



ALERTS

Bring It On, 2023! California Employment Laws Employers Should Be Aware Of

December 27, 2022

Highlights

Starting Jan. 1, 2023, the minimum wage in California is increasing to \$15.50 per hour for all employers regardless of the number of workers

The California Family Rights Act and the Paid Sick Leave Law expand the definition of family member to include a “designated person”

AB 1949 entitles eligible employees to take five days of bereavement leave

As the calendar flips to 2023, here is a rundown of significant new laws that will affect California employers in the new year. Companies should consider working with their legal counsel to ensure compliance with these laws, which take effect on Jan. 1, 2023, unless otherwise noted.

COVID-19 Related Laws and Notice Requirements

[AB 2693](#) extends notification obligations for COVID-19 exposure in the workplace until Jan. 1, 2024, but modifies Labor Code Sections 6325 and

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6409.6 to ease employer notification requirements. To alert employees of potential COVID-19 exposure, and in lieu of individual written notices to employees, employers may now opt to prominently display a notice in the workplace in the locations where other workplace rules and regulations are posted. Employers must also post this notice on their online employee portal if the employer customarily posts workplace notices online.

The notice must be posted within one business day from when the employer is notified of a potential COVID-19 exposure. The posted notice must contain the dates on which the COVID-19 case was present at the worksite within the infectious period, must remain posted for at least 15 days, and must be drafted in English and the language understood by the majority of the employees. AB 2693 eliminates the requirement that employers report cases to their local health department.

Leave Rights Expanded to Include Care for “Designated Person”

[AB 1041](#) expands the definition of a family member. Under this new law, eligible employees can take unpaid, job-protected leave to care for a “designated person” under both the California Family Rights Act (CFRA) and the California Healthy Workplaces, Healthy Families Act of 2014 (HWHFA). Employers should be aware that the statutory definitions of “designated person” are slightly different under the two laws.

Under the CFRA, designated person means “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” The designated person may be identified by the employee “at the time the employee requests the leave.”

In contrast, the HWHFA defines “designated person” more broadly as “a person identified by the employee at the time the employee requests paid sick days.”

Under both amended laws, an employer may limit an employee to one designated person per 12-month period. Employers should also be aware that the CFRA’s federal counterpart, the Family and Medical Leave Act (FMLA), does not provide such leave for care for a designated person, which will further complicate leave administration. Employers should consider reviewing and amend their leave policies to comply with AB 1041.

Right to Bereavement Leave

[AB 1949](#) expands Government Code Section 12945.7 by making bereavement leave a protected leave of absence for employees who have worked for at least 30 days prior to commencement of the leave. The law applies to all private-sector employers with five or more employees and all public-sector employers. It allows employees to take up to five days of bereavement leave upon the death of a “family member,” defined as a “spouse, child, parent, sibling, grandparent, grandchild, domestic partner or parent-in-law.”

Bereavement leave may be unpaid where there is no existing paid bereavement leave policy, but employees can use existing paid leave available (e.g., vacation, paid time off, accrued and available sick leave, etc.). Employers can require documentation to support the bereavement

leave, which may include a death certificate; a published obituary; or a verification of death, burial or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution or government agency.

The eligible employee shall be entitled to bereavement leave of no less than five days, which are not required to be consecutive. However, the bereavement leave must be completed within three months of the family member's death.

Additional Protections for Reproductive Health Decisions

The Contraceptive Equity Act of 2022 ([SB 523](#)) amends the Fair Employment and Housing Act (FEHA) to make it unlawful to discriminate against an employee or job applicant based on their reproductive health decisions, which includes, but is not limited to, "a decision to use or access a particular drug, device, product or medical service for reproductive health." It prohibits employers from requiring applicants or employees to disclose information relating to reproductive health decisions as a condition of employment or employment benefits. SB 523 also expands required health plan coverage for contraceptives.

Off-the-Job Protections for Cannabis Use Under FEHA

[AB 2188](#), which does not go into effect until Jan. 1, 2024, adds off-the-job protections for cannabis use to the FEHA. Employers will be prohibited from discriminating against an employee or job applicant based on the person's use of cannabis off the job and away from the workplace.

Protections Against Retaliation for Fears of Workplace Safety

[SB 1044](#) prohibits retaliation against employees for refusal to report to work during emergency conditions. The law prohibits an employer from taking or threatening adverse action against employees for refusing to report to, or leaving, a workplace because the employee has a "reasonable belief that the workplace is unsafe." An emergency condition is defined as either "conditions of disaster or extreme peril to the safety of persons or property caused by natural forces or a criminal act" or "an order to evacuate a workplace, worksite, or worker's home, or the school of a worker's child due to a natural disaster or a criminal act." Notably, it specifically provides that a health pandemic does not constitute an emergency condition.

Privacy Rights Protections

The California Privacy Rights Act (CPRA), which amends the California Consumer Privacy Act (CCPA), will bring employment-related information under existing privacy rules. The law applies to for-profit entities doing business in California that satisfy one or more of the following as of Jan. 1, 2023: have a gross annual revenue in excess of \$25 million in the previous calendar year; buy, sell, and/or share (alone or in combination) the personal information of 100,000 or more California residents or households; or derive 50 percent or more of their annual revenue from

selling or sharing consumers' personal information.

Covered employers should prepare to comply by Jan. 1, 2023, although there is a grace period for enforcement until July 1, 2023. Employers covered by the CPRA will have to comply with the law's notice and disclosure requirements with respect to personal information collected from their employees and job applicants, including obligations with respect to employees' rights under the CPRA.

Pay Scale Transparency and Disclosure Requirements

SB 1162 requires employers to make [pay scale information available](#) to job applicants and employees, and expands California's pay data reporting requirements.

Mandatory Updates to Employment Notices

California employers are required to physically display updated employment notices to ensure employees are aware of their rights in the workplace. Labor Code Section 1207 also allows employers to distribute these required notices via email.

The eight notices that must be updated in 2023 are:

1. **California Minimum Wage notice.** California's minimum wage [is scheduled to increase to \\$15.50](#) per hour for all employers on Jan. 1, 2023.
2. **Family Care and Medical Leave and Pregnancy Disability Leave notice.** Parent-in-law added to list of family members; also updated to add information regarding AB 1949 which provides for bereavement leave for the death of a family member and AB 1040 which allows employees to take sick leave to take care of a "designated person."
3. **Your Rights and Obligations as a Pregnant Employee notice.** Added definitions of "child" and "parent."
4. **Cal/OSHA Safety and Health Protection on the Job notice.** Hotline number change; one address change for Santa Ana.
5. **California Law Prohibits Workplace Discrimination and Harassment notice.** Updated to note that the definition of race includes hair texture and protective hairstyles, including braids, locks, and twists.
6. **Know Your Rights: Workplace Discrimination is Illegal notice.** This was formerly EEO is the Law notice.
7. **Your Rights Under USERRA notice.** The Notice to Employees from the Employment Development Department has been revised with information about taking Paid Family Leave for reasons relating to qualifying military events.
8. **Transgender Rights in the Workplace notice.** The time period for filing a complaint is extended from one year to three years.

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