MMC HR
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2023 Labor & Employment Law Update

Congratulations on maintaining a steady eye on workplace compliance. This chart aims to summarize important Labor and Employment Law updates, as well as recent litigation 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
California State Minimum Wage Increase	The 2023 CA State minimum wage has increased as follows: • CA businesses of all sizes are expected to pay $15.50/hour. o **White collar exempt employees** must receive at least **$64,480** per year. o Certain **computer software employees** who are exempt from overtime requirements must receive a minimum annual salary of **$112,065.20** (or **$53.80/hour**). o **Licensed physicians and surgeons** are exempt from state overtime requirements if they receive a minimum hourly rate of **$97.99/hour**. • **Oakland** businesses must pay **$15.97/hour**. • **San Diego** minimum wage will go up to **$16.30/hour**, regardless of employer size. • **Santa Rosa** minimum wage will be **$17.06/hour**. • **San Jose** minimum wage will be **$17.00/hour**. • **Sonoma** businesses with 25 or fewer employees will be expected to pay **$16.00/hour**, while businesses with 26 or more employees will be expected to pay **$17.00/hour**. • **West Hollywood** businesses with 49 or fewer employees are expected to pay a minimum wage of **$17.00/hour**, businesses with 50 or more employees are expected to pay a minimum wage of **$17.50/hour.** The minimum wage for all **West Hollywood** businesses will increase again on **July 1, 2023**. *Reminder: West Hollywood implemented an ordinance that sets a hotel worker minimum wage as of July 1, 2022, hotel workers must receive at least $18.35/hour. ***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. See http://laborcenter.berkeley.edu/minimum-wage-living-wage-resources/inventory-of-us-city-and-county-minimum-wage-ordinances/.
Expansion of CA SPSL	AB 152 extends COVID-19 Supplemental Paid Sick Leave until **December 31, 2022**. This law also contains a small business grant program which provides grants of up to $50,000 for businesses with 26-49 employees for the cost of providing this COVID-19 SPSL. • Note - this is **not** a new bucket of leave. Employees who begin SPSL leave before the end of the year must be permitted to complete their leave even if it extends into the new year
No Cannabis Employment Discrimination	Effective January 1, **2024**, AB 2188 makes it illegal for employers to discriminate against employees for their off-duty use of cannabis. The employee may still maintain a drug-free workplace as the employee is not permitted to possess cannabis while on the job, and the employee must not be impaired while at work. • Note: this law does not apply to building and construction trades or to federal contractors or employers who are covered by federal laws or who receive federal funding. • Employers must change their drug-screening policies in order to cease testing for non-psychoactive cannabis metabolites. Adverse action against employees with THC-positive results is permitted.
Designated Person Added Under CFRA/PSL	AB 1041 expands the California Family Rights Act (CFRA) and Paid Sick Leave (PSL) to allow for employees to care for a "designated person." Under the 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." The employee may designate the person at the time the employee requests leave. The employer may limit the employee to **one (1)** designated person per 12-month period.

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Bereavement Leave	AB 1949 requires employers with **5 or more** employees to provide up to **5 days unpaid** bereavement leave under the CFRA. Eligible employees must have been employed for at least 30 days prior to taking the leave. Qualifying family members include the employee's spouse, domestic partner, child, parent, parent-in-law, sibling, grandparent, or grandchild, While the leave is unpaid, the employee must be permitted to apply accrued paid time off to the leave. Employers can request documentation from the employee within 30 days of the first day of leave (i.e., a death certificate, obituary, burial or memorial service, etc.). The days of the leave do not need to be taken consecutively but the leave must be completed within 3 months of the family member's death.
Pay Transparency and Pay Data Reporting	SB 1162 is a very important law for CA employers. The impacts of this law are two-fold: 1. Expands **pay data reporting** requirements under SB 973 which went into effect in 2020. This law requires additional information be included in the employer's pay data report, such as the median and mean hourly rates for employees. All private employers with 100 or more employees are required to file a pay data report, regardless of whether they must also file a federal EEO-1 report. Employers who hire 100 or more employees through labor contractors must submit separate reports for those employees. o This law also extends the deadline to file pay data reports from March 31 to the second Wednesday in May of each year. 2. Pay Scales: employers with 15 or more employees must include the pay scale for a position in all job postings. Upon request, employers of **all sizes** are required to provide the pay scale to **current employees** for the position they are currently employed. Existing law permits applicants to request the pay scale for the position they are applying. - Pay scale is defined as: the salary or hourly range that the employer reasonably expects to pay for the position. This law also contains enhanced recordkeeping requirements for employers: employers must maintain records of the job title and wage rate history for each employee for the duration of their employment, plus **3 years**. Failure to keep such records will create a rebuttable presumption in favor of the employee.
Call Center Layoff Protections	AB 1601 requires call center employers to follow Cal/WARN requirements and provide 60 days advance notice to employees and the Employment Development Department (EDD) before the employer may relocate the call center worksite.
Emergency Conditions Protections	SB 1044 applies to employers of all sizes and prohibits employers, in the event of an "emergency condition" from taking adverse action against an employee who refuses to report to, or leaving, a worksite because the employee has a reasonable belief the worksite is unsafe. Employees must also be permitted to use their mobile phones/devices to communicate to others regarding emergency assistance, assessing the safety, or communicating with others to confirm their safety. Emergency condition is defined as: either (1) conditions of disaster or peril caused by natural forces or a criminal act, or (2) an order to evacuate a worksite, employee's home, or the school of an employee's child. **Note:** health pandemics are not covered under this law.
FAST Recovery Act	AB 257 created an unelected fast food sector council, which has the authority to determine wages and working conditions for applicable restaurants in the fast-food industry.
FEHA - Reproductive Decision-making	SB 523 provides a new protected category under California's Fair Employment and Housing Act (FEHA). Under this law, employers are prohibited from discriminating against an applicant or employee based on their reproductive health decision-making, which is defined as "a decision to use or access a particular drug, product, or medical service for reproductive health." Employers cannot require employees or applicants to disclose information relating to their reproductive health decision-making.
Agricultural Relations & Elections	AB 2183 specifies that agricultural employee unions may organize without holding a polling place election and may retain employees by asking them to sign a card authorizing the union to represent them in collective bargaining. The union would then petition the Agricultural Labor Relations Board (ALRB) for a non-labor peace election, which would not require a mail-in or secret ballot vote.

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Customer Restroom Access	AB 1632 requires businesses open to the general public for the sale of goods to allow any customer or individual lawfully on the premises to use the bathroom during normal business hours, even if the facility does not usually make that bathroom available to the public. This law is limited to customers/individuals with specific medical conditions such as Crohn's disease, ulcerative colitis, IBS, any condition requiring the individual to use an ostomy bag, or any other medical condition that requires immediate access to the bathroom. Please review the law for further details on the requirements and exceptions if this applies to you.
COVID-19 Workers Compensation Presumption	AB 1751 extends the workers compensation rebuttable presumption from 2020's SB 1159 to January 1, 2024. As a refresher, the presumption states that employees reporting to the worksite and contract COVID-19 are presumed to have contracted COVID-19 at work and employers are required to report such cases to their workers compensation carriers, and it is the employer's burden to prove otherwise. The presumption was originally set to expire on January 1, 2023.
COVID-19 Notice Requirements	AB 2693 makes changes to the employer's COVID-19 notice requirements under Cal/OSHA's Emergency Temporary Standards (ETS) which were originally implemented in 2020 and remain in effect through December 31, 2022. There are two main changes with this law. First, the exposure Notice changes: employers are now permitted to post and prominently display a notice for 15 days that identifies the pertinent dates when an employee with a confirmed case of COVID-19 was at the worksite, along with the location of the exposure. Employers are still required to provide written notice to those employees who were in "close contact" with a confirmed case of COVID-19 at the worksite. Second, this law extends the employers' obligations under the Prohibition Notice (notice where Cal/OSHA has prohibited operations at worksite because there is an imminent risk of COVID-19 exposure) and Exposure Notice requirements to January 1, 2024.
Cal/OSHA New Permanent Standard	As a reminder, the Cal/OSHA ETS are set to sunset on December 31, 2022, but the Board voted to adopt the new Permanent Standard which will remain in effect for 2 years after the effective date (likely January 1, 2023). Below are the main points which the Permanent Standard relaxed from the ETS: • Employee screening: employers are no longer required to institute a COVID-19 symptom screening protocol for employees. Employers now must simply be able to effectively identify and respond to workers with COVID-19 symptoms at the worksite and encourage employees to stay home if they are experiencing COVID symptoms. • Elimination of exclusion pay: employers are no longer required to maintain an employee's earnings and benefits when they are excluded from the worksite. Now, employers are simply required to provide applicable employees with information relating to any COVID-19 benefits under federal, state, or local law and the employers' specific leave policies. • Testing: employers are no longer required to provide testing to any employee experiencing COVID-19 symptoms. Now, employers must provide testing only for those employees who had a close contact with a confirmed case of COVID-19 in the workplace as required under outbreak protocols. • Outbreaks: the Permanent Standard modified the definition of "exposed group" and outbreak protocols may cease if there have been one or fewer cases of COVID in the exposed group during the 14 days preceding. • Employee notice requirements: notification must be provided to potentially exposed employees "as soon as possible." Employees and independent contractors who had a "close contact" must also be notified "as soon as possible." • COVID Prevention Plans: the Permanent Standards now allow employers to either have a separate COVID-19 Prevention Plan (CPP) which identifies COVID-19 as a workplace hazard and speaks to the employer's prevention procedures and, or they may house this into their written Injury and Illness Prevention Plan (IIPP). o Note: employers are still required to address COVID-19 hazard assessments, COVID-19 training, and investigating workplace exposures and taking corrective action in their IIPP.

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Cal/OSHA Citation and Order Postings	AB 2068 requires employers post required citation notices or orders from the Division of Occupational Safety and Health in the top seven non-English languages used by limited-English proficient adults in California.
Heat Illness and Wildfire Smoke	AB 2243 requires Cal/OSHA to submit proposals to OSHA to increase the current standards for heat illness and wildfire smoke.
Sex Trafficking in Hotels	AB 1788 establishes a cause of action for local prosecutors to go after hotels for failing to report known sex trafficking within the hotel, or where an employee benefits from the sex trafficking activity in the hotel. The statute of limitations for this is 5 years after the violation or 5 years after the victim turns 18.
CalSavers Retirement Savings Program Applies to Employers with ONE or More Employees!	Previously, only employers with 5 or more employees were required to participate in the state-run employee retirement plan if they did not otherwise provide a tax-qualified employee savings retirement plan. However, in August, California enacted SB 1126, which extends the definition of employer to include all businesses with **one or more employees** that do not participate in a retirement savings plan. Sole proprietors, self-employed individuals, and businesses that only employ the owners of the business are exempted from this. This means all eligible employers must have a plan in place by **December 31, 2025**. If you have any questions whether this applies to your business, please contact MMC's Benefits Department today to ensure you are compliant in light of these new requirements.
Increased Disability Benefits	SB 951 increases the wage replacement benefits for low-earning employees under the State Disability Insurance (SDI) and paid family leave (PFL) programs for disabilities and injuries occurring after January 1, 2025.
Wage Garnishment	SB 1477 reduces wage garnishment limits to the lesser of 20% of an individual's disposable earnings for the week, or 40% of the amount by which an individual's disposable earnings for that week exceed 48 times the state minimum wage.
Meal and Rest Breaks for Certain Public Hospital Employees	Public sector hospital employees who provide direct patient care or support direct patient must now be provided meal and rest breaks per SB 1334. This law covers general acute care hospitals, clinics, or public health settings.
Criminal Conviction Record Relief	Effective January 1, 2023, SB 731 seals the records of defendants convicted of most felonies after January 1, 2005 if they completed the terms of their sentence or probation/parole and are not convicted of a new felony for 4 years.
Employer Responsibilities under CPRA	As a reminder, beginning January 1, 2023 covered employers under the California Privacy Rights Act (CPRA) will now need to confirm that any information they collect from California applicants and employees complies with the CCPA's exacting standards. Employers must update privacy notices to alert applicants, employees, and contractors with the categories of personal information collected, purposes of collection, and to whom the information is disclosed and for what purpose, how long the employer keeps the information, among other requirements. Employers must also provide training on this new law to any individuals who are responsible for handling consumer (i.e., employee and applicant) inquiries about the employer's privacy practices or compliance with CPRA. This is a **very important** and complex law for CA employers so be sure to contact experienced privacy counsel to confirm if this applies to your business.

CASE LAW UPDATE	DESCRIPTION
Timeclock Rounding Policies No Longer Permitted	In *Camp v. Home Depot, U.S.A. Inc.*, the CA Court of Appeal determined that an employer's rounding policies, even if neutral on its face, are **impermissible** as the employer had access to sufficient technology to capture the exact amount of time the employees clocked in or out based on the minute they clocked in. If you currently use MMC's TLC system for your nonexempt employees timekeeping, **please contact MMC's HR Services Team** today to confirm TLC is not rounding your employees' time punches.
No Reimbursement Required for Applicant Drug Testing	In *Johnson v. Winco Foods, LLC,* the employer required all successful job applicants to undergo mandatory drug testing before they began employment. The applicants sued claiming they should be compensated for time spent taking the test and travel expenses incurred relating to the test. The Court there found that since the applicants were not employees at the time of the testing, the employer was not required to compensate them for the time spent and travel expenses. Employers should be very mindful of when an individual becomes an employee, as this was a condition precedent to the applicants' employment and stated as much in the conditional offer letter.
Meal and Rest Break Premiums ARE Wages for Waiting Time Penalties	*Naranjo v. Spectrum Security Services, Inc*. was an unfortunate landmark case for California employers. The CA Court of Appeals found that meal and rest break premiums **do** constitute wages for the purposes of waiting time penalties, thus any premium pay that is not timely paid is subject to waiting time penalties under the Labor Code. Therefore, when an employee is separated from employment it is extremely important to ensure all meal and rest break premiums the employee may be entitled to are timely paid, otherwise waiting time penalties will be triggered.