IN–DEPTH DISCUSSION

No Rest for California Employers in 2022! Here are the Latest Employment Laws in the Golden State

By Bruce Sarchet and Joy Rosenquist on October 5, 2022

California state and local governmental bodies—our state legislature, and counties and cities—were active again this year in their efforts to regulate the workplace. Littler Workplace Policy Institute has been tracking these bills as they worked their way through the legislature. Some were signed into law by Governor Newsom earlier this year and have already gone into effect. Unless otherwise noted, others discussed in this article will become effective on January 1, 2023. Notable new laws are summarized below. Employers should begin reviewing these requirements to help ensure compliance with the array of new laws. And don't miss our annual "new California laws" webinar on October 19, 2022.

New Employment Laws Generally Applicable to All Employers

Pay Data Reporting Requirements

Two years ago, California enacted legislation requiring employers with 100 or more employees to report, on an annual basis, specified data to the state's Civil Rights Department, including the number of employees by race, ethnicity, and gender in various job categories. SB 1162 significantly amends and expands the law to require that employers include the median and mean hourly rates within each job category by race, ethnicity and gender, and imposes penalties on employers for non-compliance. The amended law also requires employers with 100 or more employees hired through labor contractors to submit a separate report with the same data for those employees. Employers with 15 or more employees are now required to include the pay scale in all job postings for a position and to make pay scale information available to current employees in a position, upon their request. Employers are required to maintain job title and wage history records for each employee throughout their employment and for three years thereafter.

COVID-Related Legislation

California continues to enact new workplace laws, or extend those enacted previously, relating to COVID-19.

Supplemental Paid Sick Leave

In early 2021, California enacted legislation to provide employees with supplemental paid sick leave for various COVID-related absences in addition to paid time off employees receive by law or policy. That law expired on September 30, 2021. In February, 2022, SB 114, a new Supplemental Paid Sick Leave (SPSL) law, went into effect. Like the 2021 law, the new law applies to private employers with 26 or more employees. There are, however, some differences. Among other things, the new law provides leave to employees whose family members are experiencing symptoms related to a COVID vaccine or booster.

The amount of leave is also different under the 2022 statute, which provides for two separate "up to 40-hour" leave banks. The first leave bank is available if an employee is unable to work or telework due to: an employee's or an employee's family member's quarantine or isolation due to COVID; the need to care for a child whose school or childcare site is closed or unavailable due to COVID; or an employee or employee's family member's vaccination appointment or vaccination side effects. The second leave bank is available only if an employee or a family member for whom they are providing care tests positive for COVID-19. The two leaves do not need to be consecutive, and exhaustion of one is not required before using another. An employee may choose which bank they wish to use.

Assembly Bill (AB) 152 extends California state SPSL to December 31, 2022. It also allows employers to require a second COVID-19 diagnostic test, for purposes of SPSL, within no less than 24 hours of a positive diagnostic test.

Notice of COVID Exposure

AB 2693 made changes to COVID-19 notification requirements by amending California Labor Code section 6409.6 (Duties of employer when notified of potential exposure to COVID-19) and extending its provisions until January 1, 2024. The main modification will give employers the option to post a notice of potential COVID-19 exposure at the worksite (and on existing employee portals) instead of providing written notice.

Extension of Workers' Compensation Provisions Related to COVID

AB 1751 extends to January 1, 2024, the current rebuttable presumption that an employee's illness resulting from COVID-19 was sustained in the course of employment for purposes of workers' compensation benefits

Revisions to the COVID-19 Prevention Emergency Temporary Standards

In November 2020, California issued COVID-19 Prevention Emergency Temporary Standards (ETS). The standards were revised on June 17, 2021 and again on December 16, 2021. The ETS were updated again, effective May 6, 2022, and are in effect through December 31, 2022.

The revised regulations relax some of the previous standards and eliminate the distinction between vaccinated and unvaccinated employees. The new regulations state: "All protections now apply regardless of vaccination status and ETS requirements do not vary based on an employee's vaccination status." The current standards no longer require masks indoors, except in places such as healthcare facilities, or inside employer-provided vehicles. Physical distancing requirements have been eliminated except in a major outbreak, defined as exposure of 20 or more employees. Under the amended standards, partitions and barriers are no longer required in the event of an outbreak, and the ETS no longer include any cleaning and disinfecting requirements. The current regulations also provide new return-to-work standards. Employees who test positive can return to work five days after a negative test if symptoms are improving and they wear a face covering at work for an additional five days. Employees whose symptoms are not resolved may return to work 10 days after the symptoms began if they have had a fever of 100.4 degrees or less, without fever medication, for 24 hours.

On September 15, 2022, the Cal/OSHA Standards Board held a public hearing on a proposed non-emergency COVID-19 standard that would take effect when the current standard expires on December 31. Unless and until a new standard is adopted, California employers should continue to comply with their obligations under the revised regulations through December 31, 2022. The Board will likely conduct a vote by or at its December 15, 2022, meeting to approve some final version of a non-emergency COVID-19 regulation.

Workplace Health and Safety Citation Notices

AB 2068 provides that required notices posted when the Division of Occupational Safety and Health issues a workplace health or safety citation or order be written in "the top seven non-English languages used by limited-English-proficient adults in California, as determined by the most recent American Community Survey by the United States Census Bureau." Currently the required languages are Spanish, Cantonese, Mandarin, Vietnamese, Tagalog, Korean and Armenian. The notices are also required to be posted in Punjabi if that is not one of the top seven languages.

Employees Excused from Work During "Emergency Conditions"

SB 1044 allows employees to leave work or refuse to report to work during an "emergency condition," defined as disaster or extreme peril to the safety at the workplace caused by natural forces or a crime, or an evacuation order due to a natural disaster or crime at the workplace, an employee's home, or their child's school. The law specifically excludes health pandemics from the definition of emergency condition.

The law also prohibits employers from taking adverse action against an employee for refusing to report to or leaving work during an emergency condition.

The law does not apply to first responders; disaster or emergency service workers; health care workers who provide direct patient care or emergency support services; and employees who work on nuclear reactors, in the defense industry, or on a military base.

Heat Illness and Wildfire Smoke

AB 2243 requires CalOSHA to submit a regulation proposal to consider revising the heat illness standard and wildfire smoke standard. With regard to farmworkers specifically, the law further requires a regulation to consider making respiratory protective equipment mandatory at an AQI of 301 or higher.

Prohibition of Adverse Action for Off-Duty Marijuana Use

AB 2188, which takes effect on January 1, 2024, prohibits adverse action based on an employee's use of cannabis off the job and away from the workplace or if a pre-employment drug test finds non-psychoactive cannabis metabolites in the applicant's hair, blood, urine, or other bodily fluids. The law exempts employers in the building and construction industry and applicants and employees in positions requiring a federal background investigation or clearance. The law also does not preempt state or federal laws applicable to companies receiving federal funding or federal licensing-related benefits, or that have federal contracts.

Increased Unemployment and Family Temporary Disability Insurance Benefits

SB 951 increases the amount of unemployment and wage replacement benefits for low-wage employees under the family temporary disability insurance program, for disabilities or covered incidents occurring on or after January 1, 2025.

Amendment to California Family Rights Act

AB 1041 expands the categories of individuals for whom an employee may take leave under the California Family Rights Act to include a "designated person," 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 one designated person per 12-month period.

Bereavement Leave

AB 1949 requires employers with five or more employees to provide up to five days of unpaid bereavement leave for an employee within three months of the death of a family member.

Farm Workers Allowed to Vote by Mail in Union Elections

After initially declining to sign AB 2183, the Agricultural Labor Relations Voting Choice Act, which gives agricultural workers the option to vote by mail in union representation elections that were previously required to be held in person, Governor Newsom reversed his position and signed the bill following President Biden's urging. His signature was conditioned on a letter signed by the United Farm Workers President and the California Labor Federation executive Secretary-Treasurer agreeing to the passage of clarifying language during next year's legislative session.

Civil Penalties Against Public Employers for Deterring Union Membership

SB 931 permits an employee organization to file a claim against an employer before the Public Employee Relations Board (PERB) alleging violations of Government Code section 3550, which prohibits a public employer from deterring or discouraging public employees or applicants from becoming or remaining members of an employee organization. Fines are $1,000 per affected employee, not to exceed $100,000. The PERB will award attorney's fees and costs to a prevailing employee organization unless the Board finds the claim was frivolous, unreasonable or groundless.

Amendments to California's Hate Crimes Law

AB 2282, which is effective immediately, amends existing law to increase and create equal penalties for burning crosses, and displaying swastikas and nooses as hate symbols. The law provides a $16,000 fine and up to three years' imprisonment for two or more offenses.

The amended law also clarifies that it is not intended to criminalize the display of the ancient swastika symbols that are associated with Hinduism, Buddhism, and Jainism, which are symbols of peace.

Criminal Conviction Record Relief

SB 731, effective July 1, 2023, seals records of defendants convicted of most felonies on or after January 1, 2005, if they completed their sentence, probation, supervision, parole and any other terms of their conviction, and are not convicted of a new felony for four years. The new law would not apply to registered sex offenders or those convicted of violent or serious felonies, such as murder or attempted murder, manslaughter, kidnapping, assault with a deadly weapon, robbery, and similar offenses.

Time Period for Civil Rights Department to File Suit for Employment Discrimination

Employees who file complaints of employment discrimination with the Civil Rights Department may file a civil suit if the department does not file suit within a specified time period. AB 2960 tolls those time periods during a pending dispute resolution proceeding.

Motor Vehicle Tracking

AB 984, which requires the department of motor vehicles to allow vehicle location technology on fleet vehicles, prohibits employers from using the devices to monitor employees except during work hours, and only if strictly necessary for the performance of an employee's duties. Employers that install the tracking devices on vehicles must provide notice of the monitoring that includes information about employees' right to disable the devices during non-work hours.

CalSavers Retirement Savings Program

On March 22, the California Code of Regulations was amended, effective immediately, to clarify the definition of "exempt employee" under CalSavers, the state-run employee retirement plan for employers that do not otherwise participate in a tax-qualified employee-retirement plan. The prior section of the regulations defined employers required to participate in CalSavers as those with "more than five" employees. Under the amended regulation, an "eligible employer" is a business with five or more employees that does not offer a retirement savings program.

Then, on August 26, 2022, California enacted SB 1126, which further expanded the definition of "eligible employer" to include businesses that do not participate in a retirement savings plan and have one or more eligible employees. The law requires such employers to have a payroll deposit savings arrangement in place to allow employee participation in the program by December 31, 2025. The new law excludes from the definition of "eligible employer" sole proprietorships, self-employed individuals, or other business entities that do not employ any individuals other than the owners of the business.

Contraception and Abortion-Related Laws

The California legislature and governor have been active in passing and signing bills related to contraception and reproductive rights applicable to employers as well as their healthcare insurance plans.

Effective September 27, 2022, AB 2091 prohibits employers and healthcare plans from releasing information identifying or relating to a person seeking or obtaining an abortion except pursuant to a subpoena, unless the subpoena is based on another state's laws that interfere with a person's abortion rights.

Similarly, AB 1242, prohibits California electronic communications or computer companies from complying with out-of-state warrants or other legal process seeking information or records for an investigation relating to a lawful California abortion.

More generally, AB 2223 prohibits a person from being subject to civil or criminal liability for exercising their reproductive rights or assisting someone who is exercising their reproductive rights.

AB 2134 applies to religious employers' healthcare service plans and insurers that do not provide coverage for abortion and contraception. These plans and insurers will be required to provide insured employees with written information about free abortion and contraception benefits or services available through the California Reproductive Health Equity Program.

Effective January 1, 2024, SB 523 requires healthcare plans to cover over-the-counter contraceptives and prohibits plans from imposing deductibles, coinsurances, copayments, or any other cost-sharing requirements for vasectomies. The law also amends California civil rights law to prohibit employers from requiring disclosure of information relating to applicants' or employees' reproductive health decision-making, or taking adverse action based on such decision-making, defined as "a decision to use or access a particular drug, device, product, or medical service for reproductive health."

Wage Garnishment

SB 1477 reduces the maximum amount of wages that may be subject to garnishment.

Restroom Access for Certain Medical Conditions

AB 1632 requires businesses open to the public that have restrooms for employees to allow individuals who have Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other similar medical condition, to use the employee restrooms.

Industry-Specific Laws

Fast Food Industry: Creating a State-Wide Fast Food Council

Among the most significant laws enacted this year in the Golden State, AB 257, the Fast Food Accountability and Standards Recovery Act, is the first law in the country to set standards and regulations for fast-food employees, and has received national attention.

State Fast Food Council

The law, which applies to fast food restaurants that are part of a chain of 100 or more establishments nationwide, creates a state Fast Food Council to set minimum wages and standards on working hours and the health, safety, and welfare of fast food restaurant workers. The 10-member Council will comprise representatives from the Department of Industrial Relations (DIR), the Governor's Office of Business and Economic Development, and individuals representing fast food restaurant franchisors, franchisees, and employees. Before the Council can assume its duties, however, 10,000 fast food restaurant employees must sign a petition approving the creation of the Council, which is then approved by the DIR.

Fast food restaurants located within a grocery store are exempt from the law if the grocery store employs the individuals who work in the restaurant. Bakeries are also exempted from this law so long as it produces for sale bread as a stand-alone menu item. The law also provides that a standard set by the Council may not supersede a standard covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of employees, and a regular hourly pay rate not less than 30% more than the state minimum wage.

Minimum Wage of up to $22 per Hour in 2023

One of the most controversial provisions of the law authorizes the Council to set a minimum wage of up to $22 per hour in 2023, an increase of $6.50 per hour from California's $15.50 per hour minimum wage scheduled to take effect in January. In addition, on January 1, 2024 and each year thereafter, the Council may increase the minimum wage by the lesser of 3.5% or the increase in the Consumer Price Index.

Local Fast Food Councils

The law also provides that any county or city with 200,000 or more residents may form a local fast food Council to make recommendations to the state Council on state health, safety, and employment standards. The local Councils will be composed of at least one fast food restaurant franchisor or franchisee, and at least one fast food restaurant employee, as well as representatives from local employment, health, and safety agencies.

State and local Council meetings and records are subject to open meetings and public records acts, making franchisors' corporate records and data considered by the Councils potentially available to the public and competitors.

Anti-discrimination/Anti-retaliation Provisions

The anti-discrimination/anti-retaliation provisions of the statute are broad and open-ended. AB 257 prohibits a fast food restaurant operator from discharging, discriminating or retaliating against any employee who has 1) made a complaint or disclosed information, "*or the fast food restaurant operator believes the employee disclosed, or may disclose*" information regarding employee or public health or safety; 2) participated in a proceeding relating to employee or public health or safety; or 3) refused to perform work the employee believes would violate worker or public health and safety laws or standards.

AB 257 also creates a private right of action for employees to seek reinstatement, treble damages, lost benefits, and attorney's fees and costs for violations. Moreover, the law creates a rebuttable presumption of unlawful discrimination or retaliation if the employer discharges or takes any other adverse action against an employee within 90 days of the date when the employer had knowledge of the employee's protected action.

Opposition to the Law

There has been a great deal of opposition to the law by fast food business operators that argue that the law will cause many fast food restaurants, already hurt by the pandemic and supply chain delays, to close. A day after AB 257 was enacted, a coalition called Protect Neighborhood Restaurants, co-chaired by the International Franchise Association and the National Restaurant Association, filed with the attorney general's office to place a referendum on the law on the ballot in the 2024 election. Proponents will have until December 4, 2022 to submit petitions signed by 623,000 voters to place the referendum on the ballot.

Call Center Relocation Notice Requirements

AB 1601 expands the California Worker Adjustment and Retraining Act (Cal/WARN), which requires employers to provide advance written notice to employees in the event of a mass layoff, relocation, or termination of operations. Under current law, the notice requirements for relocation apply only to industrial or commercial operations. AB 1601 would add relocation of call centers to the notice requirements.

The new law also provides that call centers that fail to provide the requisite relocation notices would be ineligible for state grants, state-guaranteed loans, and tax credits.

Hospitality Industry: Panic Buttons for Hotel Workers, Limits on Workload, and More

In 2018 California was unable to enact a state law requiring "panic buttons" for hotel employees: portable devices that are quickly and easily activated to summon help if an employee reasonably believes violent or threatening conduct is occurring in their presence. Since then, California cities and counties began to implement their own hotel industry ordinances. In the last four years, Oakland, West Hollywood, and Long Beach have enacted laws relating to hotel workers. In addition to requiring panic buttons for housekeeping staff, these ordinances also often include limits on workload, compensation provisions, and recall rights for laid off workers.

This year, Glendale and Los Angeles became the newest cities to enact such ordinances.

Los Angeles Hotel Worker Protection Ordinance

The Los Angeles Hotel Worker Protection Ordinance, which went into effect on August 12, 2022, requires hotels with 60 or more rooms to provide panic buttons to hotel workers assigned to work in guest rooms or restrooms where other hotel workers are not assigned. When activated the device transmits a signal to a designated security guard who can provide immediate on-scene assistance. Hotels with fewer than 60 rooms may use a supervisor or manager for this role if they have had three hours of training.

Employers may not prevent employees from reporting violence or threats to law enforcement. The Ordinance provides paid time off for employees to report such incidents to law enforcement and consult with a counselor. In an interesting twist, the Ordinance also prohibits employers from taking adverse action against a hotel worker who decides *not to report* violence or threats to law enforcement. Hotel workers subjected to violent or threatening conduct are also entitled to reasonable accommodation, including a modified work schedule; reassignment; or adjustment to the job structure, workplace location, or other work requirements.

Workload, Compensation, and Overtime Limitations

For employees whose principal duties include cleaning guest rooms, the Ordinance also establishes new workload limitations and compensation rules based mainly on room size and the number of rooms, buildings or floors involved. Among other provisions, the law requires hotels with 45 or more guest rooms to pay housekeepers double their hourly rate when they clean more than 4,000 square feet, and hotels with at least 60 guest rooms are required to pay housekeepers double their hourly rate when they clean more than 3,500 square feet.

The Ordinance prohibits employers from requiring *or permitting* hotel workers to work more than 10 hours a day unless they sign a written consent. Employers may not take adverse action against employees who decline to work more than 10 hours a day and must include a statement to this effect in the written consent employees sign to work overtime. There are exceptions to this overtime rule in case of emergency, which means an "immediate threat to public safety or of substantial risk of property loss or destruction."

These rules may be superseded by a collective bargaining agreement, but only if the waiver in the agreement is clear and unambiguous.

Cleaning and Sanitizing of Guest Rooms

The Ordinance also specifically requires guest rooms to be sanitized and cleaned after each night they are occupied, even when guests opt out of daily room cleaning service. Hotels may continue a green policy of reusing linens and towels though they may no longer offer financial incentives, such as discounts or vouchers, for guests to opt out of daily room cleaning.

Record Retention

There is a three-year record retention requirement for all documents related to room cleaners' assignments, rate of pay, overtime hours, written consents, rooms cleaned, including square footage, and essentially anything else required under the Ordinance. The Ordinance imposes statutory damages of $100 dollars per person per day for failure to maintain records, capped at $1,000 per day for all affected hotel workers.

Anti-Retaliation and Enforcement Options

As with most such laws, employers may not take adverse action against an employee for enforcing their rights under the Ordinance. However, if an employer takes adverse action against a hotel worker "known to have engaged" in protected activities under the Ordinance within one year preceding the adverse action, the employer must provide a detailed written statement to the employee giving the reasons for their discharge or other adverse action.

In addition to injunction actions by the city to enforce the law, hotel workers may bring a civil action for violations of their rights under the Ordinance and potentially recover actual damages in addition to statutory damages of $100 per day as well as attorneys' fees and costs.

A unique provision of the Ordinance imposes joint liability on a hotel employer that contracts with another hotel employer, temporary staffing agency, or employer organization, to obtain hotel employee services, which means that if there are violations of the Ordinance both the employer and the entity with whom the employer contracted may be found liable for damages. This provision will no doubt make staffing companies second guess contracting with a hotel in Los Angeles.

Required Notices

The city has published a notice that must be placed on the back of every guest room and restroom door. In addition, employees must be given written notice of their rights under the Ordinance in the employee's language or one of the languages spoken by at least 10% of the workers employed by the hotel. The required notice is available in English and Spanish.

Can a Hotel Obtain an Exemption?

If a hotel can demonstrate compliance with the law would require a workforce reduction of more than 20% or a reduction of all workers' hours by more than 30% to avoid bankruptcy or a shutdown, the city "shall grant" a waiver for up to one year. However, before even applying for a waiver, the hotel must provide a copy of its waiver application to all its employees.

Glendale Hotel Worker Protection Ordinance

In response to a proposed ballot measure regarding hotel worker protections, Glendale enacted a Hotel Workers Protection Ordinance, which went into effect on July 28, 2022. Some of the provisions of the new law, including those regarding panic buttons and employees' related rights, reiterate requirements in Glendale's Hotel Worker Workplace Protections Ordinance that went into effect in 2020. The new law adds to but does not replace the 2020 law. In most other respects the Ordinance is almost identical to the Los Angeles Ordinance.

New Workload and Compensation Rules

Like the Los Angeles Ordinance, the Glendale law establishes new workload limitations and compensation rules, based mainly on room size, though the requirements differ from those in the Los Angeles Ordinance. The Glendale Ordinance has voluntary overtime rules that are also similar to those in the Los Angeles Ordinance.

The minimum wage for hotel workers is pegged to Los Angeles wage rates. As of July 1, 2022 the hourly rate for Los Angeles hotel workers, and therefore Glendale hotel workers, is $18.17.

These rules may be superseded by a collective bargaining agreement, but only if the waiver in the agreement is clear and unambiguous.

Anti-Retaliation and Enforcement

The anti-retaliation and enforcement provisions of the Ordinance are very similar to those in the 2020 law, which gave hotel workers the right to file a civil suit for violations and created a rebuttable presumption that an adverse employment action taken against a hotel worker within 90 days of the hotel worker's exercise of rights under the Ordinance was retaliatory. The new law contains a provision, identical to that in the Los Angeles Hotel Worker Protection Ordinance, requiring an employer who takes adverse action against a hotel worker "known to have engaged" in protected activities under the Ordinance within one year preceding the adverse action, to provide a detailed written statement to the employee giving the reasons for their discharge or other adverse action.

Exemptions

Exemptions from the law are the same as those in the Los Angeles Ordinance.

Hotel and Janitorial Workers Recall and Retention Rights

During the height of the pandemic many businesses were forced to lay off workers. As customers began to return and businesses began rehiring, in 2021 California passed SB 93, which, among other things, requires laid-off employees to be recalled in order of seniority. The law applies to hotels, private clubs, event centers, airport hospitality operations, and airport service providers, as well as janitorial, building maintenance, and security services provided to office, retail and other commercial buildings.

In addition, several cities in California enacted their own recall rights as well as retention ordinances. The Long Beach Recall Rights and Retention Ordinances, originally enacted in 2020, apply to all hotels and to commercial property companies that provide janitorial services and employ 25 or more workers.

The Long Beach Recall Rights Ordinance requires covered employers to recall laid off employees for available positions they are qualified for in order of seniority. To be qualified for recall, the worker must have either held the same or similar position at the same workplace at the time of

separation or have the same training as a new hire would receive for the position.

The Retention Ordinance provides that, in the event of a change of control or new owner, the new employer is required to hire employees from a "preferential hiring list" established by the previous employer.

Both laws required the city manager to update the city council and mayor every 90 days on the Ordinances' effectiveness and continued necessity. Since they were enacted the Ordinances have continuously been renewed. On March 16, 2022, the city amended the Long Beach Recall Rights Ordinance and the Hotel and Janitorial Retention Ordinance to eliminate the sunset provisions and maintain the laws in effect unless repealed.

This year, Emeryville also enacted a recall rights Ordinance, effective May 5, 2022, which applies to hotels with more than 50 employees and card rooms, defined as any place where people are legally permitted to play a card game for a fee, charge or other compensation. Like other recall rights laws, the Emeryville Ordinance requires laid-off workers to be recalled to any available positions for which they are qualified based on seniority. The law only covers those laid off after Emeryville's COVID-19 Declared Emergency was enacted on March 19, 2020, if they were employed for six months or more in the 12 months preceding the Declared Emergency. To be qualified for a position the employee must have held the same or similar position at the time of the layoff or have the same training that would be provided to a new employee hired into that position. Employers must provide employees laid off following the Declared Emergency with written notice, in language they understand, of their rights under the Ordinance and must keep copies of the notice, along with other employment records, for at least three years following the date of layoff. Although the Ordinance applies to employees covered by a collective bargaining agreement (CBA), it does not preempt provisions of the CBA that exceed the requirements of the Ordinance. Employees may bring a civil action for violations of the Ordinance seeking back pay, reinstatement, attorney's fees and costs.

Civil Penalties Will Be Assessed Against Hotels for Knowledge of Sex Trafficking

Under AB 1788, If a supervisory employee knew or acted with reckless disregard of activity constituting sex trafficking in the hotel and failed to inform law enforcement, the National Human Trafficking Hotline, or another victim service organization, the City Attorney or District Attorney's office may seek fines ranging from $1,000 to $10,000, per penalty. If any employee of the hotel knowingly benefitted by participating on a venture that the person knew or acted in reckless

disregard of activity constituting sex trafficking, the same fines may be imposed against the hotel. There is a five-year statute of limitations on these penalties from the date of the violation, or within the date the victim attains the age of majority.

Minimum Wage for Healthcare Workers

In another new trend, a number of California cities have recently introduced bills to provide a $25 per hour minimum wage for healthcare workers employed by private healthcare facilities.

Most recently, Los Angeles and Downey passed $25 Healthcare Worker Minimum Wage Ordinances that were scheduled to take effect in July 2022. However, both ordinances are currently on hold due to referendum petitions requiring the cities to either repeal the ordinances or place them on the ballot in the next election.

Several other cities in Southern California have adopted similar ordinances.

Other Location-Specific Laws

San Francisco Public Health Emergency Leave

In the June 7, 2022 election, San Francisco voters passed Proposition G, a new Public Health Emergency Leave Ordinance (PHELO), effective October 1, 2022. The Ordinance requires employers with 100 or more employees worldwide to provide up to 80 hours of paid leave during a public health emergency to each employee who performs work in San Francisco. The paid leave is in addition to any other paid time off to which the employee is entitled, including paid sick leave under the San Francisco Paid Sick Leave Ordinance. The Ordinance does not apply to employees covered by a collective bargaining agreement that expressly waives the Ordinance's requirements in clear and unambiguous terms.

Employees may use this leave when they are unable to work or telework due to any of the following;

1. The recommendations or requirements of a federal, state, or local health order because of a public health emergency in a jurisdiction in which the employee, or a family member the employee is caring for, resides.
2. The employee, or a family member the employee is caring for, has been advised by a healthcare provider to isolate or quarantine.
3. The employee, or a family member the employee is caring for, is experiencing symptoms of and seeking a medical diagnosis, or has received a positive medical diagnosis, for a possible

infectious, contagious, or communicable disease associated with the public health emergency.
4. If the school or place of care, or caretaker of a family member the employee is caring for is closed or unavailable due to the Public Health Emergency.
5. An air quality emergency, if the employee primarily works outdoors and is pregnant or a member of a "vulnerable population," defined as people with heart or lung disease; respiratory problems; or age 60 or older. Employers may require a doctor's note or other documentation to confirm an employee is pregnant or a member of a vulnerable population.

Anti-Retaliation and Enforcement

The city may file a civil suit for violations of the law, and employees may file complaints with the San Francisco Office of Labor Standards Enforcement (OLSE) and file civil suits for damages for lost leave time. The law prohibits employers from taking any adverse action against an employee for using public health emergency leave, and if an employee files a complaint with the OLSE or a court, the law creates a rebuttable presumption of unlawful discrimination or retaliation if the employer takes any adverse action against the employee within 90 days of the filing.

Notice and Recordkeeping

The Ordinance requires employers to post a notice in English, Spanish, Chinese, and Filipino, and, where feasible, also provide it to employees electronically via email, text, or an employer's website. Employers are required to keep records of hours worked and leave taken for four years.

San Francisco Family Friendly Workplace Ordinance

In 2014 San Francisco enacted a Family Friendly Workplace Ordinance (FFWO), applicable to companies with 20 or more employees worldwide, which gave San Francisco employees with caregiver responsibilities the right to *request* alternative work arrangements.

Effective July 12, 2022, the city significantly amended and expanded FFWO to *guarantee* flexible work arrangements for employees with qualifying caregiver responsibilities who provide written notice of their preferred arrangement, unless the employer can demonstrate undue hardship. The amended Ordinance also expanded the scope of covered employees to include employees living outside San Francisco who telework as well as those who have caregiver responsibilities not only for a parent over 65, but also for any person over 65 "in a family relationship" with the employee.

Required Process for Responding to Employee Requests

The amendments provide a process and time frames for responding to employee requests. Employers must provide a written response to the employee within 21 days of the request for an alternative work arrangement. If the employer does not agree to the requested arrangement, it must act in good faith to initiate an interactive process, either orally or in writing, to find a mutually agreeable arrangement. If the interactive process is unsuccessful and the employer denies the employee's request, the employer must provide written notice of its decision within 21 days of the initial request, explaining why the requested work arrangement would cause undue hardship. The bases for undue hardship are the same as in the original Ordinance and include increased costs, detrimental effect on the ability to meet client or customer demands, inability to organize work among other employees, or insufficient work during the time or at the location the employee has requested.

The employer must also state in writing that the employee has a right to request reconsideration within 30 days of the denial. Employers must arrange a meeting to discuss an employee's request for reconsideration within 21 calendar days of receiving the request, and they must provide a final decision in writing 14 calendar days after the meeting. If an employee does not receive responses within the required timeframes they may file a complaint with the San Francisco Office of Labor Standards Enforcement (OLSE).

Notices

All businesses in San Francisco must post notices, available on the on the San Francisco OLSE website, in English, Spanish, Chinese, and Filipino/Tagalog and any other language spoken by 5% or more of the workforce. Employers must also provide employees who inquire about alternative work schedules with the authorized request form or an equivalent.

Increased Penalties

Under the original Ordinance OLSE could require employers to pay administrative penalties up to $50 for each day a violation occurred or continued. The amended Ordinance permits OLSE to recover *the greater of* $50 for each day a violation occurred or the cost of care the employee incurred. Additionally, OLSE may order the employer to pay the city the costs incurred for investigating and remedying a violation, if greater than the sum of $50 for each day of a violation.

Oakland and Los Angeles Drop Vaccination Proof Requirements for Most Businesses

On March 9, 2022, Los Angeles County dropped its proof of vaccination requirement to enter indoor businesses. People attending indoor mega-events of 1,000 or more people, such as sporting events, are still required to show proof of COVID vaccination or a recent negative test.

Similarly, effective May 17, 2022, Oakland amended its Proof of Vaccine Ordinance, lifting its previous requirements that public businesses, such as restaurants, gyms and the like, verify proof of COVID vaccination. Now, only senior adult care facilities and city senior centers are required to verify proof of vaccine. Notices, which were required to be posted in those businesses as of January 15, 2022, are available here.

West Hollywood Minimum Wage and Time Off Ordinance

An increasing number of California cities have enacted their own local sick leave and/or minimum wage Ordinances. On November 15, 2021, West Hollywood enacted an Ordinance that permits full-time employees to accrue 96 hours per year of paid time off and an additional 80 hours per year of unpaid time off for sick leave, vacation, or personal necessity. Part-time employees are provided pro-rated paid and unpaid accrued time off proportional to the hours worked. The Ordinance also raised the minimum wage above the levels set by the state and set a schedule for increasing the city's minimum wage every six months until July 1, 2023, and annually thereafter. For hotel employers, the Ordinance took effect on January 1, 2022. For all other employers, the Ordinance took effect on July 1, 2022.

On May 16, 2022, the city amended the Ordinance to clarify some of its provisions. The amended Ordinance provides that employees must have been employed for at least six months to be eligible to use accrued paid time off unless the employer's policies provide for a shorter time period. The amendments also allow unused, accrued paid time off to be carried over until the time off reaches a maximum of 192 hours of accrued time, unless the employer's established policy is more generous.

The city recently released regulations and administrative materials, including required posters which must be in English, Spanish, and any other language spoken by at least 5% of employees.

The Ordinance provides for administrative penalties and creates a private right of action for employees to recover damages in addition to a $100 per day penalty, attorneys' fees, and if the violation is found to be intentional, the potential recovery treble damages.

Employers covered by collective bargaining agreements that expressly waive the Ordinance are exempt. Businesses may also seek a one-year waiver of the Ordinance if they can demonstrate financial hardship.

Mountain View Wage Law Compliance Ordinance

On September 13, 2022, Mountainview passed an ordinance, effective immediately, requiring businesses wishing to obtain a business license to submit an affidavit attesting that it has not been found to be in violation of any federal, state or local wage and hour laws. Submission of a false affidavit would subject a business to administrative fines and penalties.

Conclusion

Employers in the Golden State already face an array of employment law compliance challenges. 2023 adds several more to the list. Employers are encouraged to "stay current" and review their policies and practices to seek to comply with these new laws.

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