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Unpacking California's 2024 Employment Laws: Key Changes Employers Need to Know

WRITTEN BY

Mark Payne | Kristalyn Lee | Megan A. Mackie

California enacted several new employment laws for 2024, summarized below, including expanded paid sick leave, leave for reproductive loss, protections for employee cannabis use, additional noncompete enforcement limitations, workplace violence prevention program requirements, and industry-specific workplace laws.

Noncompete Agreements and Notice Requirements

- **Employers who attempt to enter or enforce void noncompete agreements risk penalties and civil liability.**

  It is well established that California law prohibits post-employment restrictive covenants, including noncompete and nonsolicitation provisions, as they are considered unlawful restraints on trade, profession, or business in violation of California Business and Professions Code Section 16600.

  Senate Bill 699, effective January 1, 2024, imposes civil liability for employers who (1) enter into a contract that includes a noncompete agreement, or (2) attempt to enforce a noncompete agreement (even if the provision is arguably valid under the laws of another state) — regardless of where and when the agreement was signed. SB 699 allows employees to bring a private action to enforce this new provision and potentially recover injunctive relief and actual damages, plus attorney's fees and costs.

  Takeaway: California employers should revisit any policies or agreements that may contain noncompete and customer nonsolicitation provisions to ensure compliance with the newly created Business and Professions Code section 16600.5. For more information on this topic, see Troutman Pepper's full article on these changes here.

- **Employers must provide written notice that any existing noncompete agreements are void.**

  AB 1076 requires employers to notify current employees and former employees (employed after January 1, 2022), in writing by February 14, 2024, that any noncompete agreements they signed are void. This new law also makes it explicitly unlawful for employers to include noncompete provisions in an employment contract or otherwise require an employee to sign a noncompete agreement unless it falls under one of the few statutory exceptions, such as in connection with the sale of business. Violations of these provisions will be considered a violation of the unfair competition statute (Business and Professions Code section 17200).

Takeaway: Employers should assess whether any employees employed after January 1, 2022, have signed a noncompete agreement, and if so, prepare the required written notice to meet the February 14, 2024, deadline.

Benefits Changes – Paid Sick Leave and Reproductive Loss Leave

- **California Paid Sick Leave increased from 24 hours to 40 hours.**

  Existing law provides California employees three days or 24 hours of paid sick leave, either frontloaded or on an accrual basis of no less than one hour of paid sick leave per every 30 hours worked.

  Effective January 1, 2024, **Senate Bill 616** increases this requirement to five days or 40 hours per year. The new law also increases the accrual and carryover cap to 10 days or 80 hours, although no accrual or carryover is required if the employer frontloads five days or 40 hours of paid sick leave each year.

  Takeaway: Employers must update their paid sick leave policies and practices to account for this increase, along with ensuring that employers continue to comply with notice requirements regarding an employee's paid sick leave balance.

- **Employers must now provide reproductive loss leave.**

  Last year, California signed a law that provided five days of unpaid bereavement leave to employees who have been employed for at least 30 days following the death of a covered family member.

  Effective January 1, 2024, a new provision will be added to the Government Code, requiring employers to provide "reproductive loss" leave (separate and distinct from the obligation to provide bereavement leave). Specifically, **Senate Bill 848** requires employers with five or more employees to provide up to five days of leave for "reproductive loss" for employees who have worked for at least 30 days. "Reproductive loss" is defined to include a miscarriage, a failed surrogacy, a stillbirth, an unsuccessful assisted reproduction (such as artificial insemination or embryo transfer), or a failed adoption. Such leave must be taken within three months of the loss, and it may be taken on nonconsecutive days. If an employee suffers more than one reproductive loss within a 12-month period, an employer is not required to provide total leave in excess of 20 days. The leave may be unpaid unless an employer's pre-existing policy already provides for paid bereavement leave. Employees, however, may use other available leave, including paid sick leave, to obtain pay for this period of time.

  Takeaway: Employers should update their policies and practices to include leave for reproductive loss.

Workplace Violence Protections

- **Employers must establish a plan for workplace violence protection.**

  Senate Bill 553 requires that all California employers implement an effective workplace violence prevention

plan (WVPP). Employers must also maintain a violent incident log and records of workplace violence hazard identification, evaluation, and correction. SB 553 further requires that employers train employees on the WVPP and maintain training records. SB 553 has several exemptions for various categories, including health care facilities and employees who work remotely. The Division of Occupational Safety and Health will retain enforcement power of all WVPPs and can issue citations and civil penalties for violations. Several requirements of the new law take effect on July 1, 2024, and the Occupational Safety and Health Standards board must propose standards by December 1, 2025. While employers are already permitted to seek a temporary restraining order (TRO) on behalf of employees who experience unlawful violence or threats of violence, SB 553 now authorizes a collective bargaining representative to also seek a TRO.

Takeaway: Employers should adopt a comprehensive workplace violence prevention plan, which addresses the requirements of the new law. Cal/OSHA has published sample written plans in the past, but it is not known at this time whether Cal/OSHA will publish a model plan for prevention of workplace violence, and each plan should be tailored to the specific circumstances of the employees' workplace.

- **Employers may now seek restraining orders on behalf of harassed employees.**

As noted above, existing law authorizes an employer to seek a TRO and injunctive relief on behalf of an employee who has suffered unlawful violence or a credible threat of violence, which can reasonably be construed to be carried out or to have been carried out at the workplace.

Senate Bill 428, which takes effect next year on January 1, 2025, will permit an employer to seek a TRO and injunction on behalf of an employee who has suffered harassment upon a showing of clear and convincing evidence that an employee has suffered harassment, that the employee has faced great or irreparable harm, and that the respondent's course of conduct served no legitimate purpose. Employees have the option to decline to be named in the order before the filing of the petition, and courts are prohibited from issuing such an order to the extent that it would prohibit speech or activities protected by the National Labor Relations Act, or provisions governing the communications of exclusive representatives of public employees.

Takeaway: Although this law does not go into effect until January 1, 2025, employers should be aware that they will have an additional mechanism to protect employees against workplace violence.

DISCRIMINATION AND RETALIATION UPDATES

- **Rebuttable presumption of discrimination or retaliation created by adverse action within 90 days of protected conduct.**

While it is well established that California law prohibits unlawful discrimination and retaliation, **Senate Bill 497** goes a step further by creating a rebuttable presumption of discrimination and/or retaliation when an employer takes adverse action (such as employment termination), within 90 days of an employee engaging in protected conduct as defined in Labor Code sections 98.6, 1102.5, and 1197.5. This new law also increases civil penalties from $10,000 generally, to $10,000 per employee per violation.

Takeaway: This new law does not define what constitutes sufficient evidence to rebut the presumption of discrimination or retaliation, therefore employers are encouraged to consult with counsel before taking any adverse employment actions involving employees who have engaged in protected activity in the prior 90 days.

- **Employers may not discriminate against a job applicant for prior cannabis use.**

  Assembly Bill 2188, which was passed last year, will go into effect on January 1, 2024. AB 2188 makes it unlawful for an employer to discriminate against a person because of the person's use of cannabis off the job and away from the workplace, except as specified. AB 2188 generally does not impact an employer's ability to take action in response to an employee who is impaired on the job.

  Senate Bill 700 builds on AB 2188 and prohibits an employer from asking an applicant about prior cannabis use, except if information about prior cannabis use is gleaned from the applicant's criminal history. However, if information about prior cannabis is gleaned from the applicant's criminal history, the employer still may not discriminate against the applicant if the use was off the job and away from a workplace.

  Takeaway: Employers should revise their recruiting and hiring processes (including, but not limited to, job applications and pre-employment drug screening) to ensure that applicants are not required to divulge any information regarding cannabis use.

MINIMUM WAGE INCREASES

- **Minimum wage to increase to $16 per hour on January 1, 2024, for all employees.**

  Beginning January 1, 2024, California's minimum wage will increase from $15.50 per hour to $16 per hour for all employers, regardless of company size. In turn, this minimum wage increase also raises the annual salary threshold for exempt employees to $66,560.

  Takeaway: Employers must adjust their pay as of January 1, 2024. Employers are reminded to check local requirements as certain cities and counties have higher minimum hourly wage requirements.

- **Multitiered minimum wage implemented for health care workers.**

  Senate Bill 525 establishes five separate minimum wage schedules for covered health care employees, as defined, depending on the nature of the employer ("covered health care facility"). "Covered health care employee" covers a broad range of employees, from physicians and nurses to housekeeping and gift shop workers. "Covered health care facility" covers nearly all health care facilities except those owned, controlled, or operated by the California Department of State Hospitals, tribal clinics exempt from licensure, and outpatient settings operated by federally recognized tribes. Some of the wage schedules include the following:

Large, covered health care facilities (with 10,000 or more full-time equivalent employees:

$23 per hour from June 1, 2024, to May 31, 2025.

$24 per hour from June 1, 2025, to May 31, 2026.

$25 per hour from June 1, 2026, and until as adjusted as specified.

Hospitals with a high governmental payor mix, independent hospitals with an elevated governmental payor mix, rural independent covered health care facilities, or covered health care facilities that are owned, affiliated, or operated by a county with a population of less than 250,000, as of January 1, 2023:

$18 per hour from June 1, 2024, to May 31, 2033.

$25 per hour from June 1, 2033, and until as adjusted as specified.

Primary care or free, community, and rural health clinics:

$21 per hour from June 1, 2024, to May 31, 2026.

$22 per hour from June 1, 2026, to May 31, 2027.

$25 per hour from June 1, 2027, and until as adjusted as specified.

All other covered health care facilities, including, but not limited to, hospitals, nursing facilities, home health agencies, psychology clinics, licensed residential care facilities, psychiatric health facility, and mental health rehabilitation centers:

$21 per hour from June 1, 2024, to May 31, 2026.

$23 per hour from June 1, 2026, to May 31, 2028.

$25 per hour from June 1, 2028, and until as adjusted as specified.

Takeaway: Employers should work with counsel to determine if they are subject to these minimum wage increases and adjust pay rates as required.

- **Minimum wage to increase to $20 per hour for fast food workers.**

  Assembly Bill 1228 repeals the Food Accountability and Standards Recovery Act (FAST) and implements a $20 per hour minimum wage starting April 1, 2024, for employees of national fast food chains, which is subject to annual increases through 2029. AB 1228 also establishes the Fast Food Council which is expected to make recommendations regarding other work place conditions and standards. “National fast food chain” is defined as

a set of limited-service restaurants consisting of more than 60 establishments nationally that share a common brand, or that are characterized by standardized options for decor, marketing, packaging, products, and services, and which are primarily engaged in providing food and beverages for immediate consumption on or off premises, where patrons generally order or select items and pay before consuming, with limited or no table service.

Takeaway: Employers of fast food workers should timely implement the new minimum wage, as well as keep an eye out for any Fast Food Council recommendations in the coming year.

DEFAMATION PRIVILEGE

- **Defamation privilege expanded to those discussing incident of sexual assault, harassment, or discrimination.**

In California, California Civil Code Section 47 designates certain types of publications and communications as "privileged" and protects the makers of privileged statements from defamation lawsuits.

Assembly Bill 933, effective January 1, 2024, expands the defamation privilege to communications made, without malice, by a person regarding an incident of sexual assault, harassment, or discrimination. Specifically, it protects individuals who had "a reasonable basis to file a complaint of sexual assault, harassment, or discrimination." However, the individual is not required to have filed a complaint about the misconduct to be protected. In addition, AB 933, entitles any prevailing defendant in a defamation action related to a privileged communication to recover attorney's fees and costs, as well as treble damages and punitive damages.

Takeaway: Alleged perpetrators of workplace misconduct should be cautious in bringing any defamation action against an employee/coworker where the person is speaking out about sexual harassment or discrimination.

ENFORCEMENT OF ARBITRATION AGREEMENTS

- **Arbitration decision appeals do not automatically stay case.**

Under current law, trial court proceedings are generally stayed when a litigant appeals a trial court decision to deny a motion to compel arbitration. **Senate Bill 365** changes that, effective January 1, 2024. In the new year, "the perfecting of such an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal."

Takeaway: This new law may require continued litigation in court, while an appeal is pending, despite an agreement to submit the claims to arbitration.

INDUSTRY-SPECIFIC UPDATES

- **Recall rights for hospitality workers expanded and extended until 2025.**

During the pandemic, **Senate Bill 93** was passed, creating Labor Code section 2810.8. That new law requires that certain hospitality and building services employers offer their laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. "Laid-off employees" are defined as "any employee who was employed by the employer for six months or more in the 12 months preceding January 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic." Employers covered by the statute include hotels with 50 or more guest rooms, event centers of a certain size, airport hospitality operations, airport service providers, and employers that provide "janitorial, building maintenance, or security services" to office, retail, or other commercial buildings. Labor Code section 2810.8 was set to sunset on December 31, 2024.

Senate Bill 723, however, extends Labor Code section 2810.8 until December 31, 2025. It also expands the definition of "laid-off employees' to include any employee who was employed for six months or more and whose most recent separation from active employment by the employer occurred on or after March 4, 2020, and was due to a reason related to the COVID-19 pandemic." It also creates a presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

Takeaway: Hospitality and building services employers covered by SB 723 need to ensure that they carefully determine who would now be considered a "laid-off employee" under the revised definition, and ensure that such employees receive the required information about other job positions as necessary.

NEW HIRE NOTICES

- **New requirements for disclosures provided to employees.**

Employers are currently required to provide an employee, at the time of hiring, a written notice including specified information in the language that the employer normally uses to communicate employment-related information to the employee.

Assembly Bill 636 requires an employer to include information regarding the existence of a federal or state disaster declaration applicable to the county or counties in which the employee will be employed in the written notice.

AB 636 also requires an employer, beginning on March 15, 2024, to give an employee, who is admitted pursuant to the federal H-2A agricultural visa, additional information in a separate and distinct section of the notice, in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protection under California law. The Labor Commissioner is required to create a template for the notice that complies with these requirements and to post the template on its website by March 1, 2024.

Takeaway: Employers need to update their new hire notices to include disaster declaration information. Employers of agricultural workers also need to update their written notices by March 1, 2024, to comply with the new requirements.

Troutman Pepper's Labor + Employment attorneys are available to assist with maneuvering California's new laws, updating existing policies, and ensuring timely compliance.

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