

2021 Labor & Employment Law Update

Congratulations on maintaining a steady eye on workplace compliance. This has been an unprecedented year in the employment law landscape due to the ongoing COVID-19 pandemic and the many challenges facing your workplace. This chart aims to summarize important Labor and Employment Law updates, but employers are encouraged to spend time with our helpful HR Team of experts and to call us with any questions at 1-800-899-MMCI (6624).

EMPLOYMENT LAW	DESCRIPTION
<p>California State Minimum Wage Increase</p>	<p>The 2020 CA State minimum wage has increased as follows:</p> <ul style="list-style-type: none"> • CA businesses with 26 or more employees are expected to pay a minimum wage of at least \$14.00/hour. Businesses with less than 25 employees are expected to pay a minimum wage of at least \$13.00/hour. • Los Angeles businesses with 26 or more employees are expected to pay a minimum wage of at least \$15.00/hour. Businesses with 25 or less employees are expected to pay a minimum wage of at least \$15.00/hour by July 1, 2021. • Businesses within the city of San Diego are expected to pay a minimum wage of at least \$14.00/hour. • San Francisco Businesses with 26 or more employees are expected to pay* a minimum wage of at least \$16.07/hour, + CPI *(as of July 1, 2020) <p><i>*Please note: Many California cities and counties have enacted their own adoption of minimum wage laws and these wages may be more than what state law requires. You are strongly encouraged to check with your MMC HR team to be sure that your business practices align with local, state, and federal law.</i></p> <p>http://laborcenter.berkeley.edu/minimum-wage-living-wage-resources/inventory-of-us-city-and-county-minimum-wage-ordinances/</p>
<p>COVID-19: CA Supplemental Paid Sick Leave (CPSL)</p>	<p>AB 1867 became effective Sept. 19, 2020 and fills in the gaps left by the Families First Coronavirus Response Act (FFCRA) passed by Congress earlier this year. This law applies to food sector workers, all employees of health care providers and emergency responders (regardless of size), and employees of any private entity with more than 500 employees nationwide. Employees would be eligible for CPSL when the employee is:</p> <ol style="list-style-type: none"> 1. Subject to a federal, state, or local quarantine or isolation order related to COVID-19; 2. Advised by a healthcare provider to self-quarantine or self-isolate due to concerns related to COVID-19; <p>OR</p> <ol style="list-style-type: none"> 3. Prohibited from working by the employer due to health concerns related to the potential transmission of COVID-19. <p>This law also has a mandatory notice that must be posted/provided to employees.</p> <p>Note: Employers are encouraged to visit the DIR's FAQ on this law for further information.</p>
<p>COVID-19: Mandated Reporting</p>	<p>Effective January 1, 2021. AB 685 is very similar to the Cal-OSHA Emergency Temporary Standards. This law imposes some significant and complex notice requirements for reporting positive COVID-19 cases in the workplace and is especially confusing as it has a different definition of “outbreak” than the Cal-OSHA ETS or SB 1159. Employers are required to provide notice within 1 business day when they receive notice of a potential exposure (i.e., when they are notified that an employee at the workplace has tested positive for COVID-19). Employers must notify all employees and any subcontractor employees who were on the premises at the same as the exposed/qualifying individual, as well as notifying any employees who may have been exposed; the notice must include information about COVID-19 related benefits they may be entitled to. Lastly, employers must notify all employees of the cleaning and disinfection protocols and that the employer is implementing per CDC guidelines.</p> <p>Note: please see the DIR FAQ on this law for detailed information on how to comply.</p>

COVID-19: Cal-OSHA Emergency Temporary Standards

Effective 11/30/20. These new standards apply to all employees and employers **EXCEPT employers subject to the Aerosol Transmissible Diseases (ATD) Standard, and employees who are working from home.** In short, there are many new requirements placed on employers. Below is a brief summary of the most important requirements:

- Written COVID-19 prevention plan (standalone document or part of IIPP)
- Notice of COVID-19 exposure within 1 business day to employees who may have been exposed
- Requirement to report to local health department if there’s an outbreak (3+ positive COVID-19 cases in 14 day period)
- Physical distancing (at least 6ft) or plexiglass partitions where 6ft. not possible
- Face coverings and PPE required to be provided by the employer
- Excluding COVID cases **and paid time off* requirement:** employees must be allowed to “maintain earnings, seniority, benefits” etc. However, employers can require employees to exhaust PSL first.
- Testing: Employers must offer free testing during working hours if 1 positive case. If there is an outbreak or a “major outbreak,” employers must offer testing weekly or twice weekly
- Return-to-Work Criteria: differs for symptomatic vs. asymptomatic employees. It’s important to note that employers **cannot** require negative test before allowing an employee to return to work!

We strongly encourage you to visit the DIR FAQ on this subject to learn about all the requirements:
<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html>

COVID-19: Workers’ Compensation Reporting

SB 1159 went into effect immediately upon passing in September 2020 and is retroactive to July 6, 2020. This law allows employees who report to a worksite to be eligible for workers’ comp benefits if they test positive for COVID-19. Employers must report any positive cases in the workplace to their workers’ comp carrier within **3 business days**. This law also creates a “disputable presumption” that the employee contracted COVID at work; the burden is on the employer to try and rebut this presumption.

Please see the [DIR FAQ on SB 1159](#) for more information on this law.

COVID-19: PPE Stockpile for Healthcare

Effective April 1, 2020. AB 2537 requires certain public employers and all private employers who provide “direct patient care” in a “general acute care hospital” setting to maintain a stockpile of PPE, including surgical masks, gowns, respirators, eye protection, shoe coverings, among others.

CFRA Expansion

Effective January 1, 2021. Many of you are likely familiar with the California Family Rights Act (CFRA), California’s counterpart to the federal Family and Medical Leave Act (FMLA) – both which provide 12 weeks of job-protected unpaid leave. While CFRA previously ran concurrently with FMLA, CA’s new CFRA expansion creates a potential stacking issue between the two laws. In short, CFRA now applies to all employers with 5 or more employees (previously it was 50 or more employees), and expands the categories of applicable family members to include grandparents, grandchildren, siblings, and adult children. This means eligible employees could potentially take 24 weeks of leave. To qualify, the employee still must have more than 12 months of service with the employer and have worked at least 1,250 hours in the 12-month period before the leave begins. However, this new law eliminates the 75 mile radius requirement.

Please reach out to MMC at 1-800-899-MMCI (6624) to discuss the CFRA expansion and how this law may apply to your organization.

Sick Leave and Kin Care

Effective January 1, 2021. AB 2017 amends CA Labor Code Section 233 by requiring employers to permit employees to use at least half of their annual accrued sick leave to care for a family member. The designation of sick leave taken for such purposes shall be made at the employee’s sole discretion.

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2017

Pay Data Reporting	<p>SB 973 is a new law that requires all employers with 100 or more employees to submit detailed reports on employees pay data, along with a number of other categories including but not limited to race, ethnicity, sex, job category, number of hours worked, etc. These reports must be provided to the Dept. of Fair Employment and Housing (DFEH) by March 31, 2021.</p> <p>Please refer to the DFEH's FAQ on this law for further information and reach out to MMC to discuss whether this applies to you and how to go about preparing.</p>
Crime Victim Leave	<p>AB 2992 amends an existing law by requiring employers to grant an employee additional unpaid job-protected time off work if they or their immediate family member (or “the equivalent”) was a victim of a crime. The definition of “crime” is expanded to include crimes that caused physical injury or that caused mental injury and a threat of physical injury. An employee should give as much advance notice as possible if they are taking time off work, and must provide either: a police report; a court order protecting or separating the employee from the perpetrator; documentation from a licensed medical professional or similar; or any other form of documentation that verifies the crime or abuse occurred.</p>
ABC Test Follow Up	<p>AB 2257 became effective law upon signing and made a number of changes to the existing law under AB 5. Currently there are 109 exemptions to the ABC test set forth in AB 5. The most important updates to this law are the professional services and business-to-business (B2B) exemptions. For more information or guidance on the exemptions to AB 5, please contact MMC directly at 1-800-899-MMCI (6624).</p>
Wage Theft	<p>Effective January 1, 2022. AB 3075 was enacted to combat employers trying to evade paying a legally binding final judgment by opening a new business. This law requires a business owner, at the time of incorporation, to attest to whether any officer or director has an outstanding judgment against them for unpaid wages. This law further establishes “successor liability” for the final judgment if the successor to the business: (1) uses substantially the same facilities or substantially the same workforce to offer substantially the same services; (2) uses substantially the same owners or managers that control the labor relations; (3) employs as a managing agent anyone who directly controlled the wages, hours, or working conditions of the affected workforce; or (4) operates a business in the same industry and the business owner has a partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the judgment debtor.</p>
Mandated Reporters	<p>Effective January 1, 2021. AB 1963 amends the Child Abuse and Neglect Reporting Act (“CANRA”) and adds two key categories of mandated reporters for any employer with 5 or more employees AND that employs minors. This law makes certain HR employees (i.e., an employee designated by the employer to accept any complaints of misconduct under FEHA) and any adults who directly supervise minors to be mandated reporters for abuse and neglect. This amendment also requires employers to provide those 2 categories of employees with training on these duties – this training requirement may be met by completing the general online training by the Dept. of Social Services</p>
No-Rehire Clauses in Settlement Agreements	<p>Effective immediately. AB 2143 amends existing law AB 749, which was passed last year, banning no-rehire clauses in settlement agreements. This law clarifies and expands the current law to allow an employer to include a no-rehire provision in a settlement agreement with an employee who filed a complaint if, before the employee made the complaint, the employer had already made and documented its own good faith determination that the “aggrieved person” (i.e., the complaining employee) engaged in sexual harassment or sexual assault.</p> <p>https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB2143</p>

Retaliation Claims	<p>Effective January 1, 2021. AB 1947 extends the deadline to for a plaintiff to file a retaliation claim from 6 months to one year after the alleged violation. It also authorizes the courts to plaintiff-only attorneys fees if the plaintiff brings a successful action for Labor Code section 1102.5 whistleblower claims. In practice, this means these types of claims will be included in many more lawsuits and will be much more expensive to settle or resolve.</p>
Labor Commissioner Representation at Arbitration	<p>Effective January 1, 2021. This is the CA legislature’s latest attempt to chip away at arbitration for employment cases. Under this law, an employee who financially unable to represent themselves and who is unable to have their claim adjudicated by DLSE because of an order to compel arbitration can petition the Labor Commissioner to represent them in the arbitration proceeding. Any petition to compel arbitration must be served on the Labor Commissioner.</p>
Corporate Board Diversity	<p>AB 979 is the follow up to SB 826. AB 979 requires publicly held corporations with their headquarters in CA to diversify their boards of directors by December 31, 2021. These corporations must have at least one director from an “underrepresented community” on its board by the end of 2021. “Underrepresented community” means an individual who self-identifies as Black, African-American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or LGBT. These requirements increase from 2022 onward.</p>
CCPA and Employee Privacy	<p>Previously, California’s Consumer Privacy Act (“CCPA”) law temporarily excludes certain employment-related personal information from the law’s requirements until January 1, 2021. Proposition 24 or the California Privacy Rights Act (“CPRA”), which passed on the ballot this November, extends this exemption until January 1, 2023. The CPRA also extends the CCPA’s anti-discrimination and anti-retaliation provisions to employees and independent contractors who exercise their rights under the Act.</p> <p>For more information, please see:</p> <p>https://ballotpedia.org/California_Proposition_24,_Consumer_Personal_Information_Law_and_Agency_Initiative_(2020)</p>