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Overview of New California Employment Laws

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California employers face an abundance of new employment laws set to take effect at the start of the new year. Below find descriptions of new requirements for employee leaves of absence, pay transparency and data reporting, COVID-19 compliance, privacy rights, industry-specific requirements, and other new workplace laws. Unless otherwise stated, the obligations created by the laws below will take effect on January 1, 2023. Learn more about these and other employment developments at Troutman Pepper's upcoming December 8 Labor + Employment webinar.

Leave

Amendments to California Family Rights Act (CFRA) and Paid Sick Leave Law (PSL) (AB 1041)

- AB 1041 adds "designated person" to the categories of persons with a serious health condition for whom an employee may take CFRA leave. A "designated person" under CFRA includes "any individual related by blood or whose association with the employee is the equivalent of a family relationship."

- For paid sick leave, AB 1041 expands "family member" to include a "designated person." A "designated person" for purposes of PSL includes "a person identified by the employee at the time the employee requests paid sick days." Unlike the CFRA, there is no blood relation or equivalent family relationship requirement.

- AB 1041 allows employers to limit an employee to one designated person per 12-month period. Employees may wait until the time leave is requested to designate that person.

Bereavement Leave (AB 1949)

- AB 1949 requires employers with five or more employees to provide at least five days of unpaid bereavement leave to employees who have worked at least 30 days before the first day of leave. Leave may be taken upon the death of a family member, including a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.

- AB 1949 allows employees to take nonconsecutive days of bereavement leave. Employers may, however, require the leave to be completed within three months of the death. Employers cannot refuse bereavement

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leave or retaliate against an employee for taking leave.

- AB 1949 allows employers to request documentation of the death. Employees may provide documents, such as a death certificate, published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency. Employers should note that AB 1949 does not limit the types of acceptable documentation that an employee can provide.

Discrimination Based on Reproductive Health Decisions

Amendment to California's Fair Employment and Housing Act (SB 523)

- SB 523 amends California's Fair Employment and Housing Act to prohibit employment discrimination based on an applicant's or employee's reproductive health decisions. This includes "a decision to use or access a particular drug, device, product, or medical service for reproductive health."

- SB 523 prohibits employers from requiring disclosure of information relating to an applicant's or employee's reproductive health decisions as a condition of employment, continued employment, or a benefit of employment.

- SB 523 also expands required health plan coverage for contraceptives. Effective January 1, 2024, health benefit plans or contracts must provide coverage for contraceptives, vasectomies, and related services consistent with the requirements of certain provisions of the California Health and Safety Code and California Insurance Code.

Pay Transparency and Pay Data Reporting Requirements

Pay Transparency (SB 1162)

- SB 1162 requires employers with 15 or more employees to include pay scales for all job postings. This includes the "salary or hourly wage range that the employer reasonably expects to pay for the position." Covered employers who use a third party to publish job postings must provide the pay scale to that third party.

- SB 1162 does not expressly limit the 15-employee threshold to California employees. Employers with 15 or more total employees (including non-California employees) should prepare to comply with the new requirements.

- SB 1162 requires employers to keep records of the job title and wage history for each employee for the duration of the employee's employment and for three years thereafter. Upon an employee's request, all employers must provide the pay scale for the employee's current position.

Civil Penalties for Pay Transparency Violations (SB 1162)

- SB 1162 imposes civil penalties ranging from $100 to $10,000 per violation. In assessing penalties, SB 1162 provides that the labor commissioner will consider the totality of the circumstances, including whether the employer committed previous violations.

Employee Pay Data Reporting (SB 1162)

- SB 1162 alters existing California pay data reporting requirements for large employers. Under current law, private employers with 100 or more employees that must file annual EEO-1 reports under federal law must also submit an annual pay data report to the California Civil Rights Department (CRD). Among other things, the report to the CRD must include pay data for employees in 10 specified job categories based on a "snapshot" that counts all individuals in each job category by race, ethnicity, and sex, who were employed during a single pay period of the employer's choice between October 1 and December 31 of the prior calendar year.

- SB 1162 requires pay data reports to now include the median and mean hourly rate for each combination of race, ethnicity, and sex within each specified job category.

- Employers with multiple establishments are no longer required to file a consolidated report that covers all employees. Employers must still, however, submit a report for each establishment.

- SB 1162 changes the deadline for pay data reports from March 31 to the second Wednesday in May of each calendar year. The first upcoming deadline is May 10, 2023.

- SB 1162 extends reporting requirements to any private California employer with 100 or more employees, regardless of whether the employer must file annual EEO-1 reports. The new law also eliminates an exception allowing employers to submit an EEO-1 report in lieu of a pay data report.

- SB 1162 does not expressly limit the 100-employee threshold to California employees. California employers with 100 or more total employees (including non-California employees) should prepare to comply with the new requirements.

Contractor Pay Data Reporting (SB 1162)

- Private employers with 100 or more employees must file a separate pay data report with the CRD for employees hired through labor contractors. The report must cover employees hired through labor contractors in the prior

calendar year. The report must also disclose the ownership names of all labor contractors used to supply employees.

- SB 1162 requires labor contractors to provide all necessary pay data to the private employer.

Civil Penalties for Pay Data Reporting Violations (SB 1162)

- SB 1162 imposes civil penalties of $100 per employee for failure to file the required report and $200 per employee for each subsequent failure to file the report.

COVID-19 Compliance

COVID-19 Supplemental Paid Sick Leave Extension (AB 152)

- AB 152, which took effect on September 30, 2022, extends California's COVID-19 supplemental paid sick leave (SPSL) requirements through December 31, 2022. The extension allows employees to continue using SPSL through the end of the year. The extension does not increase the maximum amount of SPSL an employer must provide.

- AB 152 allows employers to require employees to submit a second COVID-19 test within no less than 24 hours if their first return-to-work test on day five or later is still positive. Employers may refuse to continue providing SPSL if the employee refuses the second test.

- If an employee is using SPSL when the extension expires, AB 152 allows the employee to continue using available SPSL beyond the expiration date.

Notice of COVID-19 Exposure (AB 2693)

- AB 2693 amends employer COVID-19 notification requirements in Labor Code Section 6409.6. AB 2693 allows employers to give notice of potential COVID-19 exposure by posting a notice in a prominent workplace location as opposed to providing individual written notices.

- Notices must be posted within one business day and remain posted for at least 15 days. AB 2693 extends employer notification requirements through January 1, 2024.

- Employers should note that AB 2693 appears to conflict with Cal/OSHA's current COVID-19 Prevention Emergency Temporary Standards (ETS), which require individual written notice of potential COVID-19

exposure. Although Cal/OSHA is expected to update the ETS by the end of the year, employers should continue to comply with Cal/OSHA's existing standards.

Extension of Workers' Compensation Rebuttable Presumption (AB 1751)

- Under current law, there is a rebuttable presumption that an employee's illness resulting from COVID-19 was sustained during the course of employment for workers' compensation purposes. AB 1751 extends the rebuttable presumption through January 1, 2024.

Expiration of Cal/OSHA COVID-19 Prevention Emergency Temporary Standards (ETS)

- Cal/OSHA's current COVID-19 Prevention ETS are scheduled to expire on December 31, 2022. In the meantime, the Cal/OSHA Standards Board is expected to vote on nonemergency COVID-19 regulations on or before its meeting on December 15, 2022. If approved, the regulations would take effect no later than January 1, 2023, and remain in effect through the end of 2024. Combined with the new laws discussed above, California employers can expect ongoing COVID-19 compliance obligations through at least the start of 2024, and possibly through the end of that year.

Minimum Wage/Salary Requirement Increases

- Starting January 1, 2023, California's minimum hourly wage will increase to $15.50. As a result, the minimum annual salary for exempt employees will increase to $64,480. Unlike prior increases, the new increase applies to all employers, regardless of the number of employees.

- Employers are reminded to check local requirements as certain cities and counties have higher minimum hourly wage requirements. West Hollywood, for instance, currently requires minimum hourly rates of $16 for small businesses (less than 50 employees), $16.50 for large businesses (50 or more employees), and $18.35 for hotels. Starting on January 1, 2023, the small business rate will increase to $17, and the large business rate will increase to $17.50. The hotel rate will remain the same until July 1, 2023, when the minimum hourly rate for all West Hollywood employees will increase based on the cost-of-living adjustment for 2023. West Hollywood currently estimates the minimum hourly rate to increase to $18.86.

Employee Privacy

Protection of Employee and Business-to-Business Personal Information Under the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA)

- As detailed in our firm's prior alert on this topic, the employment and business-to-business (B2B) exemptions under the CCPA will expire on January 1, 2023. Although the CPRA extended both exemptions through the end

of the year, California failed to pass a further extension during the 2022 legislative session. Starting on January 1, 2023, covered businesses will need to extend their CCPA/CPRA compliance programs to include the personal information of California employees, job applicants, contractors, and B2B contacts. For more information on CCPA/CPRA compliance, please see our Privacy + Cyber Practice Group's multipart publication series.

Motor Vehicle Tracking (AB 984)

- AB 984 requires the DMV to create a program for authorizing an entity to issue devices as alternatives to conventional license plates, stickers, tabs, and registration cards. AB 984 aims to protect employee privacy by prohibiting employers from using such alternative devices to monitor employees except during work hours, and only if strictly necessary for the performance of an employee's duties.

- Employers that install alternative devices with monitoring on vehicles must provide employees with notice before the monitoring occurs. The notice must include detailed information, such as:
  - The specific activities that will be monitored;
  - Worker data that will be collected through monitoring;
  - Whether the data gathered through monitoring will be used to make or inform any employment-related decisions, including, but not limited to, disciplinary and termination decisions, and if so, how, including any associated benchmarks;
  - The identify of vendors or other third parties, if any, to which information collected through monitoring will be disclosed or transferred, and the purpose of the transfer;
  - The organizational positions authorized to access data gathered through the alternative device;
  - The dates, times, and frequency that the monitoring will occur;
  - Where the data will be stored and the length of time it will be retained; and
  - The employee's right to disable monitoring, including vehicle location technology, outside of work hours.

- AB 984 imposes civil penalties of $250 per employee for initial violations and $1,000 per employee for subsequent violations. Significantly, penalties are assessed per employee, per violation, and per day that monitoring without proper notice occurs. AB 984 also authorizes the labor commissioner to issue citations and collect civil penalties for violations.

- AB 984 prohibits employers from retaliating against an employee for removing or disabling an alternative device's monitoring abilities outside of work hours. Employers who retaliate can be subject to civil liability.

Other Workplace Rules

Mandatory Retirement Plans

- Since June 30, 2022, employers with more than five employees have been required to offer a retirement plan through either the state-run CalSavers program or a private-market option. Eligible employers who do not yet offer a program and wish to use CalSavers may register at https://www.calsavers.com/. Please see our prior client alert on this topic for additional details.

- SB 1126 extends mandatory retirement plans to employers with at least one employee. Eligible employers will need to offer a retirement savings program by December 31, 2025. SB 1126 excludes sole proprietorships, self-employed individuals, and businesses that do not employ individuals other than business owners.

Emergency Conditions – Employees Excused From Work (SB 1044)

- SB 1044 prohibits employers from taking or threatening adverse action against an employee for leaving work or refusing to report to work during an "emergency condition," or from accessing their mobile device for emergency purposes.

- SB 1044 defines an "emergency condition" as a disaster or extreme peril to the safety at the workplace caused by natural forces or a crime, or an evacuation order due to a natural disaster or crime at the workplace, an employee's home, or their child's school.

- SB 1044 excludes health pandemics from the definition of an emergency condition. The law also excludes first responders, disaster or emergency service workers, and health care workers who provide direct patient care or emergency support services. Other exclusions include employees who work on nuclear reactors, in the defense industry, or on a military base.

Workplace Health and Safety Citation Notices (AB 2068)

- AB 2068 provides that any time a Cal/OSHA citation or special order or action must be posted, employers must also post an employee notification prepared by Cal/OSHA in multiple languages. AB 2068 requires Cal/OSHA to prepare these notifications in English and the top seven non-English languages used by limited-English-proficient adults in California, as determined by the U.S. Census Bureau's American Community Census, as well as Punjabi (if not already included).

- AB 2068 authorizes Cal/OSHA to enforce the posting requirement with citations and civil penalties.

Industry-Specific Requirements

Fast Food Accountability and Standards Recovery Act (AB 257)

- AB 257 establishes the Fast Food Council and empowers it to set minimum wages and standards to maintain fast food worker health, safety, and welfare. Standards cannot supersede a collective bargaining agreement that provides greater protection and does not waive occupational health requirements.

- AB 257 exempts certain bakeries and restaurants in grocery stores if the grocery store employs the individuals working in the restaurant.

Call Center Relocation Notice Requirements (AB 1601)

- AB 1601 extends the California Worker Adjustment and Retraining Act (Cal/WARN) notice requirements for relocations to call center employers. A “relocation” includes when the employer intends to move a call center, or one or more of its facilities or operating units within a call center, comprising at least 30% of the call center’s or operating unit’s total volume when measured against the average call volume for the prior 12 months, or substantially similar operations to a foreign country.

- In the event of a relocation, AB 1601 requires call center employers to provide affected employees with at least 60 days of prior written notice. The employer may use a single notice, but it must state: “This notice is for the relocation of a call center” at the top of the notice.

Agricultural Labor Relations Voting Choice Act (AB 2183)

- AB 2183 provides agricultural workers an option to vote by mail in union representation elections.

- AB 2183 also allows a labor organization to be certified as the exclusive bargaining representative of a bargaining unit through a labor peace or nonlabor peace election.

Public Sector Health Care Employee Meal and Rest Periods (SB 1334)

- SB 1334 extends California’s meal and rest period requirements to public sector health care employees.

Public Employer Deterrence of Union Membership (SB 931)

- SB 931 permits employee organizations to file claims against public employers with the Public Employee Relations Board (PERB) for deterring or discouraging public employees or applicants from becoming or remaining members of an employee organization, authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization.

- SB 931 imposes civil penalties of $1,000 per affected employee, not to exceed $100,000. The law also authorizes recovery of attorneys' fees.

The array of new employment laws presents a familiar challenge for California employers. Our Labor + Employment Practice Group is committed to ensuring that your employment policies and practices are up to date with the latest developments in California employment law. Please join us for our upcoming December 8 webinar on new laws and other current issues affecting California employers.

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