker requested a written contract and the hiring entity refused; twice the amount unpaid if the hiring entity failed to timely pay contracted compensation; or the value of the contract or work performed for any other violation.

This new bill would not apply to the federal or state government or a foreign government.

Status: Passed the Senate over some opposition and is currently pending in the Assembly.

7. Expansion of Unemployment Insurance to Cover Workers on Strike (SB 1116)

While Unemployment Insurance Code section 1262 presently provides that an employee is ineligible for unemployment insurance benefits if they left work due to a trade dispute, this bill would codify case law to clarify that this limitation would not apply if the individual left work because of a "lockout" (as defined in Labor Code section 1132.8). Moreover, while employees presently remain ineligible during the entire trade dispute (except in a lockout), this bill would restore eligibility for unemployment insurance benefits after the first two weeks of absence due to a trade dispute. In other words, an employee who voluntarily left work to strike would be eligible for unemployment insurance benefits after two weeks.

This bill is identical to last year's SB 799, which passed the Assembly and Senate but was vetoed by Governor Newsom.

Status: Passed the Senate over some opposition is currently pending in the Assembly.

8. Grocery and Drug Store Self Service Checkout (SB 1446)

This bill would substantially curtail the ability of grocery establishments and retail drug establishments to provide self-service checkout and would require these establishments to compete specified assessments before implementing certain defined technologies.

The bill would apply to:

- "Grocery establishments" as defined in Labor Code section 2502 (retail stores over 15,000 square feet that sell primarily household foodstuffs for offsite consumption and in which sale of other household supplies or other products is secondary to the primary purpose of food sales); and

- "Retail drug establishments," defined to mean any person or entity that has 75 or more businesses or establishments within the state and is identified as a retail business or establishment in the North American Industry Classification System within the retail trade category 45611.

The bill would prohibit a grocery establishment or retail drug establishment from providing self-service checkout for customers unless *all* of the following conditions are satisfied:

1. At least one manual checkout station is staffed by an employee who is available at the time a self-service checkout option is available.

2. The employer has established a workplace policy that limits self-service checkouts to purchases of no more than 15 items.

3. Customers are prohibited from using self-service checkout to purchase items that require identification (like alcohol) or items subject to theft-deterrent measures.

4. No more than two self-service checkout stations are monitored by any one employee, who shall be relieved from all other duties while monitoring the self-checkout stations.

Covered establishments would also be required to include self-service checkout in their analysis for potential work hazards in their Injury and Illness Prevention Programs.

Separately, grocery establishments and retail drug establishments would be required to complete a worker and consumer impact assessment before using or procuring any "consequential workplace technology."

- "Consequential workplace technology" would mean artificial intelligence or automated decision-making systems that significantly impact, eliminate, or automate the core job functions agreed upon between Nan employer and an employee upon hire or following a subsequent change in position or department, and would include, but not be limited to, self-checkout robotics, wearable sensors, scanners, and electronic monitoring.

- The assessment would be required to include twelve specific factors, including the number of employees whose duties would be affected, the number of work hours that would be eliminated, and the potential effect on consumers including any barriers to access that the technology would create for certain populations of customers, including but not limited to seniors, the disabled, the unbanked, those without access to appropriate technology, youth, or other vulnerable populations.

- Covered establishments would be required to notify potentially-affected employees and their collective bargaining representative at least 60 days before conducting the assessment, and would be required to conduct all major phases of the assessment with the "direct, meaningful, and sustained involvement" of impacted employees and their collective bargaining representative.

- Covered establishments would be required to provide potentially affected employees or their collective bargaining representative with the assessment at least 60 days before implementation of the consequential workplace technology, and would be required to post a copy of the assessment in a location accessible to its employees and customers before, and for at least 90 days following, implementation of the technology.

Status: Passed the Senate with some Democratic opposition and is pending in the Assembly.

ADDITIONAL PENDING CALIFORNIA BILLS

Harassment/Discrimination/Retaliation

Prevention Discrimination Based on the "Intersection" of Protected Bases (SB 1137)

SB 1137 would amend the Fair Employment and Housing Act (FEHA, codified at Government Code § 12900 *et seq.*), the Unruh Civil Rights Act (Civil Code § 51 *et seq.*), and the California Education Code to prohibit discrimination not only because of one protected trait, but also the "intersection of two or more protected bases." Drawing upon the concept of "intersectionality" which proposes that different forms of inequality operate together but uniquely (i.e., the discrimination and harassment faced by Black women compared to Black men), it would recognize that harassment or discrimination may occur because of the combination of protected factors, as opposed to any single one. Accordingly, it would revise the definition of these protected characteristics in Government Code section 12926(o) [for FEHA purposes] to include (1) an intersection or combination of those characteristics; (2) a perception the person has any of those characteristics or any intersection or combination of those characteristics; or (3) a perception that the person is associated with a person who has, or is perceived to have any of those characteristics or any intersection or combination of those characteristics.

This bill would affirm the decision of the Ninth Circuit Court of Appeals in *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551 and declare its provisions declaratory of existing law.

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

Prohibition on Advertising that Job Requires Driver's License Unless Driving is Part of the Job (SB 1100)

The Fair Employment and Housing Act ("FEHA") prohibits various forms of employment and housing discrimination, including discrimination on the basis of national origin. The implementing regulations clarify that it is unlawful for an employer to discriminate against an applicant or employee because they hold a driver's license issued under Section 12801.9 of the Vehicle Code (which permits the Department

of Motor Vehicles to issue a driver's license to a person who is not able to submit satisfactory proof that their presence in the United States is authorized under federal law).

This bill would add section 12945.8 to the Government Code and make it an unlawful employment practice for employers to state in a job advertisement, posting, application or other material that an applicant must have a driver's license unless the employer reasonably expects driving to be one of the job functions for the position *and* the employer reasonably believes that satisfying the job function using an alternative form of transportation would not be comparable in travel time or cost to the employer. "Alternative form of transportation" would include but not be limited to using a ride hailing service or taxi, carpooling, bicycling, or walking.

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

Additional Law Enforcement Positions Exempted from FEHA's Cannabis Protections (SB 1264)

In 2022, California enacted AB 2188 (codified at new Government Code section 12954) prohibiting employers from discriminating against applicants or employees because of cannabis use off the job and away from the workplace or because an employer-required drug screening test revealed the presence of nonpsychoactive cannabis metabolites. Currently, Government Code section 12954 exempts certain applicants and employees from these protections, including applicants and employees hired for positions requiring a federal government background investigation or security clearance.

This bill would broaden these exemptions to applicants or employees in sworn positions within law enforcement agencies who have or would have functions or activities related to any of the following: (1) the apprehension, incarceration or correction of criminal offenders; (2) civil enforcement matters; (3) evidence gathering and processing; (4) law enforcement records; or (5) coroner functions.

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

Extending CROWN Act Protections to the Unruh Act (AB 1815)

In 2022, California enacted the CROWN (Create a Respectful and Open World for Natural Hair) Act (SB 188), preventing discrimination based on hair style and hair texture under the FEHA and the California Education Code. This bill would amend the existing definition of race in those provisions to eliminate the requirement that a trait must be "historically" associated with race for it to be protected from racial discrimination.

This bill would also amend the Unruh Act (Civil Code section 51 *et seq.*), which presently prohibits businesses from discriminating based upon a customer's protected classifications (including race), to include similar definitions and protections within the Unruh Act. Accordingly, businesses offering services or accommodations to the public would be prohibited from discriminating against any person on the basis of race, including traits associated with race, including hair texture and protective hairstyles (e.g., braids, locks and twists).

This bill also states it is declarative of existing law meaning it would apply retroactively.

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

Civil Rights Department Amendments Regarding Administrative Procedure Deadlines (SB 1022)

This bill makes several amendments regarding the definitions and procedures used when the Civil Rights Department (CRD) is pursuing a filed administrative charge. Most significantly and in response to several high-profile CRD investigations alleging long-standing patterns of harassment or discrimination (e.g., against Tesla and at Activision), it would enable the CRD to pursue group or class claims alleging violations occurring up to seven years before the CRD complaint is filed (compared to the three-year administrative period for individual charges filed with the CRD).

Secondly, it would create new instances where administrative deadlines within the FEHA are tolled, presumably for the purpose of streamlining the process and avoiding duplicative litigation. Accordingly, the complainant's one-year window to file a civil action following the issuance of a right-to-sue notice would be tolled for the duration of the claimant's timely appeal of the CRD's decision to close a case. It would also toll the CRD's one- or two-year window to conduct an investigation following the filing of an administrative complaint as follows: (1) for the amount of time specified in any written agreement between the CRD and a respondent executed before the expiration of the applicable deadline; (2) for the length of time for which the CRD's investigation is extended due to the pendency of a potentation to compel compliance; or (3) during a timely appeal within the CRD of the department's closure of the complaint. It would also toll the CRD's obligation to issue a right-to-sue notice at the end of an investigation for these same events.

Finally, it would permit the CRD to hold off on issuing a right-to-sue notice in a case where the CRD determines that a complaint is related to an ongoing complaint filed by the CRD as a group or class complaint for purposes of an investigation, conciliation, mediation or civil action.

While Government Code section 12961 authorizes the CRD to consider a "group or class complaint," it does not presently define that term, so SB 1022 would amend Government Code section 12926 to clarify that a "group or class complaint" includes a complaint "alleging a pattern or practice." SB 1022 further provides that these changes are declarative of existing law.

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

Local Agency Enforcement of FEHA Protections and Expanded CRD Powers Regarding Infrastructure Projects (SB 1340)

In 2023, the California Legislature enacted AB 594 expanding the entities (beyond the Division of Labor Standards Enforcement [DLSE]) able to pursue civil or criminal actions for Labor Code violations. This bill would require the Civil Rights Department (CRD) to collaborate with the DLSE to develop partnerships with local agencies to assist with preventing and eliminating unlawful practices under the FEHA. Via procedures outlined in proposed new Government Code sections 12978 *et seq.* a complainant when filing a verified complaint could request a local agency pursue the complaint, and the local agency would need

to receive, investigate and adjudicate the complaint using procedures substantially similar to those used by the CRD. SB 1340 further outlines the procedures applicable to these local agency claims, including the procedures for appealing, the applicable time periods for appealing or pursuing civil action, and the interplay between claims handled by the local agency and the CRD.

SB 1340 would also amend Government Code section 12993 to clarify that commencing January 1, 2026, the FEHA's general occupation of regulations regarding employment and housing discrimination does not preclude local agency enforcement of the FEHA.

This bill would also amend the FEHA relating to infrastructure projects. For instance, it would authorize the CRD to handle complaints alleging unlawful practices by a contractor or subcontractor in connection with an agreement with a state agency for an infrastructure project. In such actions, the court would have the authority to cancel the agreement. It would also require the CRD to maintain a comprehensive database tracking infrastructure contracting and procurement activities by state agencies, including the demographic data of employees by contractors and subcontractors utilized by state agencies, including for race, gender, marital status and county of residence. It would also require – commencing July 1, 2025 and annually thereafter – for a contractor or subcontractor under a state agency-issued infrastructure project funded in whole or in part by certain federal laws to report demographic information enumerated in the statute, and provide employees the option to participate in an optional survey to obtain this demographic information. It would also impose civil penalties upon contractors or subcontractors who fail to comply with these provisions, and require state agencies to utilize its database with this collected information to enforce employee demographic requirements in any project labor agreement.

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

Leaves of Absence/Time Off/Accommodation Requests

Expanding Paid Sick Leave to Cover Farmworkers During State or Local Emergencies (SB 1105)

The Healthy Workplaces, Healthy Families Act of 2014 (HWHFA), entitles an employee to paid sick days if the employee works in California for the same employer for thirty or more days within a year from the commencement of employment. This bill would expand the specified purposes for which an employer, upon the oral or written request of an employee, is to provide paid sick days. Specifically, it would require paid sick days to be provided to agricultural employees (as defined in Labor Code Section 9110) who work outside and are entitled to paid sick days, to avoid smoke, heat, or flooding conditions created by a local or state emergency (as defined) that prevent agricultural employees from working.

Status: Passed the Senate with some opposition and is currently pending in the Assembly Labor and Employment Committee.

Extension of Small Employer Family Leave Mediation Program to Include Reproductive Loss Leave and Eliminate Sunset Date (AB 2011)

This bill would amend Government Code Section 12945.21, which requires the Civil Rights Department to create a mediation pilot program for CFRA violations against smaller employers (i.e., with between five

and 19 employees). It would expand to include resolution of alleged violations of reproductive loss leave (SB 848, codified at Government Code Section 12945.6). This bill would also expand the specified events under which the mediation is deemed complete. An employee is prohibited from pursuing a civil action until the mediation is complete or deemed unsuccessful. This bill adds the mediation is deemed complete if the mediator determines that the employer does not have between five or nineteen employees.

Finally, this bill would delete the repeal date of the pilot program (currently January 1, 2025), thereby extending operation of the program indefinitely.

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

Requiring Paid Disability and Parental leave For Public School and Community College Employees (AB 2901)

Presently, existing law authorizes the governing board of a public school district or community college district to provide for a leave of absence from duty, as it deems appropriate, for an employee required to be absent because of pregnancy, miscarriage, childbirth, and recovery from those conditions. Existing law also authorized the board to provide in the rules and regulations whether the leave granted shall be with or without pay and, if with pay, to be deducted from the salary due to the employee for the period in which the absence occurs.

This bill would amend the law to now require a public-school employer or community college district to provide up to fourteen weeks of a leaves of absence, with specified pay benefits, for an employee who is required to be absent because of pregnancy, miscarriage, childbirth, and recovery from those conditions. Full-time employees' specified pay benefits are the employee's full pay (subject to the maximum fourteen weeks) while part-time employees specified pay benefits are calculated based on average hours worked (subject to the maximum fourteen weeks). Specifically, part-time employees who work a fixed number of hours per week shall receive weekly pay for the total number of hours normally scheduled to work while part-time employes without a fixed number of hours per week shall receive weekly pay in the amount of seven times the average number of hours worked in the preceding six months that the employee began their paid leave.

This bill would also authorize the paid leave to begin before and continue after childbirth if the employee is actually disabled by pregnancy, childbirth, termination of pregnancy, or a related condition, and would prohibit a leave of absence taken pursuant to these provisions from being deducted from other leaves of absence, as provided.

Status: Passed the Assembly and is pending in the Senate Education, Senate Labor, Public Employment and Retirement and Senate Appropriations Committees.

Human Resources/Workplace Policies

Labor Commissioner to Develop a "Model List" of Employee Rights and Responsibilities (AB 2299)

Labor Code section 1102.8 presently requires employers to prominently display a list of employees' rights and responsibilities under California's whistleblowing statute (Labor Code section 1102.5), including the telephone number of the Attorney General's whistleblowing hotline. AB 2299 would require the Labor Commissioner to develop a "model list" of employees' rights and responsibilities under these whistleblowing protections, which would be accessible on the Labor Commissioner's internet website and that – if posted by the employer – would satisfy the current posting requirement.

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

Social Compliance Audits (AB 3234)

Existing law regulates the employment of minors in California. This bill responds to the proliferation of non-governmental audits conducted by private companies, often in response to negative press or to help consumers gain confidence in a business. This bill would require transparency about the results of such an audit. The bill defines "social compliance audit" as an inspection or assessment of an employer's operations or practices to determine whether the operations or practices are in compliance with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor. The bill would require that if an employer has voluntarily subjected itself to a social compliance audit, the employer shall post a clear and conspicuous link on its internet website to a report detailing the findings of the employer's compliance with child labor laws. The report shall contain certain information, including whether the business does or does not engage in or support the use of child labor, whether the business exposes children to any hazardous or unsafe situations, and whether children work within or outside regular school hours.

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

Increased Reporting re: State Agency Call Center Contracts (AB 2068)

In 2022, AB 1601 became law, prohibiting call center employers from relocating a call center or one or more of its facilities or operating units within a call center unless it provides advance notice to the affected employees, the EDD, the local workforce investment board, and the chief elected official of each city and county government within which the relocation/mass layoff occurs.

This bill would require each state agency that enters into a contract with a private entity specifically for call center work to provide public or customer service on or after January 1, 2025 to provide a report to the Labor Commissioner containing certain information about the total number of jobs that will be located within California and outside the state. The Labor Commissioner would be permitted to disclose aggregated data at the request of any member of the public.

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

New Requirements re: Closure of Grocery Stores and Pharmacies (SB 1089)

While California presently has its version of the federal Worker Adjustment and Retraining Notification Act (CalWARN, Labor Code section 1400, *et seq.*) and "grocery establishment"-specific worker retention requirements (Labor Code section 2500, *et seq.*), SB 1089 would create requirements similar to (and broader than) Cal-WARN for "grocery establishments" and "pharmacy establishments" and require notice to affected communities prior to a store closure. (However, the bill would not locate this rule in the Labor Code; instead, it would create sections 22949.90 - 22949.92 in the Business and Professions Code.) This bill arises from concern with lack of access to grocery stores, supermarkets, and healthy food in low-income neighborhoods.

The bill would apply to "grocery establishments" and "pharmacy establishments." "Grocery establishment would be defined to mean a retail store that sells primarily household foodstuffs for offsite consumption, including but not limited to fresh produce, meats, poultry, beverages, baked foods, or prepared foods, and in which the sale of other household supplies or other products is secondary to the primary purpose of food sales. (The definition does not limit applicability to stores of any particular size or number of employees and is thus broader than the worker retention requirements in Labor Code section 2500, *et seq*.) "Pharmacy establishment" would mean a pharmacy as defined in Business and Professions Code section 4037 that is a chain or independent pharmacy (as defined) and is open to the public.

The bill would create a new Business and Professions Code section 22949.91, which would require a covered establishment to take the following actions no later than 60 days before a "closure" (the cessation or substantial cessation of industrial or commercial operations):

- Provide written notice to employees affected by the closure and their authorized representatives if the covered establishment employs more than 5 employees. (If a covered establishment employs 5 or fewer employees, it shall provide written notice to the affected employees no later than 30 days before the closure.)

- Provide written notice to the Employment Development Department, the State Department of Social Services, the local workforce development board and chief elected official of the city and county, and the local human services department in the county in which the covered establishment is located. (The bill provides that a CalWARN notice will satisfy the requirement to notify the EDD, the local workforce development board, and the chief elected official.)

- Post a written notice of closure in a conspicuous location at the entrance of the covered establishment's premises that includes the planned closure date. If the covered establishment is a pharmacy establishment, the notice shall include the name, address, and contact information of the pharmacy where any prescriptions will be transferred, and information regarding the process of transferring a prescription to another pharmacy.

- Provide written notice of closure in any other form in which the covered establishment regularly communicates or advertises to its customers (e.g., text, e-mail, advertisements).

The only exceptions to the notice requirement would be if a closure is necessitated by a physical calamity or an act of war *or* the closure is caused by business circumstances that were not reasonably foreseeable at the time that notice would have been required.

Violations of this section would be subject to a civil penalty up to $10,000 for each closure. The bill would create a private right of action for any person injured by the violation or the Attorney General, district attorney, or city attorney; and a prevailing plaintiff could collect attorneys' fees and costs. An employee that does not receive written notice would be entitled to recover an *additional* sum of $100 per day for each day their rights are violated and continuing until the violation is cured. There would be no private cause of action for failure to provide written notice in any form in which the establishment regularly communicates to its customers.

The bill would also create a new Business and Professions Code section 22949.92. This would require the county and local workforce development board to provide certain information to the covered establishment about safety net programs and workforce training services after receiving the notice described above. The covered establishment would then be required to provide that information to its employees no later than 30 days before the closure.

Status: Passed the Senate over some opposition and is pending in the Assembly.

Expansion of Joint Liability re: Client Employers and Labor Contractors (AB 2754)

Existing law (Labor Code section 2810) specifies that a person or entity shall not enter into a contract or agreement for labor or services with a contractor in certain industries (including, or example, construction, farm labor, janitorial, security guard, etc.) if they know or should know that the contract does not include funds sufficient to allow the contractor to comply with all applicable laws and regulations governing the labor or services to be provided. This bill would extend that law to apply to port drayage motor carrier contractors. "Port drayage motor carrier" is defined in Section 2810.4 to mean, among other things, entities that operate in the port drayage industry, which involves movement within California of cargo or intermodal equipment by a commercial motor vehicle whose point-to-point movement has an origin or destination at a port.

Existing law (Labor Code section 2810.4) requires the Division of Labor Standards Enforcement to post on its web page information on port drayage motor carriers with unsatisfied final court judgments, tax assessments, or tax liens relating to, among other things, the misclassification of employees as independent contractors. Existing law requires a customer that engages or uses a port drayage motor carrier that is on the list to share with the motor carrier or its successor all civil legal responsibility and civil liability owed to a port drayage driver or to the state for port drayage services obtained after the date the motor carrier appeared on the list.

This bill would also require a customer to share with the motor carrier all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor, regardless of whether or not the port drayage motor carrier is on the division's list.

Status: Passed the Assembly over some opposition and is pending in the Senate.

Joint Liability in Connection with Displaced Janitors (AB 2374)

Currently, the Displaced Janitor Opportunity Act (Labor Code Sections 1060-1062) requires contractors and subcontractors for janitorial of building maintenance services to retain certain employees who were employed at that site by the previous contractor or subcontractor for a period of 60 days. Under existing law, "contractor" is defined to mean any person that employs 25 or more individuals and that enters into a service contract with the awarding authority.

This bill would change the definition of "contractor" to mean any person that employes janitor employees and enters into a service contract with the awarding body. It would also extend the timeframe for which a successor contractor or subcontractor is required to retain employees to 90 days. The successor contractor or subcontractor would be required to maintain a preferential hiring list and to offer employment to retained employees if their performance during the 90-day period was satisfactory.

The bill would also enable the Labor Commissioner to enforce the section and to recover hiring and reinstatement rights, front pay or back pay, and the value of benefits the employee would have received from the employer, awarding authority, or both. In addition, a person who violates the law may be subject to a civil penalty of $500 for each employee whose rights are violated and an additional amount payable as liquidated damages of $500 per employee per day of violation, not to exceed $10,000 per employee, which may be paid to the employee as compensatory damages.

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

Advisory Committee to Create Industry-Wide Janitorial Standards (AB 2364)

Arguably drawing off the recent creation of the Fast Food Council, this bill would contemplate a similar procedure to enact comprehensive regulations for the California Property Service Workers Protection Act (PSWPA, Labor Code section 1420 *et seq*.). This law applies to "covered workers," defined to mean any individuals predominantly working as a janitor (including employees, independent contractors, and franchisee), as defined under federal law.

Under new Labor Code section 1435, the Division of Labor Standards Enforcement (DLSE) would be required by July 1, 2025, to establish a seven-person advisory committee with the particular members selected from enumerated groups (e.g., two representatives from the janitorial industry, two representatives from joint labor-management groups in the janitorial industry, etc.). By January 1, 2026, this advisory committee shall approve, through a majority vote, a comprehensive set of recommended regulations establishing janitorial standards designed to protect the health and safety of workers. In developing these proposed regulations, the advisory committee will be required to consider, weigh and be guided by relevant municipal ordinances and collective bargaining agreements and determine the time it reasonably takes workers to properly clear a given space without a high risk of incurring repetitive injuries, considering six enumerated factors.

By July 1, 2026, the DLSE would be required to submit these proposed regulations to the Office of Administrative Law for review and approval consistent with the advisory committee's regulations. Beginning January 1, 2028, an employer registering annually with the Labor Commissioner would be required to certify that they have complied with these newly established regulations. This bill would also authorize the Labor Commissioner to refuse to register or renew the registration of an employer who fails, refuses or is unable to certify that they have complied with these new regulations. It would also authorize the DLSE to deny registration to janitorial employers who have committed a crime involving moral turpitude, or who misrepresented or falsified any responses in their application, or who failed or refused to comply with any specified provisions.

In 2016 and 2019, California enacted several bills (AB 1978 (2016) and AB 547 (2019) requiring sexual harassment training and violence prevention training for janitorial employees. This bill would also increase the costs of paying a qualified organization to provide sexual violence and harassment prevention training. Presently, employers are required to pay $65 per participant. It would instead require the employer, until January 1, 2026, to pay the qualified organization $200 per participant for training sessions having less than 10 participants, and $80 per participant for training sessions with 10 or more participants, except as specified. Each year thereafter, the employer would be required to increase the rate of payment, as specified.

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

Occupational Safety and Health

Workplace First Aid Kit Rulemaking re: Narcan (AB 1976)

Under existing regulations, employers are required to have adequate first-aid materials readily available for employees on every job. (8 Cal. Code Regs. § 3400.) This bill would require the Occupational Safety and Health Standards Board to draft a rulemaking proposal before December 1, 2026 to revise applicable regulations and require all first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the U.S. FDA to reverse opioid overdose and instructions for using the opioid antagonist. The Board would be required to adopt revised standards on or July 1, 2027.

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

Changes to Hospital Workplace Violence Prevention Plans (AB 2975)

Existing law requires all employers to establish an Injury and Illness Prevention Plan. Existing law also requires employers to establish and implement a Workplace Violence Prevention Plan, although there is one set of requirements for specified hospitals (Labor Code section 6401.8) and a separate set of requirements for most other employers (Labor Code section 6401.9).

This bill would amend the Workplace Violent Prevention Plan requirements applicable to *hospitals*. It would require the Occupational Safety and Health Standards Board to amend the applicable standards to require that a hospital must maintain metal detectors at the hospital's main public entrance, at the entrance to the emergency department, and at the hospital's labor and delivery entrance if separately

accessible to the public; and to require that a hospital assign appropriate security personnel to monitor the metal detectors. Hospitals would also be required to adopt reasonable protocols for the storage of any patient, family, or visitor property that might be used as a weapon and reasonable protocols for alternative search and screening for patients, family, or visitors who refuse to undergo metal detector screening.

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

Alternative Enforcement of Occupational Safety Rules (AB 2738)

In 2023, California enacted AB 594, authorizing public prosecutors (as defined) to prosecute an action through alternative enforcement procedures for violations of specified Labor Code provisions, or to enforce those provisions independently. As often happens with newly enacted laws, this bill would amend Labor Code section 181 (which just took effect on January 1, 2024) in several respects. First, it would slightly amend the recipients of any moneys recovered by these public prosecutors, specifying the moneys should be applied first to payments due to affected workers, then to attorney's fees and costs if otherwise authorized by the Labor Code, and then divided equally between California's General Fund and the public prosecutor's office. It would also provide that a public prosecutor may enforce any other Labor Code provision as specifically authorized. Lastly, it would require (instead of just permit) a court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under these provisions.

In 2022, California enacted AB 1775 mandating contracting entities (as defined) to require entertainment sports vendors to certify its employees and any subcontractor employees have complied with specified training, certification, and workforce requirements, including for setting up live events. Citing concerns that the transitory nature of most live entertainment events prevents adequate enforcement, this bill seeks to expand the enforcement of safety protections for public events. Accordingly, it would amend Labor Code section 9251 and require that any contract subject to these requirements will provide in the writing that the entertainment events vendor will furnish, upon hiring for the live event pursuant to the contract, the contracting entity with specified information about those vendor's and subcontractor's employees' trainings. It would also subject the contract to a provision of the California Public Records Act (CPRA) that makes any executed contract for the purchase of goods or services by a state or local agency a public record subject to disclosure under the CPRA.

It would also authorize the contracting party to use or disclose to third parties the specified information for purposes of carrying out the contracting party's duties under the contract but prohibit the use or disclosure for unrelated purposes. Finally, it would also expand the categories of entities subject to penalties for violations to also include a public events venue or contracting entity and enable "public prosecutors" (discussed above) to enforce these procedures.

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

Wage and Hour

Authorizing Injunctive or Declaratory Relief in PAGA Cases (AB 2288)

Currently, the Private Attorneys General Act ("PAGA") allows employees to file lawsuits on behalf of themselves and other employees to recover civil penalties for certain state employment law violations. This bill would authorize the award of injunctive relief in addition to civil penalties.

This bill would expand PAGA, while a November 2024 ballot initiative proposes repealing and replacing PAGA. It is possible that the proponents of each measure may attempt to negotiate a compromise, but the success of any such attempt remains to be seen.

Status: Passed the Assembly with some opposition and is currently pending in the Senate Labor, Public Employment and Retirement and the Senate Judiciary Committees.

Working Group to Recommend Minimum Wage Levels (AB 1516)

While historically the Legislature has determined minimum wage levels – including via SB 3 (enacted in 2016), which raised the current statewide minimum wage to $16 an hour – this bill would require the Labor and Workforce Development Agency to convene a working group to study minimum wage-related topics in California. Comprised of representatives from the Labor Commissioner's office, the EDD, organizations representing low-wage or immigrant workers, organizations advocating for the rights of incarcerated workers, and an organization representing employers, this working group would be tasked with providing recommendations to the Legislature by July 1, 2025 regarding raising the minimum wage.

Status: Passed the Assembly and is pending in the Senate Labor, Public Employment and Retirement Committee.

Narrowing of Exemption Definition for Faculty at Private Institutions of Higher Education (AB 3105)

Existing law exempts an employee from certain provisions governing wages, hours, and other protections if the employee meets certain requirements, including being employed to provide instruction for a course or laboratory at an independent institution of higher education, as currently defined. This bill would narrow the definition of an "independent institution of higher education" by excluding those institutions formed as a nonprofit corporation *on or after January 1, 2023*. This bill would declare that these provisions are declaratory of existing law.

Status: Unanimously passed the Assembly and is pending in the Senate Labor, Public Employment and Retirement Committee.

Payment of Gratuities (AB 3143)

Existing law (Labor Code sections 351-356) establishes certain requirements relating to gratuities paid to employees, including prohibiting an employer from taking any gratuity paid to an employee by a patron or from requiring an employee to credit the amount of a gratuity against wages due to the employee.

Existing law also requires an employer to keep accurate records of all gratuities received by the employer and requires that those records be open to inspection by the Department of Industrial Relations. Currently, the existing law makes a violation of those provisions by an employer a misdemeanor.

This bill is motivated by concern that some restaurants have policies preventing employees from accepting gratuities. The bill would add Labor Code section 352, which would also prohibit an employer from prohibiting, or implementing a policy to prohibit, an employee of a restaurant from receiving any gratuity that is paid, given to, or left for an employee by a patron. The author indicates that it would allow for tipping in all restaurants. Violation of this rule would similarly be a misdemeanor, punishable by a fine not exceeding $1,000 and/or imprisonment not exceeding 60 days.

Status: Passed the Assembly and is pending in the Senate Labor, Public Employment and Retirement Committee.

Public Contracts/Prevailing Wage

Increased Access to Records, Including Payroll Records, for Public Works Projects (AB 3186)

While California law presently requires contractors to maintain accurate payroll records for public works projects and to make them available to the public agency awarding the public works contract, this bill would expand the entities entitled to request copies of these records. Specifically, new Labor Code section 1776.1 would require an “owner” or “developer” (as defined) undertaking any public works project to make available specified records (including payroll records if in their possession, custody or control) upon request by the Division of Labor Standards Enforcement, multiemployer Taft-Hartley trust funds and joint labor-management committees. This new section would specify the deadlines to comply with such requests as well as new enforcement penalties and procedures.

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

Enforcement Changes Regarding Violations on Public Work Projects (SB 1303)

Presently, an awarding body may withhold contract payments from a public works contractor for alleged violations, including when payroll records are delinquent or inadequate, or related to worker classification and scope of work, amongst other things. This bill would restructure the process prior to funds being withheld, including requiring the awarding body to notify the DLSE and confer with the negotiating parties and to participate in a process allowing the contractor or subcontractor to review and respond to alleged violations.

It would also establish new conflict of interest rules related to so-called “private labor compliance entities” hired by an awarding party to perform labor compliance and enforcement activities on public works projects on behalf of an awarding body. Amongst other things, the private labor compliance entity will be required to aver that it has no conflicts of interest (as defined) and allow the contract to be voided if the conflict of interest provisions is violated.

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

Increased Inspection Rights Regarding Public Works Projects (AB 2182)

Presently, the Labor Commissioner may investigate allegations of a contractor or subcontractor violating the law regulating public works projects, including the payment of prevailing wages, and sets forth procedures for the public or a public agency to inspect certain records regarding such projects. Commencing July 1, 2025, this bill would require job sites to give reasonable access (as defined) to representatives of a joint labor-management committee to monitor compliance with the prevailing wage and apprenticeship requirements. It would also authorize this committee to bring an action against an awarding body, contractor or subcontractor that willfully denies the committee's representative's reasonable access. Separately, it would authorize new penalties if a contractor or subcontractor fails to make payroll records available for inspection by the Labor Commissioner within a 10-day period after they are requested.

This bill would also authorize the Director of Industrial Relations to identify changes to the prevailing rate during any semiannual period and enumerate procedures to review that determination.

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

New Reporting Requirements for Changes to Public Work Contracts (AB 1890)

California has specific provisions regarding the payment of prevailing wages for public works, including a requirement that an entity awarding a public works contract timely notify the Department of Industrial Relations (DIR) of this award. This bill would amend Labor Code section 1773.3 to also notify the DIR of any changes or additions regarding the notice that involve either: (1) a change in the identity of the contractor or subcontractor performing work on the project; or (2) a change in the total amount of the contract if the change exceeds $10,000.

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

Requiring Subcontractors to Ensure Usage of Skilled and Trained Workforces on Public Contracts (SB 1162)

Public Contract Code section 2600 outlines the circumstances and requirements of a public entity to ensure that a bidder, contractor or other entity will use a skilled and trained workforce to complete a contract or project and requires the enforceable commitment that the contractor will provide to the public entity a monthly report demonstrating its compliance with these requirements. This bill would also require the enforceable commitment that these monthly reports will include the date of birth of each worker. It would also require the payroll records that are available for inspection by the Labor Commissioner to include the date of birth of each employee, while also requiring this date of birth information be subject to existing requirements to prevent disclosure of similar personal information.

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

Public Sector/Labor Relations

Constitutional Amendment Protecting Union Rights (SCA 7)

This resolution would propose an amendment to the California State Constitution, which would provide that all Californians have the right to join a union and to negotiate with their employers, through their legally chosen representative, to protect their economic well-being and safety at work, and that the Legislature shall provide for the enforcement of these rights. It would also provide that after January 1, 2023, no statute or ordinance shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and workplace safety. If this resolution is passed by two-thirds of both houses of the legislature, it would be presented to the voters of California. It would only become law if approved by the electorate.

Status: Passed the Senate Labor Committee and is pending in the Senate Elections and Constitutional Amendments Committee.

Expanding Labor-Management Cooperation Committee's Ability to Sue for Unpaid Wages and Benefits (AB 2696)

Existing law (Labor Code section 218.8) requires that direct contractors making or taking a contract on or after January 1, 2022 for certain specified construction projects must assume and be liable for any debts related to wages incurred by a subcontractor acting under the direct contractor for the wage claimant's performance of labor included in the subject of the contract between the direct contractor and the owner. Existing law extends the direct contractor's liability to penalties, liquidated damages, and interest owed by the subcontractor.

Existing law also authorizes a joint labor-management cooperation committee to bring an action against a direct contractor or subcontractor to enforce liability for any unpaid wage, fringe or other benefit payment or contribution, penalties or liquidated damages, and interest owed by the subcontractor on account of the performance of the labor on a private work.

This bill would change the scope of claims that may be brought by a joint labor-management cooperation committee. While existing law allows such a committee to bring an action to *enforce* liability for unpaid wages or benefits, the new bill would allow a committee to bring an action *for* any unpaid wages, fringe or other benefit payments or contributions. In addition, while existing law allows a committee to bring a claim related to unpaid wages owed by the subcontractor, the bill would add that a committee can bring a claim for unpaid wages owed *by the direct contractor*. And the new bill would explicitly allow a committee to bring an action for unpaid wages, fringe or other benefit payments or contributions, penalties, or liquidated damages or interest owed by the direct subcontractor pursuant to its joint liability for the subcontractor's debts.

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

Local Public Employee Organizations Recouping Representation Fees (AB 1941)

Existing law provides that public employees who are members of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations are not required to join or financially support an employee organization as a condition of employment. But existing law authorizes a recognized employee organization to charge an employee covered by the Firefighters Procedural Bill of Rights Act for the reasonable cost of representation when the employee holds a conscientious objection or declines membership in the organization and then requests individual representation in a discipline, grievance, arbitration or administrative hearing from the organization. This bill would extend this rule to employees covered by the Public Safety Officers Procedural Bill of Rights.

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

Public Employee Labor-Related Confidential Communications (AB 2421)

Existing law that governs public employee labor relations prohibits public employers from taking certain actions relating to employee organization, including imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of their guaranteed rights.

This bill would also prohibit a local public agency employer, a state employer, a public-school employer, a higher education employer, or the San Francisco Bay Area Rapid Transit District from questioning any employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.

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

Federal Work Authorization for Student Employment at Public Colleges and Universities (AB 2586)

This bill would prohibit the University of California, California State University, or a California Community College from disqualifying a student from being hired for an employment position due to their failure to provide proof of federal work authorization, except where that proof is required by federal law or where that proof is required as a condition of a grant that funds the particular employment position for which the student has applied.

The bill would further provide that each such campus is required to treat a specified prohibition in federal law on hiring undocumented noncitizens as inapplicable because that provision does not apply to any branch of state government.

The bill would require implementation by the covered colleges and universities by January 6, 2025.

U.S. Senator J.D. Vance and U.S. Representative Jim Banks have introduced bills in the U.S. Congress that would prohibit a college or university from receiving federal funds if it employs undocumented workers

and would require such institutions to participate in the federal E-Verify Program; but Congress has not taken action on either bill. (H.R. 7712 and S. 3978)

Status: Passed the Assembly over some opposition and is pending in the Senate.

Basic Labor Standards at the University of California (ACA 14 and SCA 8)

These are two resolutions to propose a Constitutional Amendment that would require employees of the Regents of the University of California to have the right to, and be covered by, certain basic labor standards. Specifically, the proposed amendment would provide that UC employees are entitled to the same basic labor standards that apply to other employees on or after January 1, 2025, including equal pay, minimum wage, timely payment of wages, overtime, occupational health and safety standards, meal and rest breaks, paid leave, including paid sick leave, and standards against displacement and contracting out of work. In addition, the amendment would provide that unless otherwise provided by state law, individuals who perform work for the UC Regents would have the right to payment of a prevailing wage if the work would be considered public works under prevailing wage laws. The amendment would allow the Legislature to enact laws to further these rights, to define or specify labor standards, or establish other protections for individuals who perform work for the Regents.

Status: ACA 14 passed the Assembly with some opposition and is pending in the Senate. SCA 8 is pending in the Senate.

Right of First Refusal and Rehire Rights for Certain Education Employees (AB 2088)

This bill would require county offices of education, school districts, community college districts and joint powers authorities to offer vacancies for part-time or full-time positions to current regular non-probationary classified employees who meet the minimum job qualifications of the position. The current employees would have a right of first refusal for ten business days. There are numerous specific requirements for the employer's offer, the employee's response, and the employee's resulting schedule. These new requirements would not supersede existing law regarding reemployment of employees who have been laid off from education employers, and do not apply to an education employer with a valid contravening collective bargaining agreement in effect on January 1, 2025.

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

Public Employment Compensation and Classification (AB 2335)

Currently, California's State Civil Service Act sets out a personnel system for the state, with appointments based on merit and fitness established by competitive tests. One of the purposes of that law is to provide a comprehensive personnel system in which positions involving comparable duties and responsibilities are similarly classified and compensated. This bill would expand that purpose to include that the compensation relationship between state civil positions with comparable duties and responsibilities is maintained.

Currently, the State Civil Service Act requires each state agency to establish an equal opportunity plan that includes identifying the areas of significant underutilization of specific groups based on race, ethnicity, and gender within each department and job category level. This bill would also require the plan to identify areas of significant *over*utilization of specific groups.

Existing law requires the Department of Human Resources to establish and adjust salary ranges for each class of position in the state civil service based on the principle that like salaries should be paid for comparable duties and responsibilities. This bill would require the department to consider any relevant factor (including the factors the Commission on the Status of Women and Girls would consider, as discussed above) in determining whether compensation and classification inequities exist between bargaining units within the state civil service.

Finally, current law requires the Department of Human Resources to evaluate all state civil service classifications in the Personnel Classification Plan, and prepare a detailed report (as specified) on gender and ethnicity pay equity in each classification where there is an underrepresentation of women and minorities. This bill would also require the report to include where there is an overrepresentation of women and minorities and statistical information for each bargaining unit. The bill would require the department to negotiate salaries to close any gaps found. It would require the department to consider any relevant factors, including the origin and history of the work, and the manner in which wages have been set, in determining whether compensation and classification inequities exist and whether work is currently undervalued or has historically been undervalued.

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

State Provided Benefits

Notifying Employees of Legal Rights for Workers' Compensation Purposes (AB 1870)

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Employers who are subject to the workers' compensation system are generally required to keep posted in a conspicuous location frequented by employees and easily read by employees during the hours of the workday a notice that includes, among other information, to whom injuries should be reported, the rights of an employee to select and change a treating physician, and certain employee protections against discrimination. Existing law requires the administrative director to make the form and content of this notice available to self-insured employers and insurers.

This bill would require the notice to include information concerning an injured employee's ability to consult a licensed attorney to advise them of their rights under workers' compensations laws, as specified.

Status: Passed the Assembly with some opposition and is pending in the Senate Labor, Public Employment and Retirement Committee.

Authorizing Electronic Signatures for Workers' Compensation (AB 2337)

This bill would define "signature" for purposes of a proceeding before the Workers' Compensation Appeals Board to include electronic record or electronic signature. An electronic record or electronic signature is defined as attributable to a person if it was the act of the person, shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

This bill would also authorize the signature requirement of every compromise and release agreement to be satisfied by an electronic signature and authorize the notary public acknowledgment requirement to be satisfied by electronic signature provided an electronic record includes specified information.

Status: Unanimously passed the Assembly and is pending in the Senate Judiciary and the Senate Labor, Public Employment and Retirement Committees.

Expanding Medical Benefits Under Workers' Compensation (SB 1205)

Existing law requires employers to secure the payment of workers' compensation, including wage replacement and medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. This bill would make an employee, who is working, entitled to receive (in addition to all other benefits) reasonable expenses of transportation, meals and lodging incident to receiving treatment, together with one day of temporary disability indemnity for each day of wages lost receiving treatment. If treatment does not require the employee to miss a full day of work, the employer may instead provide a percentage of one day of temporary disability indemnity representative of the percentage of the wages lost receiving treatment. This would apply whether the employee's injury was permanent or not.

Notably, this bill would prohibit employers from discharging or in any manner discriminating against the employee for receiving treatment during normal business hours or during the hours of the day when the employee is customarily at work.

Status: Passed the Senate with some opposition and is currently pending in the Assembly.

Farmworker Workers' Compensation Payments for Heat-Related Injuries (SB 1299)

This bill would create a disputable presumption that where an employer failed to comply with heat illness prevention standards (as defined) and there is a heat-related injury to the farmworker, it arose out of and in the course of employment. This bill would require the Workers Compensation Appeals board to find in favor of the farmworker if the employer fails to rebut the presumption. This bill also specifies compensation awarded for heat-related injury to farmworkers is to include, among other things, medical treatment and disability.

Additionally, this bill would establish the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of $5,000,000 derived from non-general funds of the Workers'

Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption.

Status: Passed the Senate with some opposition and is currently pending in the Assembly.

Unemployment Insurance: Paid Family Leave (AB 2167)

Existing law requires an individual to file a claim for family temporary disability insurance benefits no later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits. This bill would extend the timeline for an individual to file a claim to no later than the 60th consecutive day.

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

Miscellaneous

Labor Trafficking Unit within the Civil Rights Department (AB 1832)

This bill would establish a Labor Trafficking Task Force within the Civil Rights Department (CRD). The Task Force would take steps to prevent labor trafficking and coordinate with other government agencies to combat labor trafficking, investigate criminal actions related to labor trafficking in coordination with specified entities, and refer complaints to the CRD or other agencies for potential investigation, civil action, or criminal prosecution, among other things. The bill would require the Division of Occupational Safety and Health to notify the Task Force when an investigation reveals evidence of labor trafficking.

This bill is similar to AB 235 (from 2023), which did not pass out of the Appropriations Committee.

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

Labor Trafficking Unit within the DLSE (AB 1888)

This bill would establish a Labor Trafficking Unit (LTU) withing the Department of Justice to serve as the centralized enforcement, referral and investigative unit to combat labor trafficking in coordination with other state entities. The LTU would be given the authority to receive, investigate and process complaints alleging labor trafficking, and to take steps to prevent labor trafficking. It would also authorize the LTU to coordinate with state and local law enforcement agencies, tribal law enforcement agencies and district attorneys' offices when investigating criminal actions related to labor trafficking. The unit would also annually submit a report to the Legislature regarding its activities, including the number of complaints received and the number of complaints referred.

This bill is AB 1820 (2022), which was vetoed by Governor Gavin Newsom due to concerns the CRD – not the DLSE – would be the appropriate location for a Labor Trafficking Unit.

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

NEW LOCAL ORDINANCES

Los Angeles County Predictable Scheduling Ordinance

On April 23, 2024, Los Angeles County approved a fair workweek predictable scheduling ordinance, which will go into effect July 1, 2025. The ordinance is similar to an ordinance already in effect in the City of Los Angels. It applies to retail employers with at least 300 employees nationwide who work in the unincorporated areas of Los Angeles County at least two hours per workweek. Employers would need to provide work schedules 14 days in advance, give good faith estimates of schedules, allow rest between shifts, and offer extra hours to current employees before hiring new workers. The full ordinance is available here.

NEW STATE REGULATIONS AND GUIDANCE

Proposed Regulations re: AI and Automated-Decision Systems

On May 7, 2024, the Civil Rights Council issued proposed modified regulations under FEHA related to the use of artificial intelligence (AI) and automated-decision systems (ADSs). The Council announced a 45-day public comment period and set a public hearing for July 18, 2024. The draft regulations and additional information are available here. If the proposed amendments are finalized and accepted, employers will need to carefully assess their use of automated-decision systems in connection with applicants and employees.

The amendments would define an "Automated-Decision System" as a computational process that screens, evaluates, categorizes, recommends, or otherwise makes a decision or facilitates human decision making that impacts applicants or employees. It would include, for example, computer-based tests, puzzles, or games that make predictive assessments about an applicant or employee; direct job advertisements to targeted groups; screen resumes; or analyze facial expression, word choice, and/or voice in online interviews.

The regulation would specify that it is unlawful for an employer or other covered entity to use selection criteria (including a qualification standard, employment test, automated-decision system, or proxy) if such use has an adverse impact on or constitutes disparate treatment of an applicant or employee or a class of applicants or employees on a basis protected by the Fair Employment and Housing Act.

"Adverse impact" would be defined to include the use of a facially neutral practice that negatively limits, screens out, tends to limit or screens out, ranks, or prioritizes applicants or employees on a basis protected by the Act. "Adverse impact" would be synonymous with "disparate impact."

The employer would have a defense if it could show that the selection criteria, as used by the employer or other covered entity, is job-related for the position in question and consistent with business necessity and there is no less discriminatory policy or practice that serves the employer's goals as effectively as the challenged policy or practice. The regulation would specify that evidence of anti-bias testing or similar proactive efforts to avoid unlawful discrimination would be relevant to the inquiry. (Notably, this anti-bias testing is not *required,* but neither would it provide a complete defense to a claim of adverse impact.)

Employers are subject to significant limits on the use of medical and psychological examinations of applicants and employees. The amendment would specify that medical or psychological examinations include puzzles or games that evaluate physical or mental abilities and personality-based questions, including but not limited to those included in an automated-decision system. These would include questions that measure optimism and/or positive attitudes, personal or emotional stability, extroversion or introversion, and/or intensity.

The amendment would extend the period for which personnel or other employment records must be preserved from two years to four years, and would include all automated-decision system data in that preservation requirement.

The amendment would also provide that if an employer's preliminary decision to withdraw a conditional job offer involved the use of an automated-decision system, the employer must provide a copy or description of any report or information from the system, related data, and assessment criteria used as part of the automated-decision system.

NEW FEDERAL REGULATIONS AND GUIDANCE

New Regulations re: the Pregnant Workers Fairness Act (PWFA)

The U.S. Equal Employment Opportunity Commission (EEOC) published final regulations implementing the federal PWFA, which go into effect on June 18, 2024. The PWFA requires **employers with at least 15 employees** to make reasonable accommodations for the known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions of a qualified employee or applicant, unless the employer can demonstrate the accommodation would pose an undue hardship.

While California already protects pregnant workers via its Fair Employment and Housing Act (FEHA) and Pregnancy Disability Leave statute, the PWFA is *more protective of employees* in certain important ways. California employers must comply with both laws, and if they conflict, should follow the law that is more protective of employees.

One significant difference between California law and the PWFA is that the PWFA states an individual to be qualified for a job even if they cannot perform one or more of its essential functions. The regulations explain that the PWFA requires an employer to suspend a job's essential functions if the qualified employee's inability to perform the essential functions is temporary, the employee can perform the essential functions in the "near future" (generally forty weeks from the start of the temporary suspension), and the inability to perform the essential functions can be reasonably accommodated without an "undue hardship."

The regulations also provide numerous examples of potential reasonable accommodations, and lists certain accommodations that are almost always reasonable, called "predictable assessments": carrying water and drink as needed during the workday; additional restroom breaks; sitting; standing; and breaks as needed to eat and drink.

Another key difference between California law and the PWFA is that under the federal law, employers can only request documentation supporting an accommodation if it is reasonably needed for the employer to determine whether to grant the requested accommodation. The regulations list several instances in which requiring documentation is <u>not</u> reasonable, including when the limitation and need for reasonable accommodation is obvious, the employer already has sufficient information to support a known limitation related to pregnancy, or the request is for one of the four "predictable assessment" accommodations listed above.

California employers may be accustomed to requesting medical documentation for every pregnancy-related accommodation. However, given the PWFA's strict limits on when an employer may request medical documentation, California employers may want to stop asking for medical documentation as a matter of course. Best practice is to simply ask the employee for a description of their requested accommodation and an estimated timeline for the accommodation. When a California employer does request documentation, it should be careful to comply with limits imposed by both the PWFA <u>and</u> California law.

For more information, see WTK's Special Alert and the EEOC's summary materials explaining the PWFA and its regulations, which can be found here.

FTC Regulation Bans Nearly All Employment Non-Competes Nationwide

Pursuant to a new Federal Trade Commission (FTC) rule, as of September 4, 2024, nearly all employment non-compete agreements will be banned nationwide, unless implementation of the rule is delayed by a court. The new rule prohibits employers from entering into new non-compete agreements, makes most existing non-compete agreements unenforceable, and requires employers to provide notice to current and former workers that non-compete agreements are no longer in effect before the effective date of the rule.

- ***Definition of "Non-Compete"***

The new rule defines a "non-compete clause" as any term or condition of employment that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from getting a different job or starting a business after leaving their employment. The rule does *not* apply to restraints on *concurrent* employment, and applies only to restrictions on accepting a new job or starting a business after the conclusion of employment.

- ***Definition of "Workers"***

The new rule applies to "workers," defined to mean natural persons who work or who previously worked (whether paid or unpaid), including employees, independent contractors, externs, interns, volunteers, apprentices, or a sole proprietor who provides a service to a person. The term "worker" includes a natural person who works for a franchisee or franchisor, but does not include a franchisee in the context of a franchisee-franchisor relationship.

- ***Compliance with the New Rule***

- **No New Non-Compete Agreements After September 4, 2024**

Employers should not enter into, or attempt to enter into, prohibited non-compete agreements after the effective date of the new rule (September 4, 2024).

- **No Enforcement of Existing Non-Compete Agreements After September 4, 2024, With Limited Exceptions**

Employers should not enforce or attempt to enforce non-compete agreements or represent that a worker is subject to a non-compete agreement after the effective date of the new rule (September 4, 2024), *except* with respect to "Senior Executives" who entered into non-compete agreements prior to the effective date.

"Senior Executive" is defined to mean a "worker" who earns total annual compensation of at least $151,164 and is in a "policy-making position," which means a business entity's president, CEO, or the equivalent, any other officer of a business entity who has policy-making authority, or any other natural person who has policy-making authority similar to an officer with policy-making authority. "Policy-making authority" is defined to mean final authority to make policy decisions that control significant aspects of a business entity or common enterprise and does not include authority limited to advising or exerting influence over such policy decisions or having final authority to make policy decisions for only a subsidiary of or affiliate of a common enterprise. There is likely to be considerable litigation over the meaning of "policy-making authority" and the scope of the partial exemption for Senior Executives. Employers should note that under the new rule, they still may not enter *new* non-compete agreements with Senior Executives after September 4, 2024 – they may only continue to enforce pre-existing non-compete agreements with these workers.

Also, employers should note that the rule does not prohibit enforcement of non-compete clauses where the cause of action related to the non-compete clause accrued prior to the effective date of the rule.

- **Provide Notice to Current and Former Workers Before September 4, 2024**

If any workers are subject to existing non-compete clauses that would be prohibited by the new rule, employers must provide clear and conspicuous notice to those workers that the clause will not be – and cannot legally be – enforced against the worker. Because the word "worker" is defined to include people who *previously* worked for an employer, the notice requirement applies to *all* current and former workers who are subject to prohibited non-compete clauses; however, employers are not obligated to inform former workers if they no longer have contact information for those individuals.

The FTC has provided model language for the notice communication. Employers are not required to use this template, but it is an example of what the FTC deems sufficient. You can access the template here.

The notice may be sent via hand delivery, mail, email, or text message. The FTC has confirmed that the communication does not need to be individually addressed to each worker; instead, an all-staff email with the FTC's model language meets the requirement for current workers (and an employer can send an all-

staff email even if only some workers are subject to non-compete agreements). The notice must be sent by the effective date of the rule (September 4, 2024).

- ***Next Steps***

The rule has already been challenged in court, and there is a chance that a court may delay implementation of the rule. However, in the meantime, employers (including those in California) should consider what the rule would mean for their businesses if it goes into effect.

For more details about the new rule, see WTK's Special Alert. *In addition, you can read the complete rule* here. *The FTC has also published a* Fact Sheet *and a* Guide for Business and Small Entity Compliance *that provide helpful information.*

New DOL Rule Increases Salary Exemption Threshold

Both federal law (the Fair Labor Standards Act) and California state law require that employers must pay most employees a minimum wage and overtime. There are several exemptions from both state and federal law, including the executive, administrative, and professional exemptions. Employees may be exempt from the minimum wage and overtime requirements if they are paid a salary, if that salary exceeds a certain level, and if they meet the specific "duties" test for one of the exemptions.

On April 23, 2024, the federal Department of Labor (DOL) announced a new update to the regulations implementing the federal overtime pay requirements. The full new rule is available here, and the DOL has published updated FAQs about the proposed rule here.

The new regulations do *not* change the duties test, but they *do* increase the salary threshold for the federal executive, administrative, and professional exemptions and the highly compensated employee exemption, with two new effective dates: the first new salary threshold goes into effect July 1, 2024, and the second will be effective on January 1, 2025. The regulations also provide that the earnings thresholds will be automatically updated every 3 years based on then-current wage data.

	Executive, Administrative, and Professional Exemptions	
Effective Date	**Weekly Salary Threshold**	**Annual Salary Threshold**
Current/Before July 1, 2024	$684	$35,568
July 1, 2024	$844	$43,888
January 1, 2025	$1,128	$58,656
July 1, 2027 and every three years thereafter	To be determined by applying to available data the methodology in the rule.	To be determined by applying to available data the methodology in the rule.

	Highly Compensated Employee Exemption
Effective Date	**Annual Salary Threshold**
Current/Before July 1, 2024	$107,432
July 1, 2024	$132,964
January 1, 2025	$151,164
July 1, 2027 and every three years thereafter	To be determined by applying to available data the methodology in the rule.

The new rule has been challenged in court; but it is unclear whether the court will have time to issue any orders before the July 1, 2024 effective date.

Note that the salary threshold for the overtime exemption in *California* is still higher than the new federal salary threshold: as of January 1, 2024, an employee in California must earn at least $66,560 per year or $5,546.57 per month to qualify for the executive, administrative, or professional exemptions, and that number may increase on January 1, 2025 if the minimum wage increases due to inflation. Further, there is no “highly compensated employee exemption” in California. Therefore, the new federal rule should not affect employees in California.

EEOC Harassment Guidance

The EEOC recently issued new enforcement guidance on harassment in the workplace. Employers are encouraged to review the complete guidance here. The EEOC has also published a summary of key provisions here. Federal law already bans workplace harassment based on protected characteristics, including race, color, religion, sex (including sexual orientation; gender identity; and pregnancy, childbirth, or related medical conditions), national origin, disability, age (40 or older), and genetic information (including family medical history). Existing law also makes it clear that to violate the law, harassment must either create a hostile work environment or involve a change to the victim’s employment (such as termination, demotion, etc.).

This new guidance provides more than 70 specific examples of harassment the EEOC deems unlawful. Among other things, the guidance explains a cause of action for harassment under federal law could be supported by intrusive questions about sexual orientation, gender identity, gender transition, or intimate body parts, as well as outing or repeatedly misgendering a co-worker or denying access to a bathroom consistent with their gender identity.

The guidance also provides examples of potential harassment in report work environments, including sexist comments made during a video meeting, racist imagery visible in an employee's workspace when the employee participates in a video meeting, and sexual comments made during a video meeting about a bed being near an employee in the video image.

DOL Principles re: Artificial Intelligence

The DOL recently published principles and best practices regarding artificial intelligence (AI) and a Field Assistance Bulletin regarding AI and automated systems in the workplace related to the Fair Labor Standards Act (FLSA). Among other things, the DOL cautions:

- Employees must be paid for all hours worked; and if automated timekeeping and monitoring systems are used without proper human oversight, they might incorrectly categorize time as non-compensable based on analysis of worker activity, productivity, or performance.

- Systems that automatically deduct times for breaks could lead to FLSA violations.

- Use of AI scheduling and task assignment programs could create potential issues regarding hours worked in connection with "waiting time."

- AI systems or other technologies used to calculate wage rates must be used with caution and with proper human oversight to ensure employees are paid the applicable minimum wage, and to ensure the employee's regular rate and overtime premium are accurately calculated.

The Bulletin also provides guidance about the risks of using AI in connection with FMLA leave, Nursing employee protections, and Employee Polygraph Protection Act, and prohibited retaliation.

NOVEMBER 2024 BALLOT

Initiative to Raise the Minimum Wage

This ballot measure seeks to increase the minimum wage by $1.00 per year until it reaches $18.00 per hour and then to increase the minimum wage annually to adjust for inflation. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

Initiative to Repeal PAGA

This ballot measure seeks to repeal the Private Attorneys General Act, which allows employees to file lawsuits on behalf of themselves and other employees to recover monetary penalties for certain state employment law violations. The Labor Commissioner would retain the authority to enforce these laws and impose penalties. The initiative would require the legislature to provide funding for Labor Commissioner enforcement. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

If you have questions about how these new laws and regulations may affect your business, please contact us.

- Michael Kalt (mkalt@wilsonturnerkosmo.com)
- Katie M. McCray (kmccray@wilsonturnerkosmo.com)
- Patricia Clark (pclark@wilsonturnerkosmo.com)

Wilson Turner Kosmo's Legislative Summaries are intended to update our valued clients on significant employment law developments as they occur. This should not be considered legal advice.