Cooley

California Employers Facing New Employment Laws for 2024

November 7, 2023

California Gov. Gavin Newsom recently signed several new employment laws impacting California employers. Unless otherwise specified, those laws, which are summarized below, take effect on January 1, 2024.

Minimum wage increases

In the new year, the general statewide minimum wage will increase by 50 cents, to $16 per hour. The minimum exempt salary for California employees, which is tied to the state's minimum wage, will rise from $64,480 to $66,560. (**Note:** Many cities have their own minimum wage requirements that are higher than the state's minimum wage.)

The state also passed extensive legislation implementing minimum wages for specific industry employers, including healthcare facilities, as well as a $20 minimum wage for fast food workers beginning April 1, 2024.

Healthcare minimum wage

Senate Bill 525 will require virtually all California healthcare facilities to meet certain minimum wage schedules beginning June 1, 2024. The applicable minimum wage schedules (from $18 per hour up to $23 per hour) will depend on the type of healthcare facility and the nature and size of the business.

A covered "health care employee" is expansively defined to include healthcare providers, as well as those not directly involved in patient care, such as janitors, housekeeping staff, and clerical and food service workers. Notably, the expansive definition includes certain contracted or subcontracted employees if there is a contract with the healthcare facility employer to provide healthcare services or services supporting the provision of healthcare **and** the healthcare facility employer directly or indirectly exercises control over the employee's wages, hours, or working conditions. Meanwhile, a covered "health care facility" covers virtually all healthcare employers, including facilities or worksites that are part of an integrated healthcare delivery system, licensed skilled nursing facilities, and clinics.

The applicable minimum wage is divided into four categories. For example, large employers with 10,000 or more full time employees are required to pay a minimum wage of $23 per hour beginning June 1, 2024, $24 per hour beginning June 1, 2025, and $25 per hour beginning June 1, 2026. On the other hand, hospitals with a high percentage of Medicare and Medi-Cal patients, rural independent facilities, and certain independent hospitals must pay a minimum wage of $18 per hour beginning June 1, 2024. In addition to the varying minimum wage schedules, SB 525 requires healthcare workers who are paid on a salary basis to earn a monthly salary equivalent to at least 150% of the healthcare worker minimum wage, or 200% of the applicable state minimum wage, whichever is greater. The law also preempts any local ordinance, regulation, or administrative action that is enacted or takes effect after September 6, 2023, that relates to wages, salaries, or compensation for covered healthcare facility employees.

Under the law, the California Department of Health Care Access and Information must publish, on or before January 31, 2024, a list of covered healthcare facility employers that qualify based on classification. Employers who believe they were improperly excluded from the list may file requests with the department for reclassification. Healthcare facilities also may apply for waivers with the state, which would allow a temporary pause or alternative phase-in schedule of the applicable minimum wage.

Workplace violence prevention safety plan

In a groundbreaking development, California became the first state in the country to require employers to

develop, implement and maintain an “effective” workplace violence prevention plan, train employees, and create and maintain extensive records regarding workplace violence, beginning July 1, 2024. SB 553 covers virtually all employers, with limited exceptions. Under the law, “workplace violence” is defined as “any act of violence or threat of violence that occurs in a place of employment that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury.” We’ve outlined key requirements of the law below.

The prevention plan must be in writing and made easily accessible to employees. The plan can be incorporated as a stand-alone section in an existing injury and illness prevention program or maintained as a separate document. The plan **must include** all of the following components:

- Names or job titles of the persons responsible for implementing the plan.
- Effective procedures to obtain the active involvement of employees and authorized employee representatives in developing and implementing the plan.
- Methods the employer will use to coordinate implementation of the plan with other employers, when applicable.
- Procedures to accept and respond to reports of workplace violence, and to prohibit retaliation against an employee who makes such a report.
- Procedures to ensure that supervisory and nonsupervisory employees comply with the plan.
- Procedures to communicate with employees regarding workplace violence matters.
- Procedures to respond to actual or potential workplace violence emergencies, including, but not limited to, all of the following:
    - Procedures to develop and provide the training required.
    - Procedures to identify, evaluate and correct workplace violence hazards.
    - Procedures for post-incident response and investigation.
    - Procedures to review the effectiveness of the plan and revise the plan as needed.

For every “workplace violence incident,” the violent incident log **must include:**

- The date, time and location of the incident.
- The type of workplace violence.
- A detailed description of the incident.
- A classification of who committed the violence.
- A classification of circumstances at the time of the incident.
- Where the incident occurred.
- The type of incident, including, but not limited to, whether it involved a physical attack, threat of physical force, sexual assault, etc.
- Consequences of the incident, including whether security or law enforcement was contacted and their response.
- Information about the person completing the log.

The required training also must be conducted when the plan is first established and annually thereafter. Additional training must be provided when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. The initial training **must include:**

- The employer’s plan, how to obtain a copy of the employer’s plan at no cost, and how to participate in development and implementation of the employer’s plan.
- How to report workplace violence incidents or concerns to the employer or law enforcement.
- Workplace violence hazards specific to employees’ jobs, corrective measures the employer has implemented, how to seek assistance to prevent or respond to violence, and strategies to avoid physical harm.
- The violent incident log and how to obtain copies of required records.
- An opportunity for interactive questions and answers with a person knowledgeable about the employer’s plan.

Finally, employers must create and maintain training records for a minimum of one year, and the following records **must be maintained** for a minimum of five years:

- Records of workplace violence hazard identification, evaluation and correction.

- Violent incident logs.
- Records of workplace violence incident investigations.

Employers must make required records available to the California Division of Occupational Safety and Health (Cal/OSHA), and records of workplace violence hazard identification, evaluation, correction, training records and violent incident logs must be made available to employees upon request.

Although Cal/OSHA can begin enforcing SB 553 on July 1, 2024, it must propose its own workplace violence standards by December 31, 2025, and adopt such standards by December 31, 2026. SB 553 also made changes to existing law permitting employers to petition for temporary restraining orders (TROs) on behalf of employees. The law now permits union representatives to petition for TROs after hearing on behalf of employees (who can decline to be named) who have suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace.

Paid sick leave expansion

SB 616 amends the Healthy Workplaces, Healthy Families Act of 2014 to increase the amount of paid sick time employees can receive each year from three to five days (or 40 hours) for full-time employees. The law also increases the accrual threshold from six days (or 48 hours) to 10 days (or 80 hours). Employers using the "front-loading" method of providing paid sick leave must now provide five days (40 hours) at the beginning of the year. Employers using a different accrual method, other than providing one hour per every 30 hours worked, must now ensure an employee has at least 40 hours of accrued sick leave by the 200th calendar day of employment, in addition to the preexisting requirement that such employees have no less than three days (24 hours) by the 120th calendar day of employment. Employees must be permitted to use at least five days (40 hours) per year.

The sick leave statute contains an exemption for certain employees covered by a valid collective bargaining agreement, though employers relying on this exemption must meet certain additional requirements, such as not requiring employees to find a replacement worker as a condition of using the sick days.

Reproductive loss leave

SB 848 requires employers with five or more employees to provide a leave of up to five days following a "reproductive loss event," which is defined as "the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction." The leave is capped at a maximum of 20 days within a 12-month period, and employees must be permitted to take such leave nonconsecutively. Leave may be unpaid, though employees may use vacation, personal leave, accrued sick leave or other paid time off. Any information provided to the employer relating to the leave must be maintained as confidential and must not be disclosed except to internal personnel or counsel, or as required by law. The law also prohibits retaliation for exercising rights to the leave.

Noncompete agreements

California recently enacted two significant laws regarding employers' use of noncompete agreements, as we explained in an October 31 client alert.

Emergency or disaster declaration information

Effective January 1, 2024, Assembly Bill 636 expanded the information required in employers' wage theft notices. Such notices, which contain specific information, already were required to be issued to non-exempt employees at the time of hire and, in certain circumstances, within seven days of any changes to the information. AB 636 requires such notices to also include information regarding "[t]he existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed" that may affect employees' health and safety during their employment. This requirement applies to declarations issued within 30 days before an employee's first day of employment. While California's labor commissioner is required to create a new notice template by March 1, 2024, employers should update their notices in the meantime.

Cannabis use

As we discussed in an October 2022 client alert, effective January 1, 2024, AB 2188 made it unlawful for an employer to discriminate against employees for their off-duty use of cannabis. SB 700 expands this protection by making it unlawful for an employer to request information from applicants regarding their prior use of cannabis. The law also prohibits discrimination against applicants based on information about their prior cannabis use obtained from criminal history, unless the employer is otherwise permitted to consider or inquire about that information under the law.

Venture capital diversity data reporting

Beginning March 1, 2025, SB 54, another groundbreaking law, requires certain venture capital companies, including venture capital funds, to report to the California Civil Rights Department on the diversity of the founding members of companies in which they invest.

Climate disclosure requirements

In a three-punch series of laws, California became the first state to impose climate-related disclosure obligations on companies. AB 1305, the Voluntary Carbon Market Disclosures Act, will require companies who make climate-related claims or goals to provide certain annual disclosures on their website.

Two other bills – SB 253 (the Climate Corporate Data Accountability Act) and SB 261 (the Climate-Related Financial Risk Act), which are collectively known as the California Climate Accountability Package – impose new climate risk disclosure requirements for public and private companies doing business in California above certain revenue thresholds. SB 253, which is applicable to companies with revenues greater than $1 billion, requires disclosure of greenhouse gas emissions beginning in 2026. Companies also are required to obtain third-party assurance of their reports. SB 261 requires large corporations with revenues exceeding $500 million to annually disclose climate-related financial risks, with an initial climate-related financial risk report due on or before January 1, 2026.

Rebuttable presumption of retaliation

SB 497, known as the Equal Pay and Anti-Retaliation Act, amends the California Labor Code to create a rebuttable presumption of retaliation if an employee is disciplined or discharged within 90 days of engaging in certain protected activity, including disclosing an employee's own wages, discussing or inquiring about the wages of others, making a written or oral complaint regarding owed unpaid wages, or aiding or encouraging any other employee to exercise their rights. Employers also are liable for a civil penalty of up to $10,000 per employee for each violation, to be awarded to the employee who experienced retaliation.

No automatic stay during appeals of motions to compel arbitration decisions

SB 365 amends the California Code of Civil Procedure so that trial court proceedings are not automatically stayed (i.e., suspended) when a party appeals an order dismissing or denying a petition to compel arbitration. This law will permit courts to exercise discretion in whether to stay trial court proceedings while an appeal is heard. The law may be challenged in court, however, on grounds that it is preempted by the Federal Arbitration Act.

Prosecution for labor code violations

AB 594 empowers local prosecutors – including any district attorney, city attorney, county counsel, or any other city or county prosecutor – to prosecute a civil or criminal action for violations of the state's labor code that occur within the prosecutor's geographic jurisdiction. The law also provides that any individual agreement

between the employer and employee that purports to “limit representative actions or to mandate private arbitration” will have no effect on such prosecution. In addition to any other remedies available, a public prosecutor may seek injunctive relief, and prevailing plaintiffs may be awarded reasonable attorneys’ fees and costs, including expert witness fees.

Next steps

These new employment laws are expansive in breadth and scope. Employers need to prepare well in advance by reviewing and updating policies and practices, including applicable employee handbooks and employment agreements containing restrictive covenants and arbitration provisions, for compliance with these laws. Where applicable, employers also should create or revise workplace violence prevention plans to comply with SB 553 and monitor developments from Cal/OSHA on this law, which may include further guidance and a model workplace violence prevention program. Employers affected by the new slew of climate-related legislation should coordinate closely with counsel to prepare to comply with the new reporting regime.

If you have any questions about these laws or how to comply, please contact a member of Cooley’s employment group.

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