



## Memorandum

TO: To Our Clients

FROM: Levinson Arshonsky & Kurtz, LLP

DATE: December, 2022

RE: New Laws Affecting Employers in 2023

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Despite the continuing ebb and flow of COVID-19 and its variants, causing the pandemic to linger longer than anyone could have imagined back in March of 2020, the California Legislature and Governor Gavin Newsom seem to have shifted focus away from COVID-related legislation to focus on other subjects which directly affect California employers and employees.

California laws that taking effect in 2023 are discussed below. Please remember, only summaries are provided herein, and legal advice should be sought prior to enactment of any new employment policies. All laws take effect on January 1, 2023, unless otherwise noted.

### **COVID-Related Legislation**

AB 2693 extends through January 1, 2024, Cal/OSHA's ability to shut down a worksite, when, in Cal/OSHA's opinion, it exposes workers to an imminent hazard of a risk of COVID-19 infection. The law also allows Cal/OSHA to require a notice of prohibition be posted in the business.

The new law also revises the current requirement that an employer must provide individual written notices to employees within one business day of notification of the exposure to instead allow the notification requirement to be satisfied by displaying a notice of exposure in all places where notices to employees concerning workplace rules or regulations are customarily posted.

### **Pay Data Legislation**

SB 1162. This groundbreaking law requires employers (with more than 15 employees) to disclose pay scales on job postings and to furnish upon request to current employees (for companies of any size) the pay scale of their current position.

This law also requires that organizations with 100 or more employees report pay data to the California Civil Rights Department ("CRD", formerly Department of Fair Employment and Housing/DFEH), including median and mean hourly rates.

The new law further requires that all employers must maintain records of job titles and wage rate histories for the duration of an employee's employment and for three years after separation of employment.

### **California Consumer Privacy Policies**

The California Consumer Privacy Act (CCPA) applies to businesses with applicants, employees, or contractors who are California residents. Employers subject to the CCPA must satisfy detailed and onerous notice obligations if they suffer a security breach, and potentially face exposure to class action litigation for such breaches. The California Privacy Rights Act (CPRA) augmented and expanded the scope of the CCPA which became effective in 2020. Previously, employees and prospective employees were excluded from the “Consumer” definition under the CCPA, but this exclusion expires the end of 2022.

CCPA and CPRA are applicable to any for-profit entity doing business in California that meets any of the following criteria:

- Annual gross revenue exceeding \$25 million;
- Buying, receiving, or selling personal information of more than 50,000 consumers or households (expanded to 100,000 under CPRA); or
- Earning more than half of its annual revenue from selling personal information

From an employment context, qualifying companies must provide a notice and privacy policy covering collection, use, and transfer of personal information and offer these individuals the right to request copies, correction, and deletion of their personal information, among other rights.

### **Designated Persons under CFRA**

AB 1041. Employees may designate an individual to include in the list of family members for whom protected (unpaid) leave of absence to provide care for is covered under the California Family Rights Act (“CFRA”).

A designated person is defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship,” and includes domestic partners. An employer may limit an employee to naming one designated person per year.

### **Bereavement Leave**

AB 1949. Requires employers to provide a minimum of five days of bereavement leave upon the death of a family member, provided the employee has at least 30 days of active employment. Family member is defined as spouse, child, parent, sibling, grandparent, grandchild, domestic partner, parent-in-law, or a “designated person” (see above) who is akin to a close family member.

The leave must be completed within three months of the death and need not be paid by the employer, except that an employee may use any vacation, personal paid leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.

### **New Protected Class Under FEHA**

Contraceptive Equity Act of 2022. This law amends the Fair Employment & Housing Act (“FEHA”) to include reproductive health decision-making as a protected class, making it unlawful to harass, discriminate, or retaliate on that basis. Reproductive health decision-making, includes, but is not limited to, an individual’s decision to use or access a particular drug, device, product, or medical service for reproductive health. The law specifically calls out usage of birth control, contraceptives, and voluntary sterilization services as needing to be protected choices.

### **Marijuana Testing**

AB 2188. Starting January 1, 2024 (note, not 2023), AB 2188 will prohibit employers from taking action against a person based upon their off-the-job use of cannabis. This law will essentially require marijuana to be treated like alcohol use in the workplace. Employers may still take action against any employees impaired by cannabis on the property or premises of the place of employment.

These provisions do not apply to employees in building or construction trades, and do not preempt state or federal laws requiring employees to be tested for controlled substances or federal laws prohibiting their workplace use.

### **Extending Sexual Assault Statute of Limitations**

AB 2777: This law permits potential plaintiffs, during 2023, to file claims based on sexual assault regardless of whether that claim would be barred by the applicable statute of limitations, so long as the alleged wrongful actions occurred on or after January 1, 2009. This is despite the fact that the Code of Civil Procedure already provides for a lengthy ten-year statute of limitations for claims relating to a sexual assault.

A plaintiff seeking to revive a claim under this new law must allege: (1) they were sexually assaulted; (2) one or more entities are legally responsible for damages arising out of the sexual assault; and (3) the entity or entities (including, but not limited to, their officers, directors, representatives, employees, or agents) engaged in a cover up or attempted a cover up of a previous instance or allegations of sexual assault by an alleged perpetrator of such abuse.

The law also imposes obligations on the attorney filing on behalf of the plaintiff for a showing of good faith.

### **Restroom Access for Certain Medical Conditions**

AB 1632. This new law requires businesses open to the general public for the sale of goods that have a toilet facility for its employees, to allow certain members of the public to use of those facilities. Upon a showing of certain medical conditions, the business must allow any individual who is lawfully on the premises of the business to use that toilet facility during normal business hours if such use would not create a health, safety, or security risk.

### **Mileage Rate**

The standard mileage rate pursuant to IRS standards for 2023 is 62.5 cents per mile, up 4 cents from the rate for 2022.

### **Minimum Wage**

The hourly minimum wage beginning on January 1, 2023, for the State of California is \$15.50. Unlike in previous years, this minimum wage is the same for all California employers, regardless of size of the employer.

However, certain cities and municipalities have a minimum wage requirement which exceeds the California minimum wage. The applicable minimum wage depends on where employees perform work for the employer.

*Los Angeles City-* The current minimum wage for the City of Los Angeles is \$16.04, but it will be increased on July 1, 2023, based on the Consumer Price Index (CPI) which is published by the Bureau of Labor Statistics.

*Los Angeles County-* The current minimum wage for Los Angeles County, including unincorporated areas, is \$15.96, but it increases to \$16.90 on July 1, 2023.

To determine whether a Los Angeles business is subject to the Los Angeles minimum wage ordinance of the City or County, please refer to the Consumer & Business Affairs site available [here](#).

### **Annual Salary Requirements for Exempt California Employees**

As the state minimum wage increases, so too does the minimum salary requirement for properly classified exempt employees to retain their exempt status. As always, exempt employees are still required to perform exempt duties, but must also meet the state salary minimum. The minimum salary required to be paid to exempt employees in 2023 in order to maintain the exemption is \$64,480.

This is the minimum salary amount regardless of where the work is being performed and whether the city where the employee performs their work requires a higher minimum wage than California does.

Please remember to contact us with any questions.

Wishing all a happy, healthy, and prosperous 2023!

This material is for informational purposes only and does not constitute legal advice. If you have any questions regarding these new laws and applicability to your business, please contact:

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