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SHRM California LEGISLATIVE REPORT

PREPARED BY

MICHAEL S. KALT
SHRM CALIFORNIA GOVERNMENT AFFAIRS CO-DIRECTOR
WILSON TURNER KOSMO LLP

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

KATHERINE M. MCCRAY
PARTNER
WILSON TURNER KOSMO LLP

kmccray@wilsonturnerkosmo.com

PATRICIA L. CLARK
ASSOCIATE
WILSON TURNER KOSMO LLP

pclark@wilsonturnerkosmo.com

2025 CALIFORNIA LEGISLATIVE SUMMARY

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The 2025 Legislative session is officially underway. A significant number of new employment bills are working their way through the California Assembly and Senate. We are tracking more than 50 employment-related bills. We have identified the "Top Ten" issues represented by bills that – if passed – would have the most significant impact on California employers. These bills would:

1. Limit the use of **workplace surveillance tools** and require notice of doing so (AB 1331, AB 1221, and SB 238)
2. Restrict the use of **location data** (AB 1355)
3. Impose significant administrative requirements on the use of **automated decision-making systems** in the workplace (SB 7, AB 1018, and SB 420)
4. Prohibit employers from entering **"stay or pay" agreements** and impose new penalties for contracts in restraint of trade (AB 692)
5. Require distribution of a **notice of worker rights** and impose requirements if an employee is arrested or detained (SB 294)
6. Expand employees' ability to **refuse to perform hazardous tasks** (AB 1371)
7. **Revise Labor Commissioner complaint process** to increase the defendant's initial duty to produce information, increase the Labor Commissioner's initial duty to investigate, and impose a 30% "administrative fee" (AB 1234)
8. Change the definition of **pay scale for purposes of posting** and make changes to pay equity litigation (SB 642)
9. **Expand pay data reporting** to include sexual orientation and make pay data reports publicly accessible (SB 464)
10. Require **rehiring of certain workers displaced by state of emergency** (AB 858)

Of course, some of these bills may fail to progress through the legislative process and others may be materially amended. Looking ahead, the deadline for bills to pass key substantive committees is May 9, 2025, so significant amendments and votes are expected shortly. Stay tuned – we will keep you informed of developments as they occur!

In the meantime, below is a brief overview of our "Top Ten" potential employment law changes and a summary of the remaining notable employment bills currently pending, largely organized by subject matter. We have also included several references to notable new state and federal regulations and guidance.

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TOP TEN PROPOSED NEW CALIFORNIA EMPLOYMENT LAWS

1. Restrictions on the Use of Workplace Surveillance (AB 1331, AB 1221 and SB 238)

There are three pending bills that would regulate the use of workplace surveillance tools. Existing law (Labor Code section 435) already prohibits an employer from making an audio or video recording of an employee in a restroom, locker room, or room designated for changing clothes, unless authorized by court order. These bills would (a) prohibit the use of workplace surveillance in certain circumstances; (b) require advance notice and restrict the use of workplace surveillance data; and (c) require reporting to the Department of Industrial Relations. All three bills share the same definitions of key terms:

Each bill would apply to "employers," defined as any person who, directly or indirectly, or through an agent or other person, employs or exercises control over the wages, benefits, other compensation, hours, working conditions , access to work or job opportunities, or other terms or conditions of employment, of any worker. They explicitly include labor contractors and public entities in the definition of "employers. Each bill would protect "workers," defined to mean an employee or independent contractor.

Each would apply to "workplace surveillance tools," which are systems, applications, instruments or devices that collect or facilitate the collection of "worker data," activities, communication, actions, biometrics, or behaviors, or those of the public that are capable of passively surveilling workers, by means other than direct observation, and include video or audio surveillance, electronic work pace tracking, geolocation, electromagnetic tracking, photoelectronic tracking, or utilization of a photo-optical system or other means. "Worker data" would mean any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked with a covered worker.

a. Prohibition on Workplace Surveillance in Certain Circumstances (AB 1331)

The bill would add new Sections 1560-1563 to the Labor Code to prohibit employers from using a workplace surveillance tool to:

- Monitor or surveil workers in off-duty areas, including bathrooms, locker rooms, changing areas, breakrooms, designated smoking areas, lactation spaces, employee cafeterias and lounges, and other areas where workers congregate while off-duty but on work premises, including data collection on the frequency of use of those private areas; or

- Monitor or surveil a worker's residence, a worker's personal vehicle, or property owned, leased, or used by a worker, unless that surveillance is strictly necessary.

Workers would have the right to disable or leave behind workplace surveillance tools that are on their person or in their possession when entering the listed off-duty areas or during off-duty hours, including meal periods. Workers would also have the right to disable workplace surveillance tools that are on their person or in their possession during off-duty hours, including meal periods, in a worker's residence, personal vehicle, or property owned, leased or used by a worker.

It would also prohibit employers from requiring a worker to physically implant a device that collects or transmits data, including a device that is installed subcutaneously in the body.

The bill states that an employer may use routine workplace surveillance tools in a work area *not* listed in the statute as an off-duty area even if the employee may be present, so long as the employee is notified in advance that a workplace surveillance tool is in use.

The bill as currently drafted does not provide an exception for employees who have been notified and provided consent to prohibited surveillance.

It would also enact new discrimination and retaliation protections.

The new law would be enforceable via a private right of action by an employee, by the Labor Commissioner, or by the Attorney General, a district attorney, or a civil attorney. Employers could be liable for civil penalties of $500 per employee per violation of the law, damages, punitive damages, and attorneys' fees and costs, and could also be subject to injunctive relief.

Status: Passed the Assembly Labor and Employment Committee; pending in the Assembly Privacy and Judiciary Committees.

b. Restrictions on the Use of Workplace Surveillance (AB 1221)

The bill would impose the following restrictions on covered employers:

- The bill would require employers to provide written notice to workers at least thirty days before introducing a workplace surveillance tool. (For workplace surveillance tools that were in use before January 1, 2026, the employer would need to provide notice before February 1, 2026.) The employer would also need to provide notice to any worker hired after the date on which the employer first issued notice and would need to provide additional notice within 30 days of any significant updates or changes made to the workplace surveillance tool or how it is used. The notice would need to include, among other things, a description of the worker data to be collected, the intended purpose of the workplace surveillance tool, and how the form of worker surveillance is necessary to meet that purpose; a description of the specific activities, locations, communications, and roles that will be electronically monitored; whether the workplace surveillance tool will be used to make employment-related decisions and which decisions those will be; and the right of a worker to access and correct worker data collected by the workplace surveillance tool.

    - "Employment-related decision" would mean a decision by an employer that impacts wages, wage setting, benefits, compensation, hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, responsibilities, assignment of work, access to work and training opportunities, productivity requirements, workplace health and safety, and any other terms or conditions of employment.

- Employers would be prohibited from transferring, selling or licensing worker data to a vendor, subcontractor, or third party, unless the vendor is under contract to analyze or interpret worker data, and numerous additional conditions are satisfied.

- It would require employers or vendors to keep worker data secure, ensure it is accessible only to authorized personnel, and give notice to workers of a data breach as soon as possible.

- Employers using data collected from a workplace surveillance tool to make employment-related decisions would be required to retain that data for at least five years from the date collected.

- Employers would be required to allow workers to access and correct worker data collected by a workplace surveillance tool.

- Employers would be prohibited from using a workplace surveillance tool that does any of the following:

    - Prevents compliance with or violates any federal, state, or local law.

    - Identifies, obtains, or infers information about workers engaging in activity protected by state or federal labor law.

    - Obtains or infers a worker's immigration status, veteran status, ancestral history, religious or political beliefs, health or reproductive status, history, or plan, emotional or psychological state, neural data, sexual or gender orientation, disability, criminal record, credit history, or status protected under Section 12940 of the Government Code.

    - Incorporates facial recognition, gait recognition, or emotion recognition technology.

- Employers would be prohibited from relying primarily on worker data from an electronic surveillance tool to discipline or discharge a worker. Employers would need to use a human reviewer to conduct their own investigation and compile corroborating or supporting information for the decision, including but not limited to supervisory evaluations, personnel files, employee work product, or peer reviews.

- Employers would be prohibited from retaliating against workers for exercising their rights under the new law.

The bill provides for enforcement by the Labor Commissioner or public prosecutor or pursuant to civil action brought by an employee who has suffered a violation of the new law, who could seek damages including punitive damages, temporary or preliminary injunctive relief, and reasonable attorney's fees and costs. In addition, an employer who violates the new law would be subject to a civil penalty of $500 per violation.

The bill provides that it does not preempt any city or county ordinance that provides equal or greater protection to workers.

Status: Passed the Assembly Labor and Employment Committee; pending in the Assembly Privacy and Judiciary Committees.

c. Notice of the Use of Workplace Surveillance Tools to the DIR (SB 238)

This bill would require employers to provide annual notice to the Department of Industrial Relations ("DIR") of all the workplace surveillance tools the employer is using in the workplace."

The notice would be required to include, among other things, name of the model and a description of the technological capabilities of the workplace surveillance tool; whether the workplace surveillance tool will affect consumers or other individuals in addition to workers; the data that will be collected from workers and consumers and whether they will have the option of opting out of the collection of personal data; and whether the employer has disclosed the use of the workplace surveillance tool with the affected workers and consumers.

If employers began using workplace surveillance tools before January 1, 2026, they must provide notice before February 1, 2026.

The DIR would make these notices publicly available on the DIR's website within 30 days of receiving the notice.

Status: Pending in the Senate Rules Committee.

2. Restriction on Use of Location Data (AB 1355)

This bill would significantly limit businesses' ability to use location data. Although not limited to the employment context, the bill would – if passed – have major repercussions for employers who use location data, including for purposes of fleet tracking, cybersecurity monitoring, and remote work monitoring.

The bill applies to "covered entities," defined to include any individual, partnership, corporation, LLC, association, or other group, and all agents of such an entity. While the bill excludes a state or local agency, courts, and judges; it covers just about all businesses in California. (It would exclude certain information collected by health care providers if protected under the federal Health Insurance Portability and Accountability Act or other laws pertaining to heath care privacy.)

The bill regulates the collection and use of "location information," which is defined to include information that directly or indirectly reveals the present or past geographical location of an individual *or* device within the State of California that can reveal location within a range of five miles. This includes, but is not limited to, IP addresses, GPS coordinates, and cell-site location information.

First, the bill would prohibit a covered entity from collecting or processing location information unless doing so is "necessary to provide goods or services requested by that individual." It is not clear how the requirement that the data be "necessary to provide goods or services" would apply to data collected or used by employers with respect to their employees.

Second, it would be unlawful to collect or process more location information than necessary to provide the goods or services requested; to retain the information longer than necessary; to sell, rent, trade, or lease location information; to derive or infer any data not necessary to provide goods or services; or to disclose the data to third parties unless necessary to provide goods or services.

The bill specifies that it does not prohibit a covered entity from collecting or processing location information to respond to security incidents, fraud, harassment, malicious or deceptive activities, or any illegal activity , or to investigate, report, or prosecute those responsible for any of those actions. However, location information collected and processed for these reasons would be limited to what is necessary to carry out one of the purposes and must not be retained for longer than 24 hours.

Third, it would be unlawful to disclose location information to any government agency or official without a valid court order.

Next, the bill requires a covered entity to prominently display notice stating that location information is being collected, with specific details.

Finally, the bill would require a covered entity to maintain a location privacy policy, including specific information, and to provide advance notice of any changes to the policy.

The California Privacy Protection Agency would have authority to enforce this rule. Violations of the law would also be subject to a claim for damages, a civil penalty of $25,000, injunctive relief, and attorney's fees and cost.

Status: Pending in the Assembly Privacy and Judiciary Committees.

3. <u>Artificial Intelligence and Automated Decision Systems in the Workplace (SB 7, AB 1018, and SB 420)</u>

Three bills are part of the continued trend reflecting increased concerns regarding the use of artificial intelligence (AI) and Automated Decision Systems (ADSs) in employment settings. One bill (AB 1018) focuses specifically on the use of AI and ADSs in employment settings, while several other pending bills (AB 1018 and SB 420) apply more broadly, but have the potential to impose significant new requirements on employers who use AI or ADSs to facilitate employment-related decisions.

a. Automated Decision Systems in the Workplace (SB 7)

This bill would create a new chapter in the Labor Code (sections 1520-1538) to regulate the use of ADSs in employment settings.

What is an Automated Decision System?

This bill defines a covered Automated Decision System (ADS) to mean a computational process derived from machine learning, statistical modeling, data analytics, or artificial intelligence that issues simplified output, including a score, classification, or recommendation, that is used to assist or replace human

discretionary decision making and materially impacts natural persons. “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. “Automated Decision System” would *not* mean a spam email filter, firewall, antivirus software, identity and access management tool, calculator, database, dataset, or other compilation of data.

“Employment-related decisions” is defined as any decisions by an employer that impact wages, wage setting, benefits, compensation, work hours, work schedule, performance evaluation, hiring, discipline, promotion, termination, job tasks, skill requirements, work responsibilities, assignment of work, access to work and training opportunities, productivity requirements, workplace health and safety, and any other terms or conditions of employment.

What New Obligations Do Employers Have Under this Bill?

This bill sets strict guidelines for employers (and their vendors) regarding the use of ADSs in employment. It prohibits employers from using ADS that violate any federal, state, or local labor, occupational health and safety, employment, or civil rights laws. Additionally, ADS cannot be used to obtain or infer sensitive personal information such as immigration status, health history, or political beliefs. This bill also bans the use of ADS for predictive behavior analysis and prohibits taking adverse actions against workers for exercising their legal rights. Employers must ensure that any compensation decisions informed by ADS are based on clear, task-related cost differentials.

Furthermore, this bill mandates that employers cannot rely solely on ADS for making critical employment decisions such as hiring, promotion, discipline, or termination. A human reviewer must be involved to corroborate or support these decisions with additional information like supervisory evaluations or personnel files. Employers must also allow workers to access and correct their data used by ADS and to appeal any employment-related decisions made by ADS. Finally, this prohibits the use of customer ratings as the primary input for ADS decisions, ensuring a fairer and more transparent process for workers.

Notice Requirement

This bill requires employers (or their vendors) to provide written notice to workers if and when an ADS is used for employment-related decisions. The notice must be written in plain language, in the language used for routine communications, and provided via a simple method such as email or hyperlink. This ensures that workers are clearly informed about the use of ADS in decisions that affect their employment. Additionally, the notice must inform workers that employers are prohibited from retaliating against them for exercising these rights.

- *Pre-Use Notice*

Notice must be given at least 30 days before introducing the ADS, by February 1, 2026, for existing systems, within 30 days of hiring a new worker, or within 30 days of significant updates to the ADS. Employers must also maintain an updated list of all ADS in use and include this list in the notice. The notice

must contain detailed information about the ADS, including its nature, purpose, and scope, the data it uses, and the logic behind its decisions. It should also identify the creators and operators of the ADS, explain performance metrics and their implications, and describe workers' rights to access information, appeal decisions, and correct data.

- *Post-Use Notice*

Notice must be given *at the time* the decision is communicated to the worker. The notice must include specific information such as the contact details of a human representative for further inquiries, details about the ADS used, and the worker's rights to appeal the decision and correct any errors in the data.

Appealing Employment Related Decisions Made by ADSs

Employers (or their vendors) must provide affected workers with a form or a link to an electronic form to appeal the decision within 30 days of notification. The appeal form must allow workers to request access to the data used by the ADS, any corroborating evidence from a human reviewer, and provide their reasons and evidence for the appeal. Workers can also designate an authorized representative to access the data on their behalf.

Employers (or vendors) are required to respond to appeals within 14 business days. The response must involve a human reviewer who objectively evaluates all evidence, has the authority to overturn the decision, and was not involved in the original decision. The outcome of the appeal must be communicated to the worker in a clear, written document explaining the result and the reasons behind it. If the decision is overturned, the employer or vendor must rectify it within 21 business days.

Enforcement and Potential Penalties/Liability

Employers will be prohibited from retaliating against workers for exercising their rights under the bill, filing complaints, cooperating in investigations, or assisting in enforcement actions. The Labor Commissioner is responsible for enforcing these protections, including investigating violations, issuing citations, and filing civil actions. If a citation is issued, the procedures for contesting and enforcing judgments are the same as those for other labor violations. Workers can also bring civil actions for damages, including punitive damages, and seek temporary or preliminary injunctive relief. Public prosecutors may enforce the bill as well. Employers who violate these provisions are subject to a civil penalty of $500 per violation.

However, employers should note that even without this bill becoming law, it is possible that use of AI or an ADS 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 California's Civil Rights Council has approved 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.)

Status: Pending in the Senate Judiciary Committee.

b. Automated Decision Systems (AB 1018)

This bill is similar to AB 331 (introduced in 2023) and AB 2930 (introduced in 2024), which both passed several Assembly committees on party-line votes before stalling in the Appropriations Committee. This bill would create a new chapter in the Business and Professions Code (sections 22756-22756.8) to regulate ADSs and impose requirements on both the users and developers of such tools. Covered automated decision systems and artificial intelligence defined under this bill are identical to SB 7, but instead of "Employment-related decisions" this bill uses the term "Consequential decisions" and defines it as decisions that materially impact the cost, terms, quality, or accessibility of a side variety of topics, including employment-related decisions.

Who Would Have New Obligations Under this Bill?

This bill would apply to both "Deployers" and "Developers" of ADSs. A "**Deploye**r" is a person, partnership, state or local government agency, corporation, or developer, who **uses** an ADS to make or facilitate a consequential decision, either directly or by contracting with a third party for those purposes. A "**Developer**" is a person, partnership, state or local government agency, corporation, or deployer that **designs, codes, substantially modifies,** or otherwise **produces** an ADS that makes or facilitates a consequential decision, either directly or through a third party.

- *Developer Obligations include but are not limited to*:
    - Performance Evaluations

This bill requires all Developers to conduct performance evaluations of an ADS under specific conditions.

Developers must take several steps when conducting a performance evaluation. First, they must describe the ADS's purpose, list approved uses, and assess performance, including accuracy, reliability, and the effects of fine-tuning. Developers must also evaluate potential disparate treatment and impacts, detailing conditions, necessity, and mitigation measures. If the ADS is deployed, any unanticipated disparate impacts must be reported.

Furthermore, Developers are required to contract an independent third-party auditor to assess compliance with these requirements. Developers must provide the auditor with the necessary information, allowing for redactions to protect trade secrets, and notify the auditor of any withheld information. If the performance evaluation deadline passes before the audit is completed, the Developer cannot deploy or make the ADS available until the audit is finished.

- Selling, Licensing, or Transferring ADS

Developers will be required to provide several key pieces of information when selling, licensing, or transferring an ADS to a potential Deployer. This includes the most recent performance evaluation results, instructions for approved uses, and a description of fine-tuning circumstances.

- Auditor Impact Assessments

Developers must contract with an independent third-party auditor to assess the compliance, with any feedback made publicly available on the Developer's website. When Developers receive an impact assessment from an auditor, they must provide detailed information on any material differences between expected and observed accuracy and reliability, along with deployment conditions. Developers must inform Deployers of any unanticipated disparate impacts and the conditions under which they occur and explain steps to mitigate these discrepancies.

- *Deployer Obligations include but are not limited to*:

  - Disclosure Requirements

Deployers using ADS must provide a plain language written disclosure before finalizing a consequential decision made or facilitated by a covered ADS, which includes a statement informing the subject that the ADS will be used, along with the name, version number, and Developer of the ADS. It should also specify whether the Deployer's use of the ADS is within the scope of a Developer-approved use and provide a description of that use. Additionally, the disclosure must detail the personal characteristics or attributes of the subject that the ADS measures or assesses to make or facilitate the decision. The structure and format of the ADS outputs and a plain language description of how these outputs are used to make or facilitate the decision must also be included. The disclosure should state whether a natural person will review the ADS outputs or the outcome of the decision before it is finalized. Furthermore, it must outline the subject's rights under relevant subdivisions and the means and timeframe for exercising those rights, along with contact information for the deployer, the entity managing the ADS (if different from the deployer), and the entity interpreting the ADS results (if different from the deployer).

Additionally, after a consequential decision is finalized, Deployers using ADS must provide a plain language written disclosure within five days, which includes the personal characteristics or attributes that the ADS measured or assessed, the sources of personal information collected from the subject, and any key parameters that disproportionately affected the decision's outcome. It should also detail the structure and format of the ADS outputs and provide a plain language description of how these outputs were used. The disclosure must also explain the role the ADS played in making the decision and whether any human judgment was involved. Contact information for the Deployer, the entity managing the ADS (if different from the Deployer), and the entity interpreting the ADS results (if different from the Deployer) must also be included. The subject's rights and the means and timeframe for exercising those rights should be clearly outlined.

- Opt-out Provision

Before finalizing a consequential decision made or facilitated by a covered ADS, Deployers must provide reasonable opportunity to opt out (with certain exceptions not applicable to employment decisions).

- Post-Decision Correction and Appeal Opportunities

After using ADS, Deployers must provide an opportunity to correct any incorrect personal information used in the decision within 30 business days. Deployers must comply with the correction request within 30 business days if it is accompanied by sufficient documentation. If the correction changes the decision's outcome, it must be rectified within 30 days. If not, the subject must be informed within 30 days. If a correction request is denied, the Deployer must explain the basis for the denial and provide an opportunity for the subject to request the deletion of their personal information.

Deployers must also provide an opportunity to appeal the outcome of the consequential decision within 30 business days. Deployers must review the appeal request within 30 business days. If the original decision is found to be incorrect, it must be rectified within 30 days. If not, the subject must be informed within 30 days. If an appeal request is denied, the Deployer must provide an explanation of the basis for the denial.

- Redaction and Notification Requirements

Deployers that provide documentation to the subject of a consequential decision may make reasonable redactions to protect trade secrets. If information is withheld, the Deployer must notify the subject and provide a basis for the withholding. Additionally, if Deployers are required by another state or federal law to provide a similar notice, duplicative notice is not required.

- Proportionality and Purpose Limitation

A Deployer's collection, use, retention, and sharing of personal information from a subject of a consequential decision must be reasonably necessary and proportionate to achieve the purposes for which the information was collected and processed. The personal information must not be further processed in a manner that is incompatible with these purposes.

- Independent Audits for High-Impact ADS and Compliance

Deployers using an ADS to make or facilitate consequential decisions impacting more than 5,999 people within a three-year period must have an independent third-party auditor conduct an impact assessment by January 1, 2030, and every three years thereafter. If the audit is not completed on time, the ADS cannot be used for consequential decisions until the audit is finished.

- Documentation Retention Requirements

Deployers must retain specific documentation in an unredacted format for as long as the ADS remains deployed, plus an additional 10 years. This includes documentation from Developers, provided to subjects, correction requests, opt-out requests, appeal requests, auditor exchanges, and records of redactions.

- Compliance Oversight and Privacy Regulations

Deployers must designate at least one employee to oversee compliance. This designated employee is responsible for conducting a prompt and comprehensive review of any credible compliance issues raised. Additionally, Deployers that are businesses subject to the California Consumer Privacy Act of 2018 must comply with any privacy-related opt-out and access regulations adopted by the California Privacy Protection Agency.

What to Do When the Attorney General Requests Information?

If the Attorney General requests a performance evaluation or impact assessment for an ADS, the Developer, Deployer, or auditor must provide an unredacted copy within 30 days. The Attorney General can share these documents with other enforcement entities as needed. Sharing these documents does not waive any legal protections like attorney-client privilege or trade secret protection, and they are exempt from the California Public Records Act. Each day the required documents are not submitted while the ADS is in use counts as an additional violation.

Enforcement and Potential Penalties/Liability

Deployers and Developers would be subject to civil actions brought by the Attorney General, DA, County Counsel, City Attorney, CRD or Labor Commissioner for any violation of the new law, in which a court could award injunctive relief, declaratory relief, attorney's fees and costs, and a civil penalty of up to $25,000 per violation.

Status: Pending in the Assembly Judiciary and Privacy and Consumer Protections Committees.

c. High Risk Automated Decision Systems (SB 420)

This bill is the third legislative effort to regulate AI and automated decision systems (ADSs), focusing on "high-risk automated decision systems" to ensure responsible use and prevent algorithmic discrimination. "High-risk automate decision system" is defined as ADSs that assist or replace human discretionary decisions with significant legal or similar impacts, affecting areas such as education, employment, utilities, housing, healthcare, lending, legal rights, and government services. It does not include ADSs that only perform narrow procedural tasks, enhance human activities without making decisions, detect patterns without influencing decisions, or assist in preparatory tasks for assessments. Covered automated decision systems, artificial intelligence, deployers and developers defined under this bill are identical to AB 1018.

Also identical to AB 1018, this bill looks to create a new chapter in the Business and Professions Code (sections 22756-22756.8). Notably, this bill will not apply to entities with 50 or fewer employees or high-

risk ADSs that have been approved, certified, or cleared by a federal agency that complies with another law that is substantially the same or more stringent.

Obligations of Developers Under This Bill

- Impact Assessments

Developers must perform an impact assessment on high-risk ADSs before making them publicly available for use on or after January 1, 2026. For high-risk ADSs made available before this date, an impact assessment is required if substantial modifications are made.

- Disclosure Requirements

Developers must provide Deployers and potential Deployers with statements from their impact assessments, detailing the system's purpose, benefits, uses, deployment contexts, outputs, types of data used, and processing recommendations. The assessment must also summarize potential disproportionate impacts on protected classifications and describe safeguards against algorithmic discrimination

- Governance Program

Developers will be required to establish, document, implement, and maintain a governance program with reasonable administrative and technical safeguards to manage foreseeable risks of algorithmic discrimination. This program must consider the system's use, the Developer's size and complexity, and the technical feasibility and cost of available tools.

Obligations of Deployers Under This Bill

- Impact Assessments

Deployers must perform an impact assessment within two years of deploying high-risk ADSs first deployed after January 1, 2026. State agencies may opt out of this requirement if they use the system only as intended by the Developer and meet specific conditions, such as not making substantial modifications and ensuring compliance with relevant sections of the Public Contract Code.

- Notification and Disclosure

Deployers must notify individuals affected by high-risk ADS decisions and disclose the system's purpose, the specific decision it was used to make, how it was used, the type of data used, contact information for the deployer, and a link to a public statement summarizing the Deployer's use of such systems.

- Public Statement

Deployers must publish a statement on their website summarizing the types of high-risk ADSs they deploy, how they manage risks of algorithmic discrimination, and the nature and source of the information collected and used by these systems.

- Appeal Process

Deployers must provide, where technically feasible, an opportunity for individuals affected by decisions made by high-risk ADSs to appeal those decisions for review by a human.

- Governance Program

Like Developers, Deployers must establish, document, implement, and maintain a governance program with reasonable administrative and technical safeguards to manage foreseeable risks of algorithmic discrimination. This program must consider the system's use, the Deployer's size and complexity, and the technical feasibility and cost of available tools.

Confidentiality and Legal Privileges

State agencies must keep impact assessments provided by Developers confidential. Developers and Deployers will not be required to disclose information if such disclosure would result in the waiver of a legal privilege or the disclosure of a trade secret, as defined in Section 3426.1 of the Civil Code.

Deployment Restrictions

Developers and Deployers must not deploy high-risk ADSs if the impact assessment determines that the system is likely to result in algorithmic discrimination. However, Developers and Deployers may deploy the system if safeguards are implemented to mitigate these risks and an updated impact assessment verifies that algorithmic discrimination has been mitigated and is not reasonably likely to occur.

Enforcement and Potential Penalties/Liability

The Attorney General or CRD may bring a civil action against a Deployer or Developer for violations. Penalties for failing to conduct an impact assessment range from $2,500 to $10,000, depending on the size of the organization. Intentional violations add $500 per day of noncompliance. Algorithmic discrimination violations incur a $25,000 penalty per incident. The Attorney General or CRD can also seek injunctive relief and reasonable attorney's fees and costs.

Before commencing a civil action, the Attorney General or CRD must provide 45 days' written notice of the alleged violation. The Developer or Deployer has 45 days to cure the violation and provide a written statement under penalty of perjury that the violation has been cured. If the violation is cured, no action will be maintained for that violation.

Status: Passed the Senate Judiciary Committee and pending in the Senate Governmental Organization Committee.

4. Prohibition on "Stay-or-Pay" Agreements (AB 692)

This bill would make it unlawful to require employees to enter into "stay or pay" agreements by which employees are obligated to pay an amount of money if their employment terminates and would empower

the Labor Commissioner to enforce California's law against restraints on trade and create new penalties for violation of the law.

Existing law (Business and Professions Code section 16600, *et seq.*) already invalidates any contract by which anyone is restrained from engaging in a lawful trade, profession, or business and makes it an unlawful practice to require an employee to enter into a noncompete agreement. This bill would create a new section 16608 in the Business and Professions Code. The new law would apply to contracts entered into on or after January 1, 2026, and would make it unlawful to require a worker to enter into a contract as a condition of employment that does any of the following:

- Requires the worker to pay a "debt" if the worker's employment ends.
    - "Debt" means any money or property due for employment-related costs, education-related costs, or a consumer financial product or service. This would include any cost associated with a job training program or skills training program, or any necessary expenditure or loss incurred in direct consequence of the discharge of work duties, including training, residency, orientation, licensure, or competency validation required by an employer or to practice in a specific employee classification.
- Authorizes the employer, training provider, or debt collector to resume or initiate collection or end forbearance on a debt if the worker's employment ends.
- Imposes any "penalty, fee, or cost" on a worker if the worker's employment ends.
    - "Penalty, fee, or cost" includes but is not limited to a replacement hire fee, retraining fee, replacement fee, quit fee, reimbursement for immigration or visa-related costs, liquidated damages, lost goodwill, or lost profit.

For purposes of this bill, "worker" would include but not be limited to an employee, prospective employee, freelance worker, independent contractor, extern, intern, apprentice, or sole proprietor.

The bill specifies that a contract that is unlawful under this rule is a contract restraining a person from engaging in a lawful profession, trade, or business, and is void under Section 16600.

The bill would also add Section 926 to the Labor Code to specify that a contract that violates Business and Professions Code section 16600, et seq. is void as contrary to public policy, and that the Labor Commissioner can enforce the section and may issue civil penalties. Furthermore, it provides that a person seeking to establish liability against any employer may bring a civil action on behalf of the person, other persons similarly situated, or both, and that any person found liable shall be liable for actual damages sustained by the worker or $5,000, whichever is greater, in addition to injunctive relief and reasonable attorney's fees and costs.

Status: Passed the Assembly Labor and Employment Committee; pending in the Judiciary Committee.

5. Notice of Worker Rights and Requirements if an Employee is Arrested or Detained (SB 294)

This bill, entitled "The Workplace Know Your Rights Act" would require employers to provide a stand-alone written notice to each current employee and to each employee upon hire. The employer would also be required to give the notice to an employee's authorized representative, if any. The written notice would contain a description of workers' rights in 13 separate areas, including health and safety protections, wage and hour protections, workers' compensation, unemployment insurance, paid sick leave, protection against unfair immigration-related practices, rights under privacy data laws, and constitutional rights when interacting with law enforcement at the workplace. The Labor Commissioner would be required to develop a template notice by July 1, 2026 (as well as videos for employers and employees), but the bill does not specify how employers could comply with the bill's requirements before the template notice is published.

The bill would also require an employer to notify an employee's designated emergency contact in the event of an enforcement action against the employee in which the employee is arrested and detained. The designated emergency contact would be authorized to collect all wages owed to the employee in this scenario and could file a wage claim on the employee's behalf if the wages are not lawfully paid.

Employers would be prohibited from retaliating against employees for taking action in connection with this new law.

The new requirements could be enforced by the Labor Commissioner, or by an employee in a civil action, or by a public prosecutor. Any of these petitioners could seek injunctive relief, damages, punitive damages, and attorneys' fees and costs. In addition, employers who violate the new requirements could be subject to a civil penalty of $500 per employee for each violation.

The bill would not preempt any local ordinance that provides equal or greater protection.

Status: Pending in the Senate Rules committee.

6. Employee Refusal to Perform Hazardous Tasks (AB 1371)

This bill modifies existing workplace safety laws under the California Occupational Safety and Health Act of 1973, which already requires employers to comply with specific safety and health standards and prohibits employers from laying off or discharging employees for refusing to perform work that would violate these standards and create a real and apparent hazard. This bill expands these protections by allowing employees to refuse tasks if they have a reasonable apprehension that performing the task would result in injury or illness to themselves or others, even if the task does not explicitly violate prescribed safety standards.

Under this bill, an employee's refusal to perform a hazardous task is contingent on the employee, or another employee if reasonably practical, having communicated or attempted to communicate the safety or health risk to the employer. If the employer fails to provide a response that reasonably addresses the employee's concerns, the employee can refuse the task. This bill also requires employers to continue paying employees their full wages during their scheduled work hours until the hazardous condition is

resolved, or the employee can reasonably conclude that the task no longer poses a risk of serious injury or illness.

Additionally, this bill prohibits employers from using an employee's refusal to perform a hazardous task as grounds for disciplinary action and extends retaliation protections to these employees. Finally, this bill removes the provision that includes domestic work employees under its definition of "employee," thereby narrowing the scope of who is covered under these protections.

Status: Pending in the Assembly Labor and Employment Committee.

7. Changes to the Procedure for the Labor Commissioner to Investigate Employee Complaints and Hold Berman Hearings; Creation of Administrative Fee on Awards (AB 1234)

Existing law (Labor Code sections 98-98.2) sets forth a procedure for the Labor Commissioner to investigate employe complaints and to provide for a hearing in an action to recover wages and other compensation (sometimes called a "Berman hearing"). This bill would significantly revise those procedures to increase the defendant's initial duty to produce information in response to claims, increase the Labor Commissioner's initial duty to investigate claims, and impose a 30% "administrative fee" on top of any order, decision, or award.

First, the bill would create several new steps between the filing of a complaint by an employee and a hearing. Specifically, after receiving an employee complaint, the Labor Commissioner would not immediately notify the parties whether a hearing will be held or no further action will be taken. Instead, a detailed procedure would apply, including:

- Within 60 days of receipt of an employee complaint, the Labor Commissioner would notify all parties against which the complaint has been filed of the allegations in the Complaint. If the employee complaint did not include the complainant's best estimate of wages and penalties owed, the Labor Commissioner may calculate a monetary value based on the allegations and investigation it has conducted.

- Within 30 days after the notice is transmitted, the defendants must pay the full amount due or file an answer, which would be required to include:

    - Whether the defendant admits to employing the complainant, evidence to support any asserted independent contractor status, and any known employers or potentially liable parties.

    - Whether the defendant admits or denies owing any amount to the complainant, including the particulars in which the employee complaint is inaccurate and the facts upon which defendant intends to rely.

- The Labor Commissioner could then decide to prosecute the action under Labor Code Section 98.3 or decide to take no further action and notify the parties of such within 30 days of receipt of the answer.

- If the Labor Commissioner does not take these actions, it would be required to conduct an investigation, including making an assessment of the amount of wages, damages, penalties, expenses and other compensation owed and determining all parties liable for the assessment. This must be done within 90 days of the receipt of the answer. The bill sets forth the process for the investigation, including holding an investigatory and settlement conference, issuing a subpoena, and issuing a formal complaint.

- Within 90 days of the issuance of a formal complaint, the Labor Commissioner shall set a hearing date.

Second, if an award is granted, it will impose an administrative fee in the amount of 30% of the order, decision, or award to compensate the Labor Commissioner for the staffing required to investigate and recover wages and penalties.

Third, the bill would classify an appeal filed in a superior court relating to the Labor Commissioner's order, decision, or award as an unlimited civil case. The bill would grant a court jurisdiction over the entire wage dispute, including related wage claims not raised in front of the Labor Commissioner, but would prohibit the court from consolidating the action with any other actions not arising out of, or elated to, the underlying order, decision, or award, absent agreement in writing by all parties.

Status: Passed the Assembly Labor and Employment Committee; pending in the Judiciary Committee.

8. Additional Restrictions on Pay Scale Posting and Changes to Pay Equity Litigation (SB 642)

This bill would revise the definition of the "pay scale" that must be included in job postings, expand the statute of limitations for bringing pay equity cases, and expand the definition of "wages" that must be considered in assessing a pay equity claim.

- ***Pay Scale Posting***

In 2022, California enacted SB 1162, which (among other things) expanded Labor Code section 432.3 to require all employers to provide the pay scale for a position to an applicant, upon reasonable request; and to require employers with 15 or more employees to post the "pay scale" within any job posting and provide the "pay scale" to any third party engaged to announce, post, or publish a job posting for inclusion in any such job posting. Pay scale is currently defined as "the salary or hourly wage range that the employer reasonably expects to pay for the position."

This bill would amend Section 432.3 to impose add a "good faith" requirement to the definition of pay scale. The bill would define pay scale as "*a good faith estimate of* the salary or hourly wage range that the employer reasonably expects to pay for the position."

- ***Pay Equity Claims***

Existing law (Labor Code section 1197.5) prohibits an employer from paying employees at wage rates less than it pays those of the opposite sex for substantially similar work, except in certain narrow

circumstances. This bill would revise that law to prohibit paying employees less than it pays those of *another* sex. It would also expand the statute of limitations from two to three years after a cause of action occurs (or from three to four years for willful violations). And it would potentially expand the limitations period for such claims by specifying that a cause of action "occurs" when any of the following occur: (A) a discriminatory compensation decision or other practice is adopted; (B) an individual becomes subject to a discriminatory compensation decision or other practice; or (C) when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from the decision or other practice. The bill would also potentially expand the period of limitations by providing that a series of discriminatory wage payments shall be actionable as a continuing violation if the discriminatory wage payments arise in whole or in part from an ongoing discriminatory compensation decision or practice.

Finally, the bill would clarify that "wages" and "wage rate" include all forms of pay, including, but not limited to, salary, overtime pay, bonuses, stock, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. Thus, in assessing whether one employee has been paid at a wage rate less than other employees, courts would consider all these forms of pay.

Status: Pending in the Senate Labor and Judiciary Committees.

9. Expansion of Employer Pay Data Reporting Requirements (SB 464)

Existing Law (Government Code section 12999), enacted in 2020 and amended in 2022, requires private employers with 100 or more employees (or 100 or more labor contractor employees) to submit annual pay data reports to the Civil Rights Division (CRD), including mean and median hourly rates for employees with each combination of race, ethnicity, and sex within each job category at each establishment. This bill would expand the law in several ways.

First, it would require employers to collect and store any demographic information they gather for the purpose of submitting the pay data reports separately from employees' personnel records.

Second, it would require employers to report on sexual orientation, in addition to race, ethnicity, and sex. Information regarding an employee's sexual orientation would only be collected if voluntarily disclosed by the employee to the employer by the employee themselves.

Third, while existing law only allows the CRD to publish *aggregate* reports based on data obtained pursuant to the law, the new bill would allow the CRD to publish private employer reports, provided that the publication is reasonably calculated to prevent the association of any data with any individual person. (It appears this would allow disclosure of the name of the employer, just not disclosure of individual employee information.)

Fourth, the bill would create a new Section 12999.1, which would mandate that a *public* employer with 100 or more employees would also be required to submit a pay data report, starting in May 2027. "Public Employer" would include the state and every state entity, including the Legislature, the judicial branch,

California State University, political subdivisions of the state, including cities and counties, school districts, community college districts, and any public agency, authority, board, commission or district. The public employer pay data reports would be required to include data related to ethnicity, race, disability, veteran status, gender, gender identity, and sexual orientation organized by job category as listed in the civil service pay scale.

Status: Pending in the Senate Labor and Judiciary Committees.

10. Rehiring and Retention of Workers Displaced by States of Emergency (AB 858)

California Labor Code section 2810.8, enacted in 2021 and amended in 2023, provides rehire rights for employees in the hospitality and business services industries who are laid off for reasons related to the COVID-19 pandemic. The law is set to expire on December 31, 2025.

This bill would both extend these protections through December 31, 2027, and expand the protection to cover employees who were employed for at least six months, and then laid off on or after January 1, 2025, for a reason related to a state of emergency. A "state of emergency" would mean a declaration of a state of emergency or a local emergency by the Governor or by a local governing body or official designated by ordinance pursuant to the California Emergency Services Act. The bill would create a presumption that a separation due to lack of business, reduction in force, or other economic, non-disciplinary reason is due to a reason related to the state of emergency, unless the employer establishes otherwise by a preponderance of the evidence. If enacted, this new law would remain in effect until December 31, 2027.

The new bill would apply to the same employers as the existing law (hotels, private clubs, event centers, airport hospitality operations, airport service providers, and building services, as defined in the law). It would provide the same substantive protections to laid-off employees (requirements that the employer offer to re-hire laid-off employees pursuant to a specified procedure and giving laid-off employees five business days in which to accept or decline the offer; written notice to laid-off employees if the employer declines to recall the laid-off employee on grounds of lack of qualifications; retaining records; non-retaliation). The new law would have the same enforcement mechanism – the Division of Labor Standards Enforcement (DLSE) would have exclusive jurisdiction to enforce the law, and could award employees hiring and reinstatement rights, front pay or backpay for each day during which the violation continues, and the value of benefits the laid-off employee would have received. Employers could also be liable for civil penalties of $100 per employee whose rights are violated and liquidated damages of $500 per employee.

However, the new law would both extend the protections to employees laid off due to COVID-19 through 2027; and expand the scope of the statute's rehire obligation to cover employees laid off due to a state of emergency. As currently drafted, the bill would have something of a retroactive effect, as it would apply to employees laid off due to a state of emergency on or after January 1, 2025.

The provisions of the bill attempting to extend protections to employees laid off due to a state of emergency are similar to AB 3216, which was vetoed by Governor Newsom in 2020, and was a predecessor to the existing protection for workers laid off as a result of COVID-19.

Status: Pending in the Assembly Labor and Employment Committee.

ADDITIONAL NEW CALIFORNIA EMPLOYMENT LAWS

Harassment/Discrimination/Retaliation

Certificates of Prior Training for So-Called AB 1815 Training (AB 1015)

California law presently requires employers to provide so-called AB 1815 harassment training to employees within certain time frames outlined in Government Code section 12950.1 (*i.e.*, within six months of promotion for supervisory employees and within six months of hiring for non-supervisory employees, and refresher training thereafter every two years for supervisory and non-supervisory employees). Employers and employees have expressed frustration that these timelines, while well intentioned, pose logistical challenges and may be cumulative for employees who frequently change jobs, including if they have just completed their most recent training at another employer. Recognizing these concerns, section 12950.1 exempts employees from repeat sexual harassment training when switching employers, as long as they complete it once every two years.

This bill would amend section 12950.1 and provide that an employer may satisfy the training requirements for subsections (a) and (f) [the general training requirements and the training requirements for seasonal, temporary and short-term employees] by demonstrating the employee has a certificate of training completion within the past two years. It would essentially extend to all employers and employees the exemption for building trade employers and employees, allowing the employees to retain their harassment training certification for two years, regardless of the employer.

Status: Pending in the Assembly Labor and Employment Committee.

Expansion of Statute of Limitations for Sexual Assault Claims (AB 250)

In 2022, California enacted the Sexual Abuse and Cover Up Accountability Act (AB 2777, codified at Code of Civil Procedure section 240.16) reviving certain claims for damages suffered as a result of a sexual assault that one or more entities or their agents covered up. This bill would extend the eligibility period for such claims that would otherwise be time barred prior to January 1, 2026, for a sexual assault if (1) one or more entities are legally responsible for damages arising out of a perpetrator's sexual assault; and (2) the entity or entities (or their agents) engaged in a cover up (as defined). It would also revive such claims directly against the person who committed the sexual assault.

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

Leaves of Absence/Time Off/Accommodation Requests

Paid Disability and Parental Leave for Employees of Public Schools and Community Colleges (AB 65)

Existing law provides public schools and community colleges with the discretion to offer paid leave for pregnancy-related absences and to set their own rules and regulations for such leave. This bill would require public schools and community colleges to provide up to 14 weeks of *paid* leave for employees who need to be absent due to pregnancy, miscarriage, childbirth, termination of pregnancy, or recovery from these conditions. This paid leave, not be deducted from any other leaves of absence available, can start before and continue after childbirth if the employee is actually disabled by these conditions. Part-time employees are eligible for 14 weeks of paid leave, with the number of hours per week based on their normally scheduled hours or average weekly pay in the period prior to the leave.

In addition, this bill will ensure that employees on this leave continue to receive their group health coverage at the same level as if they were not on leave. Notably, this bill also removes any additional eligibility requirements, such as minimum hours worked or length of service, making it easier for employees to access this benefit.

Status: Pending in the Assembly Higher Education Committee.

Human Resources/Workplace Policies

Expansion of Personnel Records to include Education and Training Records (SB 513)

Under existing law, Labor Code section 1198.5 gives employees or their representatives the right to inspect and receive a copy of certain personnel records maintained by their employer or former employer. This bill would expand Section 1198.5 to provide that employees have the right to inspect education and training records *and* would specify the contents of such records. Specifically, any employer who maintains education or training records would need to ensure that the records include:

(1) The name of the employee;

(2) The name of the trainer;

(3) The duration and date of the training;

(4) The core competencies of the training, including skills in equipment or software; and

(5) The resulting certification or qualification.

Current and former employees and their representatives would then be able to inspect or obtain copies of those records pursuant to the procedure already established by Section 1198.5.

Status: Passed the Senate Labor Committee; pending in the Senate Appropriations Committee.

California Worker Adjustment and Retraining Act (SB 617)

Existing law, the California Worker Adjustment and Retraining (WARN) Act (Labor Code § 1400, *et seq*.), requires employers to provide advance notice to affected employee prior to ordering a "mass layoff," "relocation," or "termination" at a "covered establishment" (as defined in the statute). This bill would require employers to include in the notice whether the employer plans to coordinate services, such as rapid response orientation, through the local workforce development board and to include a functioning email and telephone number to contact the employer. If the employer chooses not to coordinate with the local workforce development board, the employer shall include in the notice a description of services offered by the board, a functioning email and telephone number of the board, and whether the employe plans to use any entity to inform impacted workers of services. If the employer chooses to coordinate with the local workforce development board, it shall do so within 30 days after the date of notice.

Status: Pending in the Senate Labor Committee.

Mail Distribution of Employment-Relating Postings (AB 1392)

Existing Law (Labor Code section 1207) provides that if an employer is required to physically post information, the employer may also distribute that information to employees by email. This bill would also allow employers to distribute such information by mail. Neither email nor mail distribution would alter the employer's obligation to physically display the required posting.

Status: Passed the Assembly; pending in the Senate.

Restriction on the Use of Self-Service Checkout at Grocery and Retail Drug Stores (SB 442)

This bill would restrict the use of self-service checkout at grocery retail stores and retail drug establishments and would require these establishments to notify their employees and the public before implementing self-service checkout. This is streamlined version of 2024's Senate Bill 1446, which passed the Senate but stalled in the Assembly.

The bill would apply to:

- "Grocery retail stores," which means either:
    - A "grocery establishment," defined as a retail store over 15,000 square feet that sells 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; or
    - A "superstore," defined as a store over 75,000 square feet that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law and devotes more than 10% of sales floor area to the sale of nontaxable merchandise.

- "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 most grocery retail stores and retail drug establishments from providing self-service checkout for customers unless *all* 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 and has signage indicating the number of items that are permitted.

3. The employer has established a workplace policy that prohibits customers from using self-service checkout to purchase items that require identification (like alcohol) or items subject to theft-deterrent measures including locked cabinets and electronic surveillance tags, that require the intervention of an employee for the customer to access or purchase the item.

4. An employee must be relieved from all other duties when monitoring a self-service checkout station.

5. 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 notify workers, their collective bargaining representatives, and the public at least 60 days in advance of the implementation of self-service checkout.

A violation of these rules would subject an employer to a civil penalty of $10,000 for each day of violation, not to exceed an aggregate penalty of $200,000. The DLSE would be authorized to investigate alleged violations and order the appropriate relief. Any worker eligible to receive notice or a representative of a collective bargaining unit would be allowed to seek enforcement of the law, and a prevailing plaintiff would be awarded attorney's fees and costs. The DLSE and public prosecutors could also seek to enforce the law.

Employers would be prohibited from retaliating or discriminating against a worker who files a complaint with the Labor Commissioner, cooperates in an investigation, or opposes any policy or practice prohibited by the new law.

Finally, the bill specifies that it would not preempt any city or county ordinance that provides equal or greater protection to workers.

Status: Passed the Senate Labor Committee; pending in the Senate Judiciary Committee.

Designation of Diwali as a State Holiday (AB 268)

Existing law designates specific days as state holidays and designates certain holidays on which community colleges and public schools are authorized to close. Existing law entitles state employees (with some exceptions) to be given time off with pay for specified holidays. This bill would add Diwali to the list of state holidays, authorize community colleges and public schools to close on Diwali, and authorize state employees to elect to take time off with pay in recognition of Diwali. However, Diwali would be excluded from designation as a judicial holiday (along with certain other state holidays).

Status: Passed the Assembly Governmental Organization Committee; pending in the Public Employment Committee.

Native American Day as a Paid State Holiday (AB 989)

The fourth Friday in September, known as "Native American Day," is already a state holiday, and state employes may elect to receive eight hours of holiday credit for the day (along with several other state holidays). This bill would amend Government Code sections 19853 and 19853.1 to make Native American Day a paid holiday for all state employees.

Status: Passed the Assembly Governmental Organization Committee; pending in the Committee on Public Employment.

Occupational Safety and Health

Occupational Safety: Face Coverings (AB 596)

Until February 3, 2025, regulations promulgated by the Occupational Safety and Health Standards Board (Cal OSHA) prohibited employers from preventing employees from wearing face coverings unless it would create a safety hazard. This bill would codify that regulation and extend its application indefinitely. "Face covering" is defined to include surgical masks, medical procedure masks, respirators worn voluntarily, or tightly woven fabric or nonwoven material of at least two layers that completely cover the nose and mouth and is secured to the head with ties, ear loops, or elastic bands that go behind the head. A violation of these standards and regulations under specific circumstances will be considered a crime.

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

Face Coverings in Public Places (AB 1326)

This bill would add sections 28050-28052 to the Health and Safety Code to clarify that individuals have the right to wear a mask (as defined) on their face in public places for the purpose of protecting individual health or the public health, with regard to communicable disease, air quality or other health factors. "Public place" would be defined to include an employment setting or other workplace. The bill specifies that the right to wear a mask does not modify or limit requirements for the removal of a mask relating to

various situations, including security protocols to identify an individual, a bona fide occupational qualification, or emergency health care protocols.

Status: Pending in the Assembly Labor and Employment Committee.

Department of Industrial Relations: Advisory Committee – Occupational Safety and Health (AB 694)

This bill aims to address the understaffing and vacancies within the Division of Occupational Safety and Health by mandating a comprehensive study and making recommendations for the design of a Compliance Safety and Health Officer workforce development pipeline program. This bill requires the Department of Industrial Relations to contract with the University of California, Berkeley Labor Occupational Health Program and the University of California, Los Angeles Labor Occupational Safety and Health Program to conduct this study. The University of California may subcontract this responsibility to other specified entities.

Additionally, this bill requires the University of California to convene an advisory committee consisting of members from specified state agencies, worker advocacy organizations, and other academic institutions (as prescribed) to make recommendations regarding the scope of the study, and the committee must meet at least once within the first 60 days of the contract's commencement. Additionally, this bill requires the University of California and its subcontractors to issue a report detailing the understaffing and vacancies within the division. This report will be posted on the Division of Occupational Safety and Health's website and disseminated to the advisory committee members, the Governor, and specified legislative committee chairs within 18 months of entering the contract.

Status: Unanimously passed the Assembly Labor and Employment Committee and pending in the Assembly Higher Education Committee.

Strengthening of Educational Settings Workplace Violence Prevention Plans (AB 1163)

This bill seeks to strengthen workplace violence prevention plans for employees in educational settings, including school districts, county offices of education, charter schools, and community college districts. By July 1, 2026, these plans must incorporate in-person training sessions that allow for real-time interaction, enabling participants to ask questions and receive immediate answers. The training will encompass physical and verbal de-escalation techniques designed to reduce the likelihood of students committing violent incidents, as well as strategies to support students' safe return to the learning environment after committing such incidents. These methods will be informed by research or practical experience regarding how best to accommodate, address, and interact with pupils who have exceptional needs or behavioral health issues. Additionally, this bill requires that training be provided to new employees before they commence their duties and to all employees on an annual basis.

Status: Pending in the Assembly Labor and Employment and Education Committees.

Notice of the Email Address of CalOSHA Office (AB 1110)

Current law (Labor Code section 6328) requires the Division of Occupational Safety and Health (CalOSHA) to prepare a notice, to be posted by employers, containing information about safety rules and regulations in the workplace. That notice must include, among other things, the address and telephone office of the nearest division office. This bill would also require the notice to contain the office's email address.

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

Wage and Hour

Publication and Enforcement of DLSE Orders, Decisions, and Awards (SB 261)

Current law allows the Division of Labor Standards Enforcement (DLSE), under the direction of the Labor Commissioner, to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Existing law (Labor Code section 98.1) allows the Labor Commissioner to file and serve a copy of an order, decision, or award after such a hearing. This bill would require the Commissioner to post a copy of such orders, decisions, or awards, on the DLSE website no later than 15 days after the time to appeal has expired. The Commissioner would redact the name, address, and personal contact information of the employee or complainant from the publicly posted document.

The bill would also create Labor Code section 98.15, which would require the DLSE to post on its website for seven years the names and contact information of any employer with an unsatisfied order, decision, or award as to which the time to appeal has expired or an unsatisfied final court judgment based on the order, decision, or award. Before posting this information, The DLSE would be required to provide notice to the employer; and the posting shall only be removed if there has been full payment of any unsatisfied judgement or the employer has entered into an approved settlement; *and* the employer has submitted a certification, under penalty of perjury, that all violations identified in the order have been remedied or abated.

Next, the bill would create Labor Code section 238.05, which would provide that if a final judgment against an employer arising from nonpayment of wages for work performed in this state remains unsatisfied after 180 days after the time to appeal has expired and not appeal is pending, the employer shall be subject to a civil penalty not to exceed three times the outstanding judgment, including post-judgment interest. There would be an exception if an employer reaches an accord with an individual holding an unsatisfied judgment pursuant to Labor Code section 238, subdivision (b) and remains in compliance with the accord until its full satisfaction.

Finally, the bill would create Labor Code section 238.10, which would allow a court to award a prevailing plaintiff all reasonable attorney's fees and costs in any action brought to enforce a final judgment against an employer arising from the employer's nonpayment of wages for work performed in the state, or to

otherwise induce compliance by or impose lawful consequences on a judgment debtor for nonsatisfaction of such final judgment.

Status: Passed the Senate Labor Committee and the Senate Judiciary Committee; Pending in the Senate Appropriations Committee.

Denial of License/Permit Based on Unsatisfied Judgment for Nonpayment of Wages (AB 485)

Existing law (Labor Code section 238) provides that if an employer has an unsatisfied judgment for nonpayment of wages, the employer may not continue to do business in California, unless the employer has obtained a bond (as specified). In addition, current law (Labor Code section 238.4) provides that employers in the long-term care industry who violate Section 238 may be denied a license by the State Department of Public Health.

This bill would create a new Labor Code section 238.7 and provide that an employer in any industry that is required to obtain a license or permit from any state agency shall be denied a permit or license if they are in violation of Section 238.

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

Notice of Potential Tax Fraud re: Noncompliant Judgement Debtor with Unpaid Wage Order (SB 355)

Existing law allows the Labor Commissioner to issue orders, decisions, awards, and judgment against an employer related to specified violations of labor law. This bill would create Section 96.9 in the Labor Code, which would require a final judgment to provide documentation to the Labor Commissioner within 60 days that the judgment has been fully satisfied, or a bond has been issue (as specified), or the judgment debtor has entered into an agreement for the judgment to be paid in installments. If a judgment debtor failed to comply with that filing requirement, it would be liable for an additional civil penalty of $2,500. In addition, if a judgment debtor does not comply with the filing requirement, the Labor Commissioner would submit the unsatisfied judgment to the Tax Support Division of the Employment Development Department as a notice of potential tax fraud.

Status: Passed the Senate Labor Committee; pending in the Senate Transportation Committee.

Suspension of Contractor's License, Civil Action for Failure to Pay Wages (AB 1002)

This bill would add section 7110.6 to the Business and Professions code and would allow the Attorney General to bring a civil action against a contractor on the basis that the contractor has failed to pay its workers' wages, or on the basis that the contractor has not fulfilled a wage judgment or is in violation of a court order regarding payment of wages to its workers. The AG could seek temporary suspension or permanent revocation of the contractor's license or seek to bar the licensure, or deny re-licensure, of any contractor, officer, director, associate, partner, manager, responsible manager, or other qualifying individual of a contractor. The AG would be required to notify the registrar of contractors at least 30 days

prior to filing a civil complaint, and the Contractors State License Board would be able to intervene in any court proceedings brought pursuant to this rule.

Status: Pending in the Assembly Committees on Business and professions and the Judiciary Committee.

Creation of Civil Action to Allow Recovery of Penalties for Failure to Pay Wages (SB 310)

Current law (Labor Code section 210) sets out a penalty for failure to pay wages to employees (including timely payment of wages during employment, timely payment of wages upon termination of employment, and equal pay). That penalty currently can be recovered by an employee in an administrative process via Labor Code section 98 (sometimes called the a "Berman hearing") or via the Labor Commissioner pursuant to a citation. Under current law, employees can also seek these penalties under PAGA (the "Private Attorneys General Act").

This new bill would allow employees to recover the statutory penalties for failure to pay wages in Labor Code section 210 via a civil action. Employees would thus be able to directly sue employers (including – potentially – in a class action) to recover these penalties. The bill also states its provisions are severable.

Status: Passed the Senate Labor Committee; pending in the Senate Judiciary Committee.

Direct Contractor and Subcontractor Liability for Wage Claims (SB 597)

Current Law (Labor Code section 218.8) applies to direct contractors making or taking a contract for the erection, construction, alteration or repair of a building or other private work. Those Direct Contractors are liable for any debt incurred by a subcontractor and owed to a *wage claimant* for the wage claimant's performance of labor. A "direct contractor" is a contractor that has a direct contractual relationship with an owner.

This bill would add an expiration date to Section 218.8, stating that it would only apply to contracts entered into before January 1, 2026. For contracts entered after that date, it would add a new Section 218.9, which would make director contractors liable for "*indebtedness for the performance of labor* described in subdivision (b) of Section 8024 of the Civil Code, incurred by a subcontractor. A "direct contractor" would be a contractor that has a direct contractual relationship with an owner *or* any other person or entity engaging contractors or subcontractors on behalf of an owner. The direct contractor's liability would be limited to payments for labor required by the subcontractor's agreement with the laborer or the subcontractor's collective bargaining agreement with a labor organization representing the laborer.

Status: Passed the Senate Labor Committee; pending in the Senate Judiciary Committee.

Allowing Labor Commissioner to Enforce Rule Against Taking Employee Gratuities (SB 648)

Existing law (Labor Code section 351) prohibits employers from taking any gratuity left for an employee, or from deducting any amount from an employee's wages on account of a gratuity, or from requiring an employee to credit a gratuity against wages owed. This bill would give the Labor Commissioner authority

to investigate and issue a citation or file a civil action for gratuities taken or withheld in violation of Section 351.

Status: Passed the Senate Labor Committee; pending in the Senate Judiciary Committee.

Meal Period Exception for Employees of Water Corporation (SB 693)

Current law (Labor Code section 512) sets out the rules requiring employers to provide non-exempt employees with meal periods. Under existing law, employees in certain occupations are exempted from the meal period rules if they are covered by a valid collective bargaining agreement and that agreement expressly provides for various items, including meal periods for the employees. This bill would extend that exception to cover employees employed by a water corporation (and subject to the requisite collective bargaining agreement).

Status: Pending in the Senate; awaiting referral to committee.

Rest Period Exemption for Employees who Hold Safety-Sensitive Positions at a Petroleum Facility (AB 751)

Existing law (Labor Code Section 226.75) provides a temporary exemption from California's rest period requirements for specified employees who hold a safety-sensitive position at a petroleum facility, to the extent that the employee is required to carry and monitor a communication device and to respond to emergencies or is required to remain on employer premises to monitor the premises and respond to emergencies. Existing law requires another rest period to be authorized in the case of an interrupted rest period, and, if circumstances do not allow for the employee to take a rest period, requires the employer to pay the employee one hour of pay at the employee's regular rate of pay for the rest period that was not provided. This exemption is set to expire January 1, 2026. This bill would extend the exemption indefinitely, and would extend the exemption to "other refineries," which would mean establishments that produce fuel through the processing of alternative feedstock as described in Labor Code section 7853, subdivision (c).

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

Independent Contractor Classifications

Additional Proposed Changes to the Exemptions from the ABC Test for Worker Classification Purposes (AB 504, AB 816 and SB 527)

In 2020, California enacted Labor Code section 2775 codifying the so-called "ABC Test" enunciated by the California Supreme Court in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903, for determining whether an individual is an employee or an independent contractor. The Legislature has also subsequently specified various occupations and business relationships that are exempt from the ABC Test and that instead would be governed by the so-called *Borello* "multi-factor" test for classification purposes. (Labor Code section 2776 *et seq.*).

On an annual basis thereafter, the Legislature has considered additional bills to expand or modify these exemptions, and three such bills are being considered this year. The first, AB 504, deals with licensed manicurists, whose existing exemption from the ABC Test is scheduled to become inoperative on January 1, 2025. AB 504 would remove the January 1, 2025, inoperative date, making the licensed manicurist exemption extend indefinitely.

The second – SB 527 – would create an exemption from the ABC Test for sports coaches for elementary or secondary private schools or local education agencies (as defined).

The third – AB 816 – would create an exemption for a merchandiser contracting with a bona fide business or hiring entity to provide stand-alone in-instore inventory and product placement labor or services on behalf of retailers and brands in the consumer-packaged goods industry. To qualify for this new exemption, all of the following criteria would need to be satisfied: (1) the individual voluntarily registers as a merchandiser; (2) the merchandiser can freely negotiate or voluntarily accept the terms of renumeration for completion of the labor or service; (3) the labor or services are performed by the merchandiser without supervisor, direction or control of the business or hiring entity; (4) the business or hiring entity carries private occupational accident insurance for individuals registering as merchandisers; (5) the business or hiring entity does not require the merchandiser to accept any specific contract for labor or serve, undergo training or provide specialized equipment or tools; and (6) outside of the contract for labor or services, the business or hiring entity does not restrict the merchandiser from engaging with or performing work through other businesses or companies.

Status: AB 504 and AB 816 are pending in the Assembly Labor and Employment Committee, and SB 527 is pending in the Senate Labor Committee.

Employer Indemnification Obligations Expanded to Personal and Commercial Vehicles Owned by Employees (SB 809)

Labor Code section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in director consequence of the discharge of their duties. This bill would add new Labor Code section 2802.2 to state that the employer's indemnification obligations apply to the

use of a vehicle, including a personal or a commercial vehicle, owned by an employee and used by that employee in the discharge of their duties.

With the 5-year exemption for the construction industry to comply with the so-called ABC Test having expired in 2024, this bill would take additional steps to ensure and potentially incentivize construction industry employers to comply as it relates to truck owners that they use.

First, it would add new Labor Code section 2775.5 to clarify that the mere ownership of a vehicle, including a personal vehicle or a commercial vehicle, used by a person in the providing labor or services for remuneration does not make that person an independent contractor. Rather, that individual's status as an employee or an independent contractor would still be determined by Labor Code section 2775, including the so-called "ABC Test."

Second, under the Motor Carrier Employer Amnesty Program administered by the Labor Commissioner and the Employment Development Department, motor carriers performing drayage service were able to be relieved of misclassification liability by entering into a settlement agreement prior to 2017 and reclassifying all their commercial drivers as employees. This bill would establish a similar program (i.e., the Construction Trucking Employer Amnesty) whereby construction contractors could also be relieved of misclassification liability by January 2027 agreeing to properly classify all drivers performing construction work as employees and entering into a settlement agreement with provisions identified in new Labor Code section 2750.9.

Third, it would incentivize employers to adopt the two-check system whereby the trucking companies would pay truck-owner drivers with two separate checks: one for their labor and one check for use of their commercial vehicles. Accordingly, SB 809 would require construction trucking companies to indemnify a commercial motor vehicle driver who owns the commercial vehicle they use in discharge of their duties for the "use, upkeep and depreciation" of that commercial vehicle. It would also specify how the amount of that reimbursement may be determined and how it may be paid.

In this regard, SB 809 seeks to incentivize construction employers via the amnesty program to reclassify their independent contractors to employers and seeks to provide clarity to these employers that they can meet their indemnification obligations by adopting this two-check system.

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

Public Sector/Labor Relations

Notice Requirements Before Issuing Request for Proposals for Work Within Scope of Recognized Employee Organizations (AB 339)

This bill would require the governing board of a local agency to provide at least 120 days written notice to a recognized employee organization before issuing a request for proposal, request for quotes or renewing or extending an existing contract to perform services within the scope of work of the job classifications represented by the employee organization. This notice would need to include specific

information, including the anticipated duration of the organization, and require the public agency to meet in good faith with the recognized employee organization if it demands to meet and confer.

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

Union-Related Privileges Proposed (AB 340 and AB 1109)

Both bills would protect communication between employees and union representatives albeit in slightly different contexts. AB 340 would add Government Code 3558.9 to prohibit a public employer from questioning a public employee or their union representative about communications made in confidence between the employee and the union representative relating to any matter within the scope of the recognized employee organization's representation. It would also prohibit the public employer from compelling the public employee or their union representative to disclose confidential communications to a third party.

AB 1109 would add Evidence Code section 1048 to establish that a represented employee and their union representative have a privilege to refuse to disclose in any court, agency or administrative proceeding, any confidential communication (as defined) between the employee or former employee and the union agent made while the union agent was acting in the agent's representative capacity. It would also establish that the represented employee has the privilege to prevent another from disclosing, in connection with such a proceeding, a confidential communication between the agent and a union agent that is privileged. AB 1109 appears similar to a previous proposal vetoed by Governor Newsom.

Status: AB 340 unanimously passed the Assembly Public Employment and Retirement Committee and is pending in the Assembly Appropriations Committee; AB 1109 has unanimously passed the Assembly Judiciary Committee.

Privilege for Bias Revealed During Bias Mitigation Efforts (SB 303)

This bill would amend the Evidence Code to allow a public employer or a public employee to refuse to disclose and prevent others from disclosing information pertaining to the public employee's bias obtained through or as a result of bias mitigation or elimination efforts. "Bias mitigation or elimination" efforts would be defined as training and education provided by a public employer that asks employees to understand, recognize or acknowledge the influence of conscious and unconscious bias and implements strategies to mitigate the impact of such bias.

It would also render inadmissible in civil proceedings evidence of bias mitigation or elimination efforts relating to a public employee, including the results of those efforts and any specific strategies developed to address the public employee's bias conducted by or on behalf of the public employer.

Status: Pending in the Senate Judiciary Committee.

Background Checks for Certain University of California Employees (AB 922)

This bill would require the University of California to conduct background checks, to be completed by the Department of Justice, during the final stages of the application process for prospective employees and volunteers who have or would have specified duties, including possession of building master keys for access to residences, offices or other facilities and those who would have direct responsibility for the care, safety and security of people or property. It would also require any services contract entered into, renewed or amended on or after January 1, 2026, by the University of California to contain a provision requiring the contractor and specified individuals to provide fingerprint images and related information if the will have access to certain records, documents, information or items.

Status: Pending in the Assembly Higher Education Committee.

Tax-Related

Tax Credits for Student Loan Payments by an Employer on Behalf of an Employee (AB 386)

This bill would allow, for taxable years 2026 through 2031, a qualified taxpayer (e.g., a business or employer) to receive a tax credit of up to $3,000 per taxable year per employee for student loan repayments made on behalf of a full-time employee. It would similarly exempt from the full-time employee's gross income qualifying student loan repayments made on their behalf by a qualifying employer. This bill is similar in concept but with a lower annual credit and income exclusion to other bills that have recently stalled in the California legislature.

Status: Pending in the Assembly Revenue and Taxation Committee.

Tax Exemption for Tips (SB 17)

Echoing proposals at the federal level, this bill would for taxable years beginning on or after January 1, 2026, exclude tips from gross income for purposes of California's Personal Income Tax laws. "Tips" would be defined as "any gratuity provided by a customer or client of the employer's business."

Status: Pending in the Senate Revenue and Taxation Committee.

Tax Exclusion for Overtime to First Responders and Agricultural Employees (SB 628 and AB 1124)

SB 628 would authorize employers to claim a credit in an amount equal to the overtime wages paid during that quarter to specified agricultural employees covered by Wage Order 14-2001. The credit would need to be claimed within specifically enumerated documents, and the amount claimed cannot exceed the amount that would otherwise be remitted for that quarter to the Employment Development Department for employee withholdings.

AB 1124 would, for taxable years beginning on or after January 1, 2025, and before January 1, 2030, exclude from the gross income of a qualified taxpayer (i.e., a first responder) overtime wages paid in relation to work performed directly in response to or in support of emergency operations.

Status: SB 628 is pending in the Assembly Judiciary Committee and AB 1124 is pending in the Assembly Revenue and Taxation Committee.

State Provided Benefits

Paid Family Leave for Care of "Designated Person" (SB 590)

This bill aims to expand the scope of California's paid family leave program. Currently, the program provides wage replacement benefits for up to 8 weeks to workers who take time off to care for a seriously ill family member. This bill, effective July 1, 2027, will extend eligibility to individuals caring for a "designated person," defined as anyone related by blood or whose relationship with the employee is equivalent to a family relationship. Employees will be able to identify this designated person when filing a claim for benefits.

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

Tightened Regulations for Workers' Compensation Insurance for Contractors (SB 291)

Existing law exempts an applicant or licensee who has no employees, from the requirement to have on file with the Contractors State License Board ("CSLB") a current and valid Certificate of Workers' Compensation Insurance or Certification of Self-Insurance, provided that they file a statement with the CSLB certifying that they do not employ any person (as specified), and who does not hold a specified license issued by the board (as defined). This bill proposes to repeal the current exemption by January 1, 2027, instead of the previously set date of January 1, 2028. This change will affect both applicants or licensees organized as joint ventures, and applicants and licensees who have no employees, have no disciplinary actions and do not undertake projects over $2,000. The $2,000 valuation applies to a single work or operation and cannot be circumvented by dividing the contracts to evade this requirement.

This bill also introduces stricter penalties related to false filings of exemption certificates for workers' compensation insurance. It mandates a minimum civil penalty of $10,000 per violation for sole owner licensees, or $20,000 for any partnership, corporation, limited liability company or tribal business licensee, found employing workers without maintaining the required workers' compensation coverage. Additionally, CSLB is prohibited from renewing or reinstating licenses for those under disciplinary action until they provide valid proof of workers' compensation insurance.

To further ensure compliance, this bill requires the CSLB to develop an open book examination by January 1, 2027. This examination will be included in the license renewal process, requiring licensees to certify under penalty of perjury that they do not have employees and understand the penalties for non-compliance. This is to ensure that the financial thresholds for exemptions remain relevant and fair over time. However, this bill specifies that the exemptions do not apply to any applicant or licensee with an active C-39 classification, which pertains to roofing contractors, due to the higher risks associated with this type of work.

Status: Pending in the Senate Judiciary and Business, Professions and Economic Development Committees.

Enhanced Workers' Compensation for Hospital Employees (SB 632)

Existing law establishes compensation to employees for injuries sustained in the course of employment. This system includes a rebuttable presumption that certain injuries sustained by specified members of law enforcement or first responders arose out of and in the course of employment. Prior to January 1, 2024, this presumption also applied to various employees, including those working at health facilities, for illnesses or deaths resulting from COVID-19 under specified circumstances.

This bill enhances these protections specifically for hospital employees who provide direct patient care in acute care hospitals. This bill defines "injury" for these employees to include infectious diseases, cancer, musculoskeletal injuries, post-traumatic stress disorder, and respiratory diseases, explicitly including COVID-19 and its variants. This bill creates rebuttable presumptions that these injuries, if developed or manifested in hospital employees, arose out of and in the course of their employment. Additionally, this bill extends these presumptions (depending on the type of injury) for specified time periods after the hospital employee's termination of employment, ensuring continued protection even after they leave their job. For example, the presumption for infectious diseases (including COVID-19), extends for up to 90 days after the employee's termination. For post-traumatic stress disorder, the presumption extends for up to 36 months (3 years). For musculoskeletal injuries, the presumption extends for up to 60 months (5 years) after termination. Finally, for cancer and respiratory diseases, the presumption extends for up to 120 months (10 years) after termination.

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

Real Property Transfers by Uninsured Employers (SB 847)

Under existing law, employers must secure workers' compensation for their employees, and if the employer has not secured the payment of compensation or is illegally uninsured, a lien can be filed against their property or the property of substantial shareholders. This bill addresses situations where uninsured employers, or substantial shareholders, attempt to evade financial responsibilities by transferring ownership of real property after an employee' s injury but before a lien is recorded.

This bill authorizes the Administrative Director of the Division of Workers' Compensation ("Director") to determine whether such property transfers were intended to retain a beneficial interest for the uninsured employer or substantial shareholder, effectively creating a resulting trust for their benefit. This bill would allow the Director to make a *prima facie* finding that the transaction resulted in a beneficial trust for the uninsured employer when specified circumstances are present, such as the deed indicates that the transfer was made as a gift or that no transfer tax to the county was paid, among others. If the Director determines that a resulting trust exists, a certificate of lien shall be attached to the resulting trust and would require the Director to mail written notices of that determination to the transferor and transferee (as prescribed).

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

Artificial Intelligence

Ensured Accountability for AI-Related Harm (AB 316)

This bill seeks to enhance accountability for the use of AI by prohibiting developers and users from claiming that an AI system autonomously caused harm to a plaintiff. Under existing law, individuals are responsible for injuries caused by their lack of ordinary care or skill in managing their property or person. Additionally, developers of generative AI systems released after January 1, 2022, must provide documentation on their websites about the data used to train these systems. This bill builds on these requirements by ensuring that developers and users cannot evade responsibility by arguing that the AI acted independently.

Status: Unanimously passed the Assembly Judiciary Committee and pending in the Assembly Privacy and Consumer Protections Committee.

Intent to Conduct Study of Impact of AI on Workers (SB 366)

This bill mandates the Department of General Services to contract with the University of California, Los Angeles Labor Center to conduct a study evaluating the impact of artificial intelligence on worker well-being, job quality, job types, different populations, and state revenues. The Department of General Services must submit the findings of this study to the Legislature by June 1, 2027, and file notice with the Secretary of State indicating the date upon which the study was submitted.

Status: Pending in the Senate Labor, Public Employment and Retirement Committee.

Strengthened Privacy Protections for High-Risk Artificial Intelligence Systems (SB 468)

Building on the California Consumer Privacy Act of 2018 (CCPA) and the California Privacy Rights Act of 2020 (CPRA), this bill imposes a duty on businesses deploying high-risk AI systems, referred to as "covered deployers," to safeguard personal information. A "high-risk artificial intelligence system" is defined as an AI system that processes personal information and poses a significant risk to privacy or security.

Under this bill, covered deployers are required to develop, implement, and maintain a comprehensive information security program. This program must include administrative, technical, and physical safeguards that are appropriate to the business's size, scope, and type. Administrative safeguards involve policies and procedures designed to manage the selection, development, implementation, and maintenance of security measures. Technical safeguards include technology-based measures such as encryption, access controls, and intrusion detection systems. Physical safeguards protect the physical infrastructure where personal information is stored and processed, including securing facilities and ensuring safe disposal of physical media containing personal information.

This bill also specifies that any violation of these requirements constitutes a deceptive trade act or practice under the Unfair Competition Law. This means that businesses failing to comply with the security program requirements could face civil penalties and injunctive relief. Additionally, this bill grants the California Privacy Protection Agency the authority to adopt regulations to implement these provisions. This includes the power to establish fees, which are exempt from the Administrative Procedure Act. This bill also defines various terms to ensure clarity and consistency in its application.

Overall, this bill represents a significant step forward in the regulation of AI systems, particularly those that handle sensitive personal information. By imposing stringent security requirements and holding businesses accountable for their AI systems, this bill aims to mitigate the risks associated with high-risk AI and protect consumers from potential harm. This comprehensive approach underscores the importance of responsible AI management and aligns with broader efforts to enhance data privacy and security in the digital age.

Status: Pending in the Senate Judiciary Committee.

Miscellaneous

Gift Certificate Redemption (SB 22)

Existing law provides that a gift certificate, sold after January 1, 1997, is redeemable in cash or subject to replacement with a new gift certificate except that a gift certificate with a cash value of less than $10 is redeemable in cash for its cash value. This bill would instead make a gift certificate with a cash value of less than $25 redeemable in cash for its cash value. Additionally, this bill would require an issuer of gift certificates to display at the cash register a notice of the right of the holder to redeem a gift certificate for cash pursuant to that provision. A similar bill failed in 2024.

Status: Pending in the Senate Judiciary Committee.

California Consumer Privacy Act of 2018: Opt-Out Preference Signal (AB 566)

This bill amends the California Consumer Privacy Act of 2018 (CCPA) to enhance consumer privacy protections. Specifically, it requires businesses to develop and maintain browsers and mobile operating systems that include a setting enabling consumers to send an opt-out preference signal. This signal communicates the consumer's choice to opt out of the sale and sharing of their personal information to businesses they interact with online. This bill mandates that this setting be easy for consumers to locate and configure. Additionally, this bill authorizes the California Privacy Protection Agency to adopt regulations necessary to implement and administer these provisions. This requirement will become operative 6 months after the adoption of relevant regulations by the California Privacy Protection Agency.

Status: Passed the Assembly Privacy and Consumer Protections Committee and pending in the Assembly Appropriations Committee.

NEW LOCAL ORDINANCES

San Diego County Restrictions for Covered Employers to Comply with in Addition to California's Fair Chance Act

Effective October 10, 2024, San Diego County adopted its own Fair Chance Ordinance ("SDFCO"). Covered employers in the county must now comply with both the county's SDFCO in addition to the state's Fair Chance Act ("FCA").

The new ordinance applies to positions that involve performing at least two hours of work on average each week within the unincorporated areas of San Diego County for a covered employer. A covered employer is any private employer who is either located in or doing business in the unincorporated areas of San Diego County, with five or more employees. This includes any entity that evaluates an applicant's or employee's criminal history on behalf of a covered employer or acts as an agent of a covered employer.

Under the ordinance, covered employers cannot inquire about an applicant's criminal history until after they extend a conditional job offer. Additionally, they cannot include questions about criminal history on applications before extending such an offer. If a covered employer "intends to deny…[e]mployment, transfer, or promotion" based on criminal history, the employer must conduct a written individualized assessment evaluating whether the criminal history "has a direct and adverse relationship with the specific duties that justify" the decision, and follow a county-specific pre-adverse action letter process. Finally, covered employers must retain all records related to employment applications for at least one year and must provide these records to the Office of Labor Standards and Enforcement ("OLSE") or the applicant upon request.

There are notable differences between the county ordinance and existing state law, including:

- While the FCA requires an individualized assessment of whether the applicant's criminal history has a "direct and adverse relationship with the specific duties" that justifies denying the applicant the position, the SDFCO requires that the individualized assessment be written.

- In addition to the individualized written assessment, if a covered employer decides that an applicant's criminal history disqualifies them from employment, transfer, or promotion, the SDFCO requires that covered employers must notify the applicant in writing. This notification must include: (1) details of the disqualifying conviction(s) that led to the preliminary decision; (2) a copy of the criminal background check report or relevant information source; (3) information about the applicant's right to file a complaint with the OLSE regarding the SDFCO and with the state's Civil Rights Department concerning the FCA; and (4) an explanation of the applicant's right to respond to the preliminary decision, including the deadline for doing so and the possibility of submitting evidence to challenge the accuracy of the criminal background check report.

- Under the FCA, certain covered employers are exempt from the individualized assessment requirements. The SDFCO does not provide any similar exemptions.

The ordinance grants the OLSE substantial enforcement powers, including investigating violations, imposing escalating monetary penalties (up to $5,000 for a first violation, $10,000 for a second, and $20,000 for third and subsequent violations), and recommending suspension or revocation of business licenses for noncompliance. That said, the OLSE cannot issue fines under the SDFCO until July 1, 2025.

NEW STATE REGULATIONS AND GUIDANCE

New FAQs re: PAGA

The California Labor & Workforce Development Agency (LWDA) recently published Frequently Asked Questions (FAQ) on the Private Attorneys General Act (PAGA), providing an overview of PAGA basics, and guidance to employers on the new procedures introduced by the 2024 amendments. (https://www.labor.ca.gov/resources/paga/paga-faqs/). Among others, the FAQ addresses what is recoverable under PAGA, the cure process for employers, and the new early evaluation conference.

New Model List of Employees' Whistleblowing Rights and Responsibilities

In 2024, California enacted AB 2299, which required the Labor Commissioner to develop a "model list" of employees' rights and responsibilities under California's whistleblowing statute (Labor Code section 1102.5). The new law provided that if an employer posts this "model list," it will satisfy the requirement of Labor Code section 1102.8, which requires employers to prominently display a list of employees' whistleblowing rights and responsibilities.

In December 2024, the Labor Commissioner published the model list, which is available at https://www.dir.ca.gov/dlse/whistleblowersnotice.pdf.

CRD Opens 2024 Pay Data Reporting Period

On February 3, 2025, the CRD opened the pay data reporting portal for submissions for the 2024 calendar year. Private employers of 100 or more employees or workers hired through labor contractors must to annually report pay, demographic, and other workforce data to the state. The **deadline** for employers to file pay data reports with CRD is **May 14, 2025**. Along with opening the portal, the CRD also released updated report templates, FAQs, and Handbook. Click Here to view. Employers should note that there is *new guidance* about race and ethnicity standards. Specifically, Middle Eastern or North African (MENA) has been added as a new race/ethnicity category to California's pay data reporting. For more information on the new set of race and/or ethnicity categories, see the FAQs on "How should employers report employees' race and ethnicity?" and CRD's Handbook.

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 has since published several amended versions of the proposed regulations. The current 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.

NEW FEDERAL REGULATIONS AND GUIDANCE

New IRS Mileage Reimbursement Rate

Starting January 1, 2025, the optional standard mileage rate used for reimbursement of business expenses will increase to 70 cents per mile, up three cents from 2024. For more information and other reimbursement rates, see: https://www.irs.gov/newsroom/irs-increases-the-standard-mileage-rate-for-business-use-in-2025-key-rate-increases-3-cents-to-70-cents-per-mile.

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)

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