Compliance Bulletin

California Employment Laws Effective Jan. 1, 2024

In general, once approved by both the state legislature and the state governor, a new bill in California becomes effective on Jan. 1 of the following year (though some exceptions are possible for emergency measures and when the bills specifically appoint a different effective date).

This Compliance Bulletin provides an overview of labor and employment laws California adopted throughout 2023. Specific labor and employment updates include the following topics:

- Minimum wage standards in fast food and health care
- Wage notification amendments for agricultural employees
- Anti-discrimination prohibitions for cannabis use
- New standards for noncompete agreements
- Reproductive loss leave
- Workplace violence prevention and temporary restraining orders

Action Steps

Employers should review these laws and update their employment policies, practices and procedures to remain in compliance. Employers should seek the advice of a knowledgeable legal professional for specific situations and counsel on how to implement required changes.

Employers should also continue to monitor California's Department of Industrial Relations (DIR) communications for updates on these and additional labor and employment topics.

Please contact Poms & Associates Insurance Brokers LLC for more information on these updates and other labor and employment issues.

Compliance and Enforcement

Labor Code Enforcement (AB 594)

Existing law vests the DIR with various powers and duties to foster, promote, and develop the welfare of wage earners in California, to improve their working conditions and to advance their opportunities for profitable employment. It also establishes within the DIR, among other entities, the Division of Labor Standards Enforcement (DLSE), the Division of Workers' Compensation (DWC), and the Division of Occupational Safety and Health (CAL/OSHA), and grants enforcement duties and powers to these agencies.

Existing law authorizes the DLSE, the head of which is the Labor Commissioner, to enforce the state's Labor Code and other labor laws. Existing law relating to payment of wages for general occupations provides that nothing in those provisions limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction from the DLSE.

Until Jan. 1, 2029, AB 594 authorizes public prosecutors to take legal action, either civil or criminal, for violations of specified provisions of the Labor Code or to enforce those provisions independently. AB 594 requires money recovered by public prosecutors under the Labor Code to be applied first to payments due to affected workers. It also requires all civil penalties recovered pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified. With certain exceptions, the new law limits the action of public prosecutors to redressing violations occurring within their geographic jurisdiction. It also authorizes public prosecutors, in addition to any other remedies available, to seek injunctive relief to prevent continued violations.

AB 594 provides that, in any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration has no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code. It further provides that any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice will not stay the trial court proceedings.

Existing law prohibits any person or employer from engaging in willful misclassification of an individual as an independent contractor instead of an employee and in specified acts relating to the misclassified individual's compensation. Existing law, if the Labor and Workforce Development Agency or a court makes one of several prescribed determinations regarding the violation of those prohibitions, subjects the violator to specified civil penalties. Existing law also authorizes the Labor Commissioner to determine such a violation through investigation and informal hearing and, on making that determination, to issue a citation to assess civil penalties pursuant to prescribed procedures for issuing, contesting, and enforcing judgments.

Finally, AB 594 authorizes the Labor Commissioner or a public prosecutor to enforce these willful misclassification provisions through specified methods, such as by investigating an alleged violation, ordering temporary relief, issuing a citation and filing a civil action. It also permits specified employees, the Labor Commissioner, or a public prosecutor to alternatively recover certain penalties as damages payable to the employee.

Discrimination and Retaliation

Discrimination in Employment: Use of Cannabis (AB 2188)

California's existing Fair Employment and Housing Act (FEHA) protects and safeguards the right and opportunity of all persons to seek, obtain and hold employment without discrimination, abridgment or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation or military and veteran status. It also prohibits various forms of employment discrimination and empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices.

As of Jan. 1, 2024, Assembly Bill (AB) 2188 also makes it unlawful for employers to discriminate against a person in hiring, termination or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon the person's use of cannabis off the job and away from the workplace. An exception exists for pre-employment drug screening or when employer-required drug screening tests find employees have nonpsychoactive cannabis metabolites in their hair, blood, urine or other bodily fluids.

AB 2188 exempts certain applicants and employees from these new requirements, including employees in the building and construction trades and applicants and employees in positions requiring a federal background investigation or clearance. The new law does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits or entering into a federal contract.

Privileged Communications: Incident of Sexual Assault, Harassment or Discrimination (AB 933)

Existing law defines libel as a false and unprivileged written publication that injures reputation and slander as a false and unprivileged publication, orally uttered, that injures reputation. It also makes certain publications and communications privileged and therefore protected from civil action, including complaints of sexual harassment by an employee, without malice, to an employer if the complaint is based on credible evidence and communications between the employer and interested persons.

Assembly Bill (AB) 933 adds to those privileged communications a communication made by an individual, without malice, regarding an incident of sexual assault, harassment or discrimination, and specifies the attorney's fees and damages available to a prevailing defendant in any defamation action brought against that defendant for making that communication.

Protected Employee Conduct (SB 497)

Existing law prohibits discharging an employee or in any manner discriminating, retaliating or taking any adverse action against any employee or applicant because the individual engaged in protected conduct. Employees who are discriminated against in the terms and conditions of their employment because they engaged in protected conduct are entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of their employers.

In addition, existing law prohibits employers and their agents from making, adopting or enforcing a rule, regulation or policy preventing employees from disclosing information to certain entities or from providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry if employees have reasonable cause to believe that the information discloses a violation of the law. It also prohibits retaliation against employees for various reasons and makes corporations and limited liability companies liable for civil penalties of up to $10,000 for each violation.

Finally, existing law prohibits employers from paying employees wage rates that are less than the rates paid to an employee of the opposite sex for substantially similar work. In addition, employers also may not prohibit their employees from disclosing their own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise these and other rights. Employers are prohibited from discharging, discriminating or retaliating against an employee because of an action taken by the employee to invoke these and other provisions. A civil action against an employer for violating these provisions must be commenced within one year.

Senate Bill (SB) 497 creates a rebuttable presumption in favor of employee claims if employers engage in any prohibited retaliatory action within 90 days of when protected activity takes place.

SB 497 also establishes that in addition to other remedies, an employer may be subject to civil penalties of up to $10,000 per employee for each violation. This penalty is to be awarded to employees who suffered retaliation. In assessing this penalty, the DIR must consider the nature and seriousness of the violation based on the evidence obtained during the course of the investigation.

Employee Leave

Paid Sick Days Accrual and Use (SB 616)

California's existing Healthy Workplaces, Healthy Families Act of 2014 (HWHFA) establishes requirements relating to paid sick days and paid sick leave. It excludes specified employees from its provisions, including employees covered by a valid collective bargaining agreement (CBA employees).

Senate Bill (SB) 616 excludes railroad carrier employers and their employees from the HWFA's provisions.

With certain exceptions, the HWHFA entitles employees to paid sick days for certain purposes if they work in California for the same employer for 30 or more days within a year from the start of employment. It imposes procedural requirements on employers regarding the use of paid sick days, such as by prohibiting retaliation for using paid sick days, prohibiting the imposition of certain conditions on the use of paid sick days and requiring the use of paid sick days for specified health care and situations. The leave must be accrued at a rate of no less than one hour for every 30 hours worked and be available for use beginning on the 90th day of employment.

SB 616 extends these procedural requirements on the use of paid sick days to CBA employees.

Existing law authorizes employers to use a different accrual method as long as employees have at least 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. It also provides that employers may satisfy the accrual requirements by providing at least 24 hours or three days of paid sick leave that is available to use by the end of the employee's 120th calendar day of employment.

SB 616 modifies the employer's alternate sick leave accrual method to also require that employees have no less than 40 hours of accrued sick leave or paid time off by the 200th calendar day of employment or each calendar year or in each 12-month period. It also authorizes employers to satisfy accrual requirements by providing, in addition to the existing criteria for satisfaction above, not less than 40 hours or five days of paid sick leave that is available to employees to use by the end of their 200th calendar day of employment.

Existing law requires accrued paid sick days to carry over to the following year of employment. Existing law, however, authorizes employers to limit employee use of accrued paid sick days to 24 hours or three days in each year of employment, calendar year or 12-month period. Under existing law, this provision is satisfied, and no accrual or carryover is required if the full amount of leave is received at the beginning of each year of employment, calendar year or 12-month period. Existing law defines "full amount of leave" for these purposes to mean three days or 24 hours.

SB 616 raises the employer's authorized limitation on the use of carryover sick leave to 40 hours or five days in each year of employment. The bill redefines "full amount of leave" to mean five days or 40 hours.

Existing law also entitles individual providers of in-home supportive services and waiver personal care services to paid sick days in specified amounts in accordance with minimum wage increases, up to a maximum of 24 hours or three days each year of employment when the minimum wage has reached $15 per hour. Existing law authorizes the State Department of Social Services to implement and interpret these provisions.

Beginning Jan. 1, 2024, SB 616 increases the sick leave accrual rate for providers of in-home supportive services and waiver personal care services providers to 40 hours or five days in each year of employment.

Under existing law, an employer is not required to provide additional paid sick days if it has a paid leave or paid time off policy, makes an amount of leave available to employees that may be used for the same purposes and under the same conditions as the leave provisions, and the policy satisfies one of the specified conditions. Among those specified conditions is one that requires employers to have provided paid sick leave or paid time off in a manner that results in an employee's eligibility to earn at least three days or 24 hours of sick leave or paid time off within nine months of employment.

SB 616 changes that condition so that employees must be eligible to earn at least five days or 40 hours of sick leave or paid time off within six months of employment.

Under existing law, employers have no obligation to allow an employee's total accrual of paid sick leave to exceed 48 hours or six days, provided that an employee's rights to accrue and use paid sick leave are not otherwise limited.

SB 616 increases those accrual thresholds for paid sick leave to 80 hours or 10 days.

Existing law on paid sick days includes provisions on, among other things, compensation for accrued, unused paid sick days upon specified employment events, the lending of paid sick days to employees, written notice requirements, the calculation of paid sick leave, reasonable advance notification requirements, and payment of sick leave taken.

SB 616 provides that these provisions preempt any local ordinance to the contrary.

SB 616 also indicates that the matters addressed within it are a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

Leave for Reproductive Loss (SB 848)

California's existing Fair Employment and Housing Act (FEHA) makes it unlawful for an employer to refuse to grant an employee's request to take up to five days of bereavement leave upon the death of a family member.

Senate Bill (SB) 848 makes it unlawful for an employer to refuse to grant a request by an eligible employee to take up to five days of reproductive loss leave following a reproductive loss event. This leave must be taken within three months of the event, except as described, and pursuant to any existing leave policy of the employer. SB 848 also provides that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. Under the new law, in the absence of an existing policy, the reproductive loss leave may be unpaid. However, the new law authorizes employees to use certain other leave balances otherwise available to them, including accrued and available paid sick leave. SB 848 makes leave under these provisions a separate and distinct right from any right under the FEHA.

SB 848 also makes it unlawful for an employer to retaliate against an individual because of the individual's exercise of the right to reproductive loss leave or the individual's giving of information or testimony as to reproductive loss leave. Under SB 848, employers must maintain employee confidentiality relating to reproductive loss leave.

Hiring Practices and Regulations

Rehiring and Retention: COVID-19 Displaced Workers (SB 723)

Until Dec. 31, 2024, existing law requires employers to offer laid-off employees specified information about job positions that become available for which they are qualified and to offer positions to those laid-off employees based on a preference system in accordance with specified timelines and procedures. It also prohibits employers from refusing to employ, terminating, reducing compensation or taking other adverse action against laid-off employees for seeking to enforce their rights under these provisions.

The term "laid-off employee" means any employee who was employed by the employer for six months or more in the 12 months preceding Jan. 1, 2020, and whose most recent separation from active service was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force or other economic, nondisciplinary reason related to the COVID-19 pandemic.

Senate Bill (SB) 723 redefines "laid-off employee" to mean any employee who was employed by the employer for six months or more and whose most recent separation from active employment by the employer occurred on or after March 4, 2020, and was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, reduction in force or other economic nondisciplinary reason due to the COVID-19 pandemic. It also creates a presumption that a separation due to a lack of business, reduction in force or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

SB 723 also extends the Dec. 31, 2024, repeal date until Dec. 31, 2025.

Inquiries Into Applicant Cannabis Use (SB 700)

The existing California Fair Employment and Housing Act (FEHA) prohibits various forms of employment discrimination and empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices. As of Jan. 1, 2024, AB 2188 makes it unlawful for employers to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person because of the person's use of cannabis off the job and away from the workplace, except as specified.

Senate Bill (SB) 700 adds even more protection by making it unlawful for employers to request information from applicants relating to their prior use of cannabis. Under the new law, information about a person's prior cannabis use obtained from the person's criminal history is exempt if employers are permitted to consider or inquire about that information under a specified provision of the FEHA or other state or federal law.

Noncompete Agreements

Contracts In Restraint of Trade (SB 699)

Existing law regulates business activities in order to maintain competition and voids any contractual provisions by which a person is restrained from engaging in a lawful profession, trade, or business of any kind, except as otherwise provided.

Senate Bill (SB) 699 establishes that a voided contract is unenforceable regardless of where and when the contract was signed. It also prohibits employers or former employers from attempting to enforce a contract that is void regardless of whether the contract was signed and the employment was maintained outside of California.

In addition, SB 699 prohibits employers from entering into a contract with employees or prospective employees that includes a provision that is void under the law described above and makes noncompliance a civil violation. It also authorizes employees, former employees and prospective employees to bring an action to enforce this law for injunctive relief or the recovery of actual damages, or both, and provides that these individuals are entitled to recover reasonable attorney's fees and costs if they prevail.

Noncompete Agreements (AB 1076)

Existing law voids contractual provisions by which a person is restrained from engaging in a lawful profession, trade or business of any kind, except as otherwise provided. Existing case law, as established in the case of Edwards v. Arthur Andersen LLP (2008) 44 Cal.4th 937, interprets this provision to void noncompete agreements in an employment context and noncompete clauses within employment contracts, even if that agreement is narrowly tailored, unless an exception applies.

The existing Unfair Competition Law (UCL) makes various practices unlawful and makes a person who engages in unfair competition liable for a civil penalty. It provides for enforcement exclusively by the Attorney General or other specified local agency attorneys.

Assembly Bill (AB) 1076 codifies existing case law by specifying that the statutory provision voiding noncompete contracts is to be broadly construed to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy specified exceptions. It also makes these provisions applicable to contracts where the person being restrained is not a party to the contract.

Furthermore, AB 1076 makes it unlawful to include a noncompete clause in an employment contract, or to require an employee to enter into a noncompete agreement, that does not satisfy specified exceptions. Under the new law, employers must notify current and former employees in writing by Feb. 14, 2024, that the noncompete clause or agreement is void. A violation of these new provisions is an act of unfair competition pursuant to the UCL.

Notification Requirements

Required Disclosures for Agricultural Employees (AB 636)

Existing law requires employers to provide employees with a written notice that includes specified information at the time of hiring. The notice must be in the language that employers normally use to communicate employment-related information to their employees. The DIR is required to provide a template that includes the required information and to make the template available to employers for this notice.

Assembly Bill (AB) 636 requires employers to include in the written notice information regarding the existence of a federal or state disaster declaration applicable to the county or counties in which employees will be employed.

Beginning March 15, 2024, AB 636 also requires employers to give employees working under a federal H-2A agricultural visa additional information in a separate and distinct section of the notice described above. The notice must be provided in Spanish and, if requested by the employee, in English. This notice for H-2A employees must be provided on the day that these employees begin to work for the employer in the state or on the first day that employees begin work for another H-2A employer. This supplemental notice must describe an agricultural employee's additional rights and protection under California law.

AB 636 also provides employers that employ both H-2A and non-H-2A employees with the option to provide the notice to non-H-2A employees in English or Spanish, at the employees' request, or in the language that employers normally use to communicate employment-related information to non-H-2A employees. The DIR is required to create a compliant template for the notice and to post it on its website starting March 1, 2024.

Existing law specifies that for purposes of these provisions, the term "employee" does not include, among other persons, an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate wage.

AB 636 excludes an H-2A employee from the definition of "employee" if they are covered by an agreement that provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

Notice of Unemployment Levies (AB 1389)

Existing law requires the California Employment Development Department (EDD) to implement and administer the state's unemployment insurance program and provides for the payment of unemployment compensation benefits to eligible individuals who are unemployed through no fault of their own. Existing law also provides for penalties and interest if any person or employing unit is delinquent in the payment of any contributions for unemployment insurance and authorizes the EDD to enforce any state tax liens against a delinquent account receivable or account held by a financial institution if proper notice is given. If a levy is made on an account receivable, the person receiving a notice of the levy must remit any credits or personal property owing to the delinquent person or employing unit to the department within five days of receipt of the notice of levy. A person that comes into possession of credits or property owing to a delinquent person or employing unit has one year from the date of receipt of the notice of an accounts receivable levy to remit the credits or property to the EDD within five days of coming into possession of the credits or property. A financial institution receiving a notice of levy must remit the property to the EDD within five days of receiving the notice of levy, but the financial institution does not have to remit property that is not in its possession at the time the notice of levy is served.

Assembly Bill (AB) 1389 instead requires the person in possession of credits or property owing to the delinquent person or employing unit to remit the credits or property to the EDD after 10 but no later than 14 business days after service of the levy. It also requires a person coming into possession of credits or property owing to the delinquent person or employing unit within one year of receipt of the notice of levy to remit the credits or property to the EDD after 10 but no later than 14 days after coming into possession of the credits or property.

Electronic Notice and Documents (AB 1355)

Earned Income Tax Credit

The California Personal Income Tax Law (PITL) allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws. Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements.

The PITL, in modified conformity with federal income tax laws, allows an earned income credit against personal income tax, and a payment in excess of that credit amount, to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor as set forth in the annual Budget Act.

California's Earned Income Tax Credit Information Act (EITCIA) requires employers to notify all employees that they may be eligible for specified income tax filing assistance programs and state and federal antipoverty tax credits, including the federal and California earned income tax credits, by handing specified documents directly to each employee or mailing the specified documents to the employee's last known address twice annually. The 2nd notification may be sent electronically.

Until Jan. 1, 2029, AB 1355 authorizes employers to provide the first notification via email to an employee's email account instead of directly handing or mailing it, if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. The new law also prohibits employers from discharging or taking other adverse action against employees who do not opt into receipt of electronic statements or materials.

Unemployment Benefits

Existing law prescribes a system for the payment of benefits to unemployed individuals who meet specified eligibility criteria and requires employers to supply each individual with copies of printed statements or materials relating to claims for benefits at the time the individual becomes unemployed. Failure to comply with these provisions is a misdemeanor.

Until Jan. 1, 2029, AB 1355 authorizes employers to provide the notification concerning statements and materials for benefits via email to an employee's email account, if the employee affirmatively, and in writing, by email or by some form of electronic acknowledgment, opts into receipt of electronic statements or materials. The new law also prohibits employers from discharging or taking other adverse action against employees who do not opt into receipt of electronic statements or materials.

Reproductive Rights and Benefits

Health Care Services: Legally Protected Health Care Activities (SB 345)

Existing law provides for the licensure and regulation of various categories of medical professionals by boards within the Department of Consumer Affairs, including, among others, the Medical Board of California and the Dental Board of California. Existing law makes specified actions by licensed health care providers unprofessional conduct and, in certain cases, a criminal offense.

Senate Bill (SB) 345 prohibits a healing arts board from denying an application for a license or imposing discipline upon a licensee or health care practitioner on the basis of a civil judgment, criminal conviction or disciplinary action in another state if that judgment, conviction, or disciplinary action is based solely on the application of another state's law that interferes with a person's right to receive sensitive services, that would be lawful if provided in this state, regardless of the patient's location. It further provides that the performance, recommendation or provision of a legally protected health care activity by a licensee or health care practitioner acting within their scope of practice for a patient who resides in a state in which the performance, recommendation or provision of that legally protected health care activity is illegal, does not, by itself, constitute professional misconduct, upon which discipline or other penalty may be taken.

In this connection, the new law defines a "legally protected health care activity" to mean specified acts, including, among others, the exercise and enjoyment, or attempted exercise and enjoyment, by a person of rights related to reproductive health care services or gender-affirming health care services secured by California's Constitution or laws or the provision of a health care service plan contract or a policy, or a certificate of health insurance, that provides for those services.

California's existing Confidentiality of Medical Information Act generally prohibits a health care provider, health care service plan, contractor, or corporation from sharing, selling, using for marketing or otherwise using medical information for a purpose not necessary to provide health care services to the patient.

Senate Bill (SB) 345 prohibits a person or business from collecting, using, disclosing or retaining the personal information of a person who is physically located at, or within a precise geolocation of, a family planning center, except as necessary to perform the services or provide the goods requested. It also prohibits the sale or sharing of this information and authorizes an aggrieved person or entity to institute and prosecute a civil action for a violation and obtain damages and costs. These provisions do not apply to a provider of health care, a health care service plan or a contractor.

California's existing Reproductive Privacy Act declares as contrary to the public policy of this state a law of another state that authorizes a person to bring a civil action against a person or entity that engages in certain activities relating to obtaining or performing an abortion. It also prohibits the state from applying an out-of-state law described above to a case or controversy in state court or enforcing or satisfying a civil judgment under the out-of-state law.

SB 345 states that California law governs any action against a person who provides or receives by any means—including telehealth, reproductive health care services or gender-affirming health care services—if the care was legal in the state in which it was provided at the time of the challenged conduct.

SB 345 states that interference with the right to reproductive health care services, gender-affirming health care services or gender-affirming mental health care services is against the public policy of California. It declares as a violation of public policy a public act or record of a foreign jurisdiction that, among other things, authorizes a person to bring a civil action against a person, provider, or other entity in California for, among other acts, seeking or providing reproductive health care services, gender-affirming health care services or gender-affirmative mental health care services. SB 345 declares the intent of the Legislature that nothing in the bill be interpreted to undermine or decrease any existing protections under California law. SB 345 also authorizes a person to institute a civil action against a person who engages in abusive litigation or infringes on or interferes with a legally protected health care activity, among other things. It specifies damages and costs authorized to be recovered and specifies circumstances under which a court may exercise jurisdiction over a person in such a civil action. It further authorizes an aggrieved person, provider or other entity to move to modify or quash a subpoena issued in connection with abusive litigation. The new law specifies the laws of California govern in a case or controversy heard in California related to reproductive health care services, gender-affirming health care services, or gender-affirming mental health care services, except as required by federal law.

Existing law permits a judgment creditor to apply for the entry of a judgment based on a sister state judgment by filing an application with a superior court and requires the court clerk to enter a judgment based on the application. It also requires courts to grant a stay enforcement of such a judgment under specified circumstances.

SB 345 adds a requirement for California courts to grant a stay of enforcement of a sister state judgment if a money judgment or lien on real property was obtained for the exercise of a right guaranteed by the U.S. Constitution, a right guaranteed by the California Constitution, or against a person or entity for aiding and abetting the exercise of those rights.

Existing law prohibits an abortion from being performed upon an unemancipated minor unless they first give their written consent to the abortion and also obtain the written consent of one of their parents or legal guardian. It also provides specified judicial procedures to be followed if one or both of the unemancipated pregnant minors or their guardian refuses to consent or if the minor elects not to seek their consent.

SB 345 repeals these provisions.

Existing law defines murder as the unlawful killing of a human being or a fetus with malice aforethought. An exemption is available for a person who commits an act that results in the death of a fetus under specific circumstances, including if the act is solicited, aided, abetted, or consented to by the person pregnant with the fetus.

SB 345 expands that exemption to include a person pregnant with a fetus who committed the act that resulted in the death of the fetus.

Existing law prohibits a state or local law enforcement agency or officer from knowingly arresting or knowingly participating in the arrest of any person for performing, supporting, or aiding in the performance of an abortion or for obtaining an abortion, if the abortion is lawful in California. It also prohibits a state or local public agency from cooperating with or providing information to an individual or agency from another state or a federal law enforcement agency, regarding a lawful abortion.

SB 345 prohibits a state or local government employee or a person acting on behalf of the local or state government, among others, from providing information or expending resources in furtherance of an investigation that seeks to impose civil or criminal liability or professional sanctions on an individual for a legally protected health care activity that occurred or that would be legal if it occurred in California. It requires any out-of-state subpoena, warrant, wiretap order, pen register trap and trace order, or other legal process to include an affidavit or declaration under penalty of perjury that the discovery request is not in connection with an out-of-state proceeding relating to a legally protected health care activity, except as specified. By requiring an individual seeking discovery under these provisions to declare certain conditions are present under penalty of perjury, the new law expands the crime of perjury and imposes a state-mandated local program.

California's existing Bail Fugitive Recovery Persons Act (BFRPA) prohibits a person, other than a certified law enforcement officer, from apprehending, detaining, or arresting a bail fugitive unless the person is a licensed bail fugitive recovery agent, or both a bail licensee and private investigator who are also bail fugitive recovery agents. A violation of the Bail Fugitive Recovery Persons Act is a misdemeanor.

SB 345 prohibits a person authorized under the BFRPA from apprehending, detaining, or arresting a bail fugitive who has been admitted to bail in another state and whose alleged offense or conviction is for the violation of a law of another state that authorizes a criminal penalty to an individual performing, receiving, supporting or aiding in the performance or receipt of sexual or reproductive health care. This includes, but is not limited to, abortion, contraception or gender-affirming care, if the sexual or reproductive health care is lawful under the laws of California, regardless of the recipient's location. SB 345 makes a violation of this provision an infraction punishable by a fine of $5,000 and makes the authorized individual ineligible for and subject to forfeiture of specified licenses. It also creates a civil cause of action for an individual taken into custody in violation of this provision. By expanding the application of a crime, the new law creates a state-mandated local program.

Existing law establishes a process by which a material witness in California may be ordered to attend and testify in a pending prosecution or grand jury in another state.

SB 345 prohibits a judge from ordering a witness to appear pursuant to these provisions if the criminal prosecution is based on the laws of another state that authorizes a criminal penalty to an individual performing, receiving, supporting, or aiding in the performance or receipt of sexual or reproductive health care (including, but not limited to, an abortion, contraception, or gender-affirming care) if the sexual or reproductive health care is lawful under the laws of California.

Existing state law provides for the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals. Existing federal law establishes the federal Supplemental Nutrition Assistance Program (SNAP), known in California as CalFresh, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county. Existing federal regulations disqualify a fleeing felon from receiving benefits under the CalFresh program.

SB 345 requires a determination that a person is fleeing to avoid prosecution for purposes of eligibility in the CalWORKs program if a federal, state, or local law enforcement officer in its official capacity presents an outstanding felony arrest warrant containing specified National Crime Information Center Uniform Offense Classification Codes.

Existing law refers to “unborn children” and “unborn persons” in various contexts, including, among others, defining low-risk pregnancy conditions for determining the scope of authorization of a certificate to practice nurse-midwifery, defining active labor for health facility licensing provisions, and defining the term spouse for California State Teachers’ Retirement System benefits.

SB 345 replaces “unborn child” and “unborn person” with “fetus” in those provisions.

Existing law also refers to “unborn persons” in various contexts, including naming unknown defendants in real property actions, allowing a court to appoint a guardian ad litem to advocate for inadequately represented interests in probate proceedings, allowing a guardian ad litem to give consent on behalf of a beneficiary who lacks legal capacity, and providing an exception for requiring a personal representative to file an account of the distributions of a decedent’s estate.

SB 345 replaces “unborn person” with “unborn beneficiary” in those provisions.

Abortion Provider Protections (SB 487)

Existing California law declares another state’s law authorizing a civil action against a person or entity that receives or seeks, performs or induces, or aids or abets the performance of an abortion, or who attempts or intends to engage in those actions, to be contrary to the public policy of California. It also prohibits the application of that law to a controversy in California court and the enforcement or satisfaction of a civil judgment received under that law.

Senate Bill (SB) 487 specifically includes within these provisions, in addition to abortion performers, abortion providers.

California’s existing Knox-Keene Health Care Service Plan Act provides for the licensure and regulation of health care service plans by the California Department of Managed Health Care and makes a willful violation a crime. Existing law also provides for the regulation of health insurers by the California Department of Insurance.

SB 487 prohibits a contract issued, amended, or renewed on or after Jan. 1, 2024, between a health care service plan or health insurer and a health care services provider from containing any term that would result in termination or nonrenewal of the contract or otherwise penalize the provider based on a civil judgment, criminal conviction, or another professional disciplinary action in another state if the judgment, conviction, or professional disciplinary action is solely based on the application of another state’s law that interferes with a person’s right to receive care that would be lawful if provided in California. SB 487 also prohibits a health care service plan or health insurer from discriminating against a licensed provider solely on the basis of a civil judgment, criminal conviction, or another professional disciplinary action in another state if the judgment, conviction, or professional disciplinary action is solely based on the application of another state’s law that interferes with a person’s right to receive care that would be lawful if provided in California. Because a willful violation of these provisions by a health care service plan would be a crime, SB 487 imposes a state-mandated local program.

Existing law requires that the California State Department of Public Health (DPH) automatically suspend as a Medi-Cal provider any individual or entity that has a license, certificate, or other approval to provide health care that is revoked or suspended by a federal, California, or other state’s licensing, certification, or approval authority; has otherwise lost that license, certificate, or approval; or has surrendered that license, certificate, or approval while a disciplinary hearing was pending.

SB 487 authorizes the DPH, subject to obtaining necessary federal approvals and the availability of federal financial participation under Medi-Cal, to elect not to suspend an individual or entity as a provider in the Medi-Cal program if the revocation, suspension, or loss of the individual or entity's license, certification, or approval authority in another state or the pending disciplinary hearing during which the individual or entity surrendered the license, certification, or approval authority in another state is based solely on conduct that is not deemed to be unprofessional conduct under California law. SB 487 also requires the DPH to seek any necessary federal approvals to implement these provisions.

Under existing law, the Director of Health Care Services is authorized, for purposes of administering the Medi-Cal program, to suspend a provider of service from further participation under the program for specified reasons, including conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Existing law requires the director, upon receipt of written notification from the Secretary of the U.S. Department of Health and Human Services that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, to promptly suspend the practitioner from participation in the Medi-Cal program. Existing law also requires the Director of Health Care Services to notify the administrative director of a suspension of a physician from participation in the Medi-Cal program imposed pursuant to provisions authorizing the director to suspend a provider of service from participation.

SB 487 authorizes the director, subject to obtaining necessary federal approvals and the availability of federal financial participation under Medi-Cal, to request a waiver under federal law, as permitted, if the provider's suspension from participating in the Medicare or Medicaid program was based solely on conduct that is not deemed to be unprofessional conduct under California law. It also requires the DPH to seek any necessary federal approvals to implement these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

SB 487 provides that no reimbursement is required by this act.

Wage and Hour Issues

2024 Overtime Exemption for Computer Employees (Annual Announcement)

The California Labor Code provides that some computer software employees are exempt from overtime requirements if certain criteria are met. One of the criteria is that the employee's hourly rate of pay is not less than the statutorily specified rate. The DIR is responsible for adjusting this rate on Oct. 1 of each year, and new rates become effective on Jan. 1 of the following year. The annual adjustment is equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

In October 2023, the DIR adjusted the computer software employee's minimum hourly rate of pay exemption, as shown in the table below. This increase reflects a 3.3% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

Effective Date	Jan. 1, 2023	Jan. 1, 2024
Hourly Rate	$53.80	$55.58
Monthly Salary	$9,338.78	$9,646.96
Annual Salary	$112,065.20	$115,763.35

Fast Food Council: Health, Safety, Employment, and Minimum Wage (AB 1228)

Fast Food Council

Existing law, which is suspended pursuant to a referendum petition, establishes that, until Jan. 1, 2029, the Fast Food Council (Council) within the DIR and prescribes its powers. This Council is responsible for promulgating minimum fast food restaurant employment standards. Existing law sets standards for any minimum wage the Council establishes.

Assembly Bill (AB) 1228 repeals those existing provisions on Jan. 1, 2024, if a specified referendum is withdrawn by its proponents by that date.

If the referendum is withdrawn, in addition to that repeal, AB 1228 establishes, until Jan. 1, 2029, or as otherwise provided, the Fast Food Council and prescribe the Council's purposes, duties, and limitations; establish an hourly minimum wage for fast food restaurant employees; authorize the Council to increase the hourly minimum wage pursuant to specified parameters; and set forth requirements, limitations, and procedures for adopting and reviewing fast food restaurant health, safety, and employment standards. AB 1228 requires all standards, rules, and regulations developed by the Council to be issued, amended, or repealed, as applicable, in the manner prescribed in the Administrative Procedure Act, and requires the Council to petition the Occupational Safety and Health Standards Board and the Civil Rights Council if any minimum standards fall within their jurisdiction.

Whistleblower Protections

Existing law prohibits employers or any person acting on their behalf from making, adopting, or enforcing any rule, regulation, or policy preventing employees from disclosing information specified violations of the law to governmental or law enforcement agencies, regardless of whether disclosing the information is part of their job duties. Employers that retaliate against these employees may face penalties and other sanctions.

AB 1228 also deems the Council a governmental agency for whistleblower purposes. In addition, it prohibits a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any employee due to the employee's participation in or testimony to any proceeding convened by the Council.

AB 1228 also prohibits any city, county, or city and county from enacting or enforcing any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees, except as provided.

Food Handler Card Training and Examination Reimbursement (SB 476)

California's existing Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities by the State Department of Public Health. Subject to exceptions, the law requires a food handler to obtain a food handler card within 30 days of hire and to maintain a valid food handler card for the duration of employment as a food handler. A food handler card is issued only upon successful completion of a food handler training course and examination that meets certain requirements. The law requires that at least one food handler training course and examination cost no more than $15 and include a food handler card. A violation is generally a misdemeanor.

In addition, under existing law, the provisions relating to a food handler card do not apply to a food handler subject to an existing local food handler program that took effect before Jan. 1, 2009.

Senate Bill (SB) 476 requires employers to consider the time that it takes for their employees to complete the training and the examination as compensable "hours worked," for which employers would pay, and to pay employees for any necessary expenditures or losses associated with obtaining a food handler card. It also requires employers to relieve their employees of all other work duties while they are taking a training course and examination. Conditioning employment on applicants or employees having an existing food handler card is prohibited.

SB 476 makes the new provisions described above applicable to food handlers who are subject to existing local food handler programs that took effect before Jan. 1, 2009.

Finally, SB 476 requires the DIR to post on its internet website a link to the internet website of certain accredited food handler training programs by Jan. 1, 2025. Local public health departments must provide a link to that web page on their own internet website.

Workplace Safety and Health

Smoking Tobacco in the Workplace: Hotels and Transient Lodging Establishments (SB 626)

California existing Occupational Safety and Health Act (Cal-OSH) prohibits smoking of tobacco products inside an enclosed space at a place of employment and makes violations punishable by fines. Existing law establishes specified exemptions from "place of employment" that allow smoking in certain work environments, including an exemption for up to 20% of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

Senate Bill (SB) 626 eliminates the exemption for up to 20% of guestroom accommodations in transient lodging establishments.

Temporary Restraining Orders and Protective Orders: Employee Harassment (SB 428)

Existing law authorizes any employer, whose employee has 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, to seek a temporary restraining order and an injunction on behalf of the employee and other employees of the employer. An employer seeking a temporary restraining order must show reasonable proof that an employee has suffered unlawful violence or a credible threat of violence and that a great or irreparable harm would result to an employee if the order is not issued. Existing law prohibits issuing such an order to the extent that the order would prohibit constitutionally protected speech, specified activities related to dispute resolution between employers and employee organizations, or other law.

As of Jan. 1, 2025, Senate Bill (SB) 428 authorizes any employer whose employee has suffered harassment to seek a temporary restraining order and an injunction on behalf of the employee and other employees upon a showing of clear and convincing evidence that an employee has suffered harassment, that great or irreparable harm would result to an employee, and that the respondent's course of conduct served no legitimate purpose. It also requires an employer seeking such a temporary restraining order to provide the employee whose protection is sought the opportunity to decline to be named in the order, before the filing of the petition. The new law expressly prohibits a court from issuing such an order to the extent that the order prohibits speech or activities protected by the federal National Labor Relations Act or certain provisions governing the communications of exclusive representatives of public employees.

Occupational safety: Workplace Violence, Restraining Orders and Workplace Violence Prevention Plan (**SB 553**)

Existing law authorizes any employer, whose employee has 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, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace.

As of Jan. 1, 2025, Senate Bill (SB) 553 also authorizes a collective bargaining representative of an employee to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace. SB 553 requires an employer or collective bargaining representative, before filing such a petition, to provide the employee who has suffered unlawful violence or a credible threat of violence from any individual an opportunity to decline to be named in the temporary restraining order. Under the new law, an employee's request to not be named in the temporary restraining order would not prohibit an employer or collective bargaining representative from seeking a temporary restraining order on behalf of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

California's existing Occupational Safety and Health Act (Cal-OSH) imposes safety responsibilities on employers and employees, including the requirement that an employer establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime. Cal-OSH is enforced by the California Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations, including the enforcement of standards adopted by the Occupational Safety and Health Standards board (standards board).

SB 553 requires employers to also establish, implement, and maintain, at all times in all work areas, an effective workplace violence prevention plan containing specified information. It also requires employers to record information in a violent incident log for every workplace violence incident, provide effective training to employees on the workplace violence prevention plan, and provide additional training when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan. Employers must also create and maintain records of workplace violence hazard identification, evaluation, and correction and training records. Violent incident logs and workplace incident investigation records must also be maintained. These records must be made available to Cal/OSHA, employees, and employee representatives. These requirements are effective July 1, 2024.

Existing law requires Cal/OSHA to issue, with reasonable promptness, a citation to an employer if, upon inspection or investigation, it believes the employer has violated any standard, rule, order, or regulation that it enforces. The law includes specific procedures for issuance of the citation and provides a rebuttable presumption that a violation is enterprise-wide if an employer has multiple worksites and Cal/OSHA has evidence of a pattern or practice of the same violation or violations committed by the employer involving more than one of their worksites, or if the employer has a written policy or procedure that violates specified provisions of law. It also authorizes CAL/OSHA to impose certain civil penalties, including when any employer violates any occupational safety or health standard, order, or special order, depending on whether the violation is serious.

SB 553 requires Cal/OSHA to enforce the workplace violence prevention plan and related requirements by issuing a citation and a notice of civil penalty. It also authorizes the appeal of a citation and penalty. Under the new law, Cal/OSHA must propose standards for the required plan by Dec. 1, 2025. The standards board must finalize these standards no later than Dec. 31, 2026.

SB 553 also requires every employer to include the workplace violence prevention plan as part of its effective injury prevention program. A violation of this new requirements is a misdemeanor in specified circumstances.

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