

2020: What's New in the Employment World?

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OVERVIEW

- **In 2019: 2695 bills were introduced to the Legislature; 1042 made it to the Governor's desk; the Governor signed 870 and vetoed 172.**
- **This presentation will cover a brief review of key new 2020 laws that will impact the workplace in these areas:**
 - **Discrimination, Harassment and Retaliation**
 - **Lactation Accommodation**
 - **Wage and Hour**
 - **Leaves of Absence**
 - **Privacy**
 - **Health and Safety**
 - **Settlement Agreements**
 - **Arbitration Agreements**



Discrimination, Harassment, and Retaliation

Key Risk Area

- **Discrimination, harassment and retaliation claims continue to pose significant risk to employers, especially in the “Me-Too” era.**
- **What to do:** Employers must have compliant policies in place (Zero Tolerance), respond promptly and thoroughly to complaints, and conduct regular training of the entire workforce.

AB-9

Extends FEHA Statute of Limitations

- Extends statute of limitations for claims pursuant to the Fair Employment and Housing Act to **3 years** (from one year).
- **What to do:** Training, enforcing policies. Documenting incidents/complaints and retaining documentation and other evidence will be key.

AB-333

Expands Whistleblowe r Protections

- AB-333 provides whistleblower protection to advocates for patient rights at who at county mental health facilities.
- **What to do:** Mental health care facilities must take steps to prevent retaliation against patient rights advocates who report a suspected violation of federal, state or local law.

SB-188

Protection for Natural Hairstyles

- **SB-188 amends the definition of “race” under the Fair Employment and Housing Act (FEHA) and the California Education Code to include “traits historically associated with race, including, but not limited to, hair texture and protective hairstyles,” (e.g. braids, locks, and twists).**
- **What to do:** Update the Company’s anti-discrimination and harassment policy to include protective hairstyles; train managers and supervisors.

SB-778

Extends Deadline for Harassment Training

- Extends the deadline for providing the required sexual harassment training under SB-1343, to January 1, 2021.
- SB-1343 requires that all employers with 5 or more employees provide AB-1825 sexual harassment training to all employees: 1 hour every two years for non-supervisory employees and 2 hours every two years for supervisory employees.
- **What to do:** Implement a training program (live, online etc.) and set a schedule to accomplish training by the deadline.

SB-530

Construction Industry Harassment Training

- This bill requires the Division of Labor Standards Enforcement (DLSE) to develop recommendations for an industry-specific harassment and discrimination prevention policy and training standard for use by employers in the construction industry.
- **What to do:** Employers in the construction industry should monitor the DLSE for release of the training guidelines. The DIR must convene an advisory committee by March 1, 2020.

New Required FEHA Forms

- The California Department of Fair Employment and Housing (DFEH) has issued mandatory updates to the Pregnancy Disability Leave notice and the CFRA notice (now called Family and Medical Leave and Pregnancy Disability Leave notice).
- The DFEH has also released mandatory updates effective January 1, 2020, to the DFEH Discrimination and Harassment notice, the Transgender Rights in the Workplace notice, and the Sexual Harassment pamphlet.
- **What do do:** Obtain and post the updated notices-- they should be on your new workplace poster and are available at: www.dfeh.ca.gov.



LACTATION ACCOMMODATION

SB-142

Lactation Accommodati on Requirements

Currently, employers must provide a location other than a bathroom for lactation accommodation. SB-142 expands the accommodation requirements. Specifically, the lactation room must be close to the employee's work area, private, and free from intrusion. The room must also:

- Be safe, clean and free of toxic or hazardous materials;
- Contain a surface to place a breast pump and other personal items;
- Contain a comfortable chair;
- Have electricity;
- Be near a sink with running water.

The employer must also provide a refrigerator suitable for storing breast milk close to the employee's workspace.

What to do: Employers must create and implement a lactation accommodation policy and provide employees with a copy when an employee requests parental/pregnancy leave. The policy must be in the employee handbook. Employers must also create a lactation accommodation request form.

There is a hardship exemption for employers with **less than 50** employees.



WAGE AND HOUR

Key Risk Area

PAGA Claim/ Class Action for Meal and Rest Period Violations

- In the opinion of the presenter, the risk of a PAGA claim/class action based on alleged meal and rest period violations, is the number one risk facing all California employers, and in particular those employers with more than 100 employees.
- Key numbers all employers, managers and supervisors should understand the importance of these numbers: 4.0, 5.0, 6.0, 10.0 and 12.0
- **What to do:** Implement and ENFORCE a compliant meal and rest period policy, that includes procedures for premium pay.

AB-5

Independent Contractors

AB-5 codifies the “ABC test” and expands it so that it applies to the Labor and Unemployment Insurance Codes. Under the ABC test, a worker is classified as an employee unless the employer can establish all three of the following:

- A. The worker is free from the hiring entity’s control and direction in connection with the performance of the work, both under the contract for the performance of the work and in actually performing the work;*
- B. The worker performs work that’s outside the usual course of the hiring entity’s business; and*
- C. The worker is customarily engaged in an independently established trade, occupation or business of the same nature as the work performed.*

What to do: Review the status of any worker classified as an independent contractor to make sure the worker meets the ABC Test.

Update: Uber and Postmates have filed a lawsuit alleging AB-5 is unconstitutional. A federal judge ruled AB-5 applies to freelance journalists. A different federal judge temporarily blocked it from applying to more than 70,000 independent truck drivers.

AB-673

Wage Penalties

- Current law imposes, independent from other penalties, a civil penalty on employers who fail to pay wages as provided in certain sections of the Labor Code. The Labor Commissioner may recover these penalties, which amount to \$100 for the initial violation and \$200 plus 25 percent of the amount unlawfully withheld for subsequent violations. AB-673 gives employees the ability to bring a private action to either:
- The bill authorizes an employee to either recover statutory penalties against an employer in a Labor Commissioner hearing, or to enforce civil penalties under a specified provision of the Labor Code Private Attorneys General Act of 2004, but not both, for the same violation.
- **What to do:** Implement and enforce compliant wage and hour policies. Review these policies at the start of 2020; train managers and supervisors. In particular, check pay stubs, meal and rest period policies, procedures for ensuring no off the clock work, overtime policies, and suitable seating.



LEAVES OF ABSENCE

AB-1223

Organ Donor Leave

- Under current law, employers with 15 or more employees are required to provide an employee who is donating an organ with up to 30 days of paid leave within a one-year period.
- AB-1223 requires these employers to provide an additional unpaid leave of absence, for up to 30 days per year, to an employee who is donating an organ.
- **What to do:** Update your employee handbook/organ donor leave policy. Train managers and supervisors on this policy and all other LOA policies.



AB-1748 expands the protections provided under the California Family Rights Act (CFRA) to reflect those under the Family and Medical Leave Act (FMLA) for airline employees.



CFRA now clarifies that airline employees are eligible for family and medical leave if they have worked 12 or more months for the employer, worked at least 504 hours and have been paid at least 60 percent of the monthly guarantee (at least 60 percent of the minimum number of hours scheduled in a given month).

What to do: Update the Company's CFRA policy.

AB-1748

Expansion of CFRA Rights for Airline Employees

SB-30

Domestic Partnership (Covered Individuals)

- Currently, a domestic partnership may be entered into by either two adults of the same sex, or two adults of the opposite sex who are over the age of 62.
- SB-30 allows any two adults over the age of 18 to enter into a domestic partnership.
- **What to do:** Update policies/employee handbook.

SB-83

Paid Family Leave (Length of Benefits)

Beginning July 1, 2020, Paid Family Leave (PFL) benefits provided through California's State Disability Insurance (SDI) program are increased from six (6) to eight (8) weeks.

PFL provides partial wage replacement benefits to employees on leave to care for a seriously ill family member or for baby bonding with a newborn child within one year of birth or for a newly adopted child/ foster care placement of a child.

What to do: Update paid family leave policy; post required notices.

AB-406

Paid Family Leave (EDD Information)

- Effective January 1, 2025, California's Employment Development Department (EDD) must provide PFL materials in non-English languages as spoken by a substantial number of PFL applicants.
- **What to do:** Calendar date for new materials and monitor EDD for release of the materials. www.edd.ca.gov.

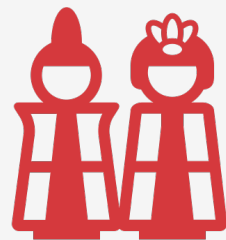


PRIVACY





AB-25 exempts employers for one year from complying with the CCPA regarding information collected “by a business in the course of the natural person acting as a job applicant to, an employee of, director of, officer of, medical staff member of, or contractor of that business.”



The CCPA provides consumers with the right to know about, and have deleted, data that businesses have obtained about them. Although, the CCPA applies to “consumers” it defines “consumers” so broadly that it could apply to employees and job applicants, which are not ordinarily considered “consumers”.

What to do: Monitor developments on CCPA; ensure systems are in place to protect employee data, particularly related to medical records. Implement procedures for proper deletion of biometric data related to employees who are terminated/resign.

AB-25

California Consumer Privacy Act (CCPA)



HEALTH AND SAFETY



AB-1805

OSHA Reporting

- Currently, employers must report to the California Division of Occupational Safety and Health (Cal/OSHA) any “serious injury or illness,” which is defined as requiring inpatient hospitalization for more than 24 hours for reasons other than medical observation or tests.
- Pursuant to AB-1805, the 24-hour minimum hospitalization requirement is deleted, and employers must now report all inpatient hospitalizations, regardless of the length of stay. The bill also updates the definition of “serious exposure” to define exposure to a hazardous substance as one that has a “realistic possibility” of death or serious physical harm (versus current law requiring “substantial probability” of death/serious harm).
- **What to do:** Update policies and procedures related to OSHA reporting. Train managers and supervisors.



SETTLEMENT AGREEMENTS

AB-749

No-Rehire Provisions

- Effective January 1, 2020, settlement agreements may not contain any provision that prohibits an “aggrieved” employee from seeking re-hire with that employer. The new law also applies to any parent companies, subsidiaries, divisions, affiliates, or contractors. Any no-rehire provision in a settlement agreement created on or after that date will be void.
- Note however that the new law only applies to no-rehire provisions in agreements between employers and “aggrieved persons,” which refers to an employee who has filed a claim against their employer in court, before an administrative agency, in an alternative dispute resolution forum, or through the employer’s internal complaint process.
- **What to do:** Review settlement agreements to make sure they do not contain a “no-rehire” provision. Discuss this with your employment law counsel. Consider impact on WC C&R’s.



ARBITRATION AGREEMENTS

AB-51

Bans Mandatory Arbitration Agreements

- AB-51 bans mandatory arbitration agreements entered into between employers and employees, after January 1, 2020. Pursuant to the new law, employers are prohibited from requiring that an applicant or employee waive any right, forum or procedure for any employer violations of the FEHA and the Labor Code. “Voluntary” arbitration agreements are permissible.
- The bill does not apply to any arbitration agreements entered into prior to January 1, 2020. Employers should consult with counsel to determine how to amend arbitration agreements that will be in effect after January 1, 2020.
- CalChamber filed for a stay pending outcome of appeals that have been filed, which has been granted.
- **What to do:** Consult with employment law counsel on whether your Company’s arbitration agreement should be revised.
- **Update:** CalChamber and others filed for a stay pending outcome of appeals that have been filed. On December 29, 2019, a federal court granted a temporary stay.

SB-707

Arbitration Costs

- SB-707 provides that if an employer fails to pay the costs associated with beginning or continuing arbitration within 30 days after the costs are due, the employer is in breach of agreement and waives its right to compel arbitration.
- **What to do:** Ensure that costs associated with arbitration are paid in a timely manner.



CONCLUSION AND QUESTIONS

DISCLAIMER

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