

Legal Update

Brought to you by: Poms & Associates Insurance Brokers LLC

California Employment Laws Effective Jan. 1, 2025

Most new bills in California become effective on Jan. 1 of the following year once approved by the state Legislature and the state governor (though some exceptions are possible for emergency measures and when the bills specifically appoint a different effective date).

This Legal Update provides an overview of labor and employment laws California adopted throughout 2024. Specific labor and employment updates include the following topics:

- Expanded discrimination protections;
- Limits on driver's license inquiries;
- Captive audience bans;
- Freelance worker protections;
- Vacation-use requirements before using paid family leave;
- Expanded sick leave for agricultural employees; and
- Jury, court and victim time off protections.

The new laws presented in this Legal Update take effect on Jan. 1, 2025.

Expanded Discrimination Protections

Definition of Race (AB 1815)

California's Fair Employment and Housing Act (FEHA) prohibits employers with **five or more employees** from discriminating against employees based on their protected characteristics (e.g., race, sex, disability, religion and age). California amended the FEHA to broaden the definition of "**race**" to include traits associated with race, including hair texture and protective hairstyles, such as braids, locs and twists.

Discrimination on the Basis of Two or More Protected Classes (SB 1137)

California also amended the FEHA to protect employees from discrimination on the basis of their actual or perceived **combination of protected traits** (i.e., intersectionality or cross-sectionality). The amendment provides that protected categories include:

- Any combination of protected characteristics;
- A perception that a person has a characteristic or characteristics within protected categories or a combination of protected characteristics of those characteristics; and
- A perception that a person is associated with a person who has or is perceived to have a protected characteristic or characteristics of protected characteristics.



HIGHLIGHTS

- AB 1815 amends the definition of race to include traits associated with race, including but not limited to hair texture and protective hairstyles.
- SB 399 prohibits employers from requiring employees to attend employer-sponsored meetings that convey the employer's opinions on religious or political matters.
- SB 988 establishes minimum requirements between a hiring party and a freelance worker.
- AB 2499 amends the provision for time off related to jury duty, court appearances and victim-related activities.

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Driver's License Requirements (SB 1100)

California further amended the FEHA to prohibit employers with **five or more employees** from requiring job candidates to have a driver's license in a job advertisement, posting, application or other materials unless it is reasonably believed:

- Driving will be a job function for the position; and
- Satisfying this function using an alternative form of transportation (e.g., rideshare, taxi, carpooling, bicycling or walking) would not be comparably efficient or cost-effective for the employer.

Enforcement of Local Laws (SB 1340)

Under an amendment to the FEHA, the act will not prohibit any city, county or other political subdivision of California from enforcing local laws prohibiting employment discrimination if local enforcement:

- Concerns an employment complaint filed with the California Civil Rights Department (CCRD);
- Takes place after the CCRD issued a right-to-sue notice;
- Begins before the expiration of the time to file a civil action; and
- Is pursuant to a local law that is at least as protective as the FEHA.

Increased Worker Protections

Captive Audience Ban (SB 399)

California passed the California Worker Freedom from Employer Intimidation Act, which prohibits all employers from discriminating against individuals who refuse to attend an employer-sponsored meeting or decline to participate in, receive or listen to employer communications, in each case the purpose of which is to communicate the employer's views on religious or political matters (including labor organization efforts). However, under the law:

- Employers may communicate information that they are legally required to communicate (including requiring employee trainings to comply with the employer's legal obligations) or that is necessary for employees to perform their job;
- Higher education institutions may communicate information on coursework, symposia or academic programs;
- Public entities may communicate information related to one of its policies or any law or regulation such entity is responsible for administering;
- Religious entities may communicate information regarding relevant religious matters;
- Political organizations may communicate information regarding relevant political matters; and
- Nonprofit, tax-exempt training programs may require a student or instructor to attend classes, complete fieldwork or perform community service hours on relevant political or religious matters.

Employers who violate the law may be subject to civil penalties of \$500 per employee for each violation, as well as injunctive relief and damages.

Freelance Worker Protections (SB 988)

California passed the Freelance Worker Protection Act, which imposes minimum requirements for freelance contracts. The law applies to any person or organization in California (other than the state, federal, or foreign governments or individuals hiring services for themselves, their family or their homestead) that retains a freelance worker. “**Freelance workers**” are defined as individuals who are hired or retained as individual contractors to provide professional services in exchange for \$250 or more, by itself or in the aggregate, over the immediately preceding 120 days.

Under the act, the hiring party:

- Must pay freelance workers on or before the date compensation is due under their contract or, if not specified, no later than 30 days after the completion of the worker’s services; and
- May not require as a condition of timely payment that the freelance worker accept less compensation than agreed upon in the contract or that the freelance worker provide more goods or services than agreed upon in the contract once the freelance worker has started work under the contract.

The act also requires that all contracts are in writing, that the hiring party provide a signed physical or electronic copy of the written contract to the freelance contract, and that the hiring party retain a copy of the contract for at least four years. Written contracts for freelance services must contain the following:

- Name and mailing address of each party;
- Itemized list of services to be provided, the value of such services, and the rate and method of compensation;
- The date compensation will be paid or the mechanism through which the date will be determined; and
- The date by which the freelance worker must provide a list of services rendered to the hiring party to ensure timely payment of compensation.

Hiring parties may not discriminate against or take any adverse action against a freelance worker to penalize or deter the freelance worker from asserting their rights under the law. An aggrieved freelance worker or public prosecutor may bring a civil action seeking attorney fees and costs, injunctive relief and other damages deemed appropriate.

Amended Paid Family Leave Laws

Expanded Vacation Time and Paid Family Leave Benefits (AB 2123)

Under existing California law, within the state disability insurance (SDI) program, employees are eligible for paid family leave (PFL) to care for ill family members, bond with a minor child within one year of birth or placement, and participate in active duty or for the active duty of certain family members. Under existing law, employers may require employees to take up to two weeks of earned but unused vacation before, and as a condition of, the employee’s receipt of PFL benefits during any 12-month period they are eligible for such leave. Under an amendment, employers will **no longer** be able to require employees to use such earned but unused vacation benefits prior to receiving PFL benefits.

Adjusted Time Frame for State Disability Insurance and Paid Family Leave Claims Filing and Payment (SB 1090)

California amended its SDI and PFL laws to adjust the time frames for filing a claim and payment of SDI and PFL benefits. Existing law requires workers to file a claim **by the 41st consecutive compensable day**. The amended law will allow workers to file a claim for SDI or PFL benefits **up to 30 days in advance** of the first compensable day but no later than the 41st consecutive day following the first compensable day. Additionally, existing law requires the Employment Development Department to issue payment within 14 days of the employee's properly completed disability claim. The amended law requires payment by the later of such date or the first date of eligibility.

Increases to State Disability Insurance and Paid Family Leave Pay (SB 951)

California revised the formulas used to determine SDI and PFL benefits. Starting Jan. 1, 2025, the new formulas will **increase wage replacement rates to 70%-90%** based on the individual's wages earned, with lower-wage workers receiving a higher percentage in compensation. Workers making no more than 70% of the state average weekly wage will be eligible for up to 90% of their wages.

Amended Sick and Safe Leave Laws

Expanded Sick Leave Benefits for Agricultural Workers (SB 1105)

The Healthy Workplaces, Healthy Families Act (HWHFA) currently entitles any California employee who works for the same employer for 30 or more days within their first year of employment to paid sick leave for various purposes, including an employee's illness or preventive care. California amended the act to require employers to provide paid sick days to agricultural workers to **avoid smoke, heat and flooding conditions** created by a local or state emergency. The leave requirement applies to employees who:

- Are agricultural workers as defined in state law;
- Work outside; and
- Are eligible for paid sick leave under the HWHFA.

A local or state emergency exists under the amendments if the governor proclaims a state of emergency or a local emergency is proclaimed due to smoke, heat or flooding conditions that prevent agricultural employees from working.

Changes to Jury, Court and Victim Time Off Provisions (AB 2499)

Currently, the HWHFA requires employers to provide paid safe time leave to employees who are victims of domestic violence, assault, stalking and other crimes. California amended the HWHFA to expand the circumstances in which an individual qualifies for such leave. Specifically, under the amended law, employees may take leave if their **family member** is a victim of a qualifying act of violence. A **"qualifying act of violence"** is expanded to include an act, conduct or pattern of conduct where a third party causes bodily injury or death, exhibits or uses a firearm or other dangerous weapon, or uses or makes a reasonably perceived or actual threat to use force against another individual to cause physical injury or death (in addition to the existing definition that includes domestic violence, assault and stalking).

Moreover, in addition to the existing circumstances in which employees may take paid safe time leave, employees may take safe time leave to do any of the following in relation to a qualifying act of violence:

- Enroll children in a new school or child care;
- Seek, obtain or assist a family member in seeking or obtaining legal services;
- Prepare for, participate in or attend any civil, administrative or criminal legal proceeding; and

- Seek, obtain or provide child care or care to a care-dependent adult if such care is necessary to ensure their safety.

Further, the California Labor Code currently provides unpaid leave protections for victims of domestic violence, sexual assault, stalking or other crimes and for individuals performing jury duty or serving as a witness. Under the amended law, such provisions will move to the FEHA. While the provisions themselves will remain largely unchanged, employers with **25 or more employees** will be able to limit the leave an employee may take as follows:

- **Twelve weeks** for leave for victims of a qualifying act of violence;
- **Five days** for relocation or enrolling a child in a new school or child care facility when the family member was the victim of a nonfatal crime; and
- **Ten days** for leave when an employee's family member was the victim of a nonfatal crime.

Employers must also inform employees in writing of their rights upon hire, annually, upon the employee's request, and any time an employee informs an employer that the employee or the employee's family member is a victim. The California Department of Civil Rights will develop a form that employers may use to comply with such notice requirements.

PAGA Reforms

Extended PAGA Exemption for Unionized Construction Industry Employers (AB 1034)

Under existing law, California's Private Attorneys General Act (PAGA) does not apply to employees in the construction industry if they are covered by a collective bargaining agreement (CBA) that meets certain conditions, including wages at least 30% more than the state minimum wage, and prohibits all California Labor Code violations redressable under PAGA, provides a grievance and binding arbitration procedure to redress Labor Code violations, expressly waives PAGA requirements under clear and unambiguous terms, and authorizes the arbitrator to award any and all remedies available under the Labor Code. The exemption had a sunset date and only applied to CBAs in effect before Jan. 1, 2025, and expired on the date the CBA expired or on Jan. 1, 2028, whichever was earlier. This amendment deletes the original Jan. 1, 2025, date and extends the exemption for certain unionized employers in the construction industry until **Jan. 1, 2038**.

Wage and Hour Issues

State Minimum Wage Increase

California's statewide minimum wage will increase from \$16 to **\$16.50** on Jan. 1, 2025. Additionally, the minimum salary for full-time exempt employees will increase from \$66,560 per year to **\$68,640** per year.

Compliance and Enforcement

Social Compliance Audit (AB 3234)

California enacted a new law requiring an employer that voluntarily conducts a social compliance audit of its operations to evaluate compliance with state and federal laws to publish a report detailing its organization's compliance with child labor laws. Employers must comply with this reporting requirement by posting a clear and conspicuous link on their public-facing website to a report detailing the findings of their compliance with child labor laws. However, the new law does not require employers to conduct social compliance audits.

The report must contain:

- The year, month, day and time the audit was conducted;
- Whether the audit was conducted during a day or night shift;

- Whether the employer engaged in or supported the use of child labor;
- A copy of any past or present written policies and procedures regarding child employees;
- Whether the employer exposed child employees to any hazardous or unsafe workplace situations;
- Whether the child employees worked within or outside of regular school hours or during night hours; and
- A statement that the auditing company is not a government agency and is not authorized to verify compliance with federal and state labor laws or health and safety regulations.

Digital Replica of Voice or Likeness (AB 2602)

Under this new law, a provision in an employment agreement is unenforceable if it allows for the creation and use of a digital replica of a worker's voice or likeness in place of work the worker would otherwise have performed in person. The law defines a "**digital replica**" as a computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a sound recording, image, audiovisual work or transmission in which the actual individual either did not actually perform or appear or did perform or appear but the fundamental character of the performance or appearance has been materially altered. This law applies to new performances on or after Jan. 1, 2025.

Whistleblower Law Posting Requirement (AB 2299)

The California Whistleblower Protection Act prohibits an employer from retaliating against an employee for reporting information, conduct, behavior or another activity that the employee reasonably believes may violate federal, state or local law. Employers are required to prominently display a list of employee rights and responsibilities under the state's whistleblower laws. This amendment directs the Department of Industrial Relations (DIR) to develop a model list of employee rights and responsibilities that comply with the law's notice requirements, which will be accessible on the DIR's website. Employers that post this model list will be deemed in compliance with the law's posting requirements.

Property Service Worker Protection Act Amendments (AB 2364)

California's Property Service Workers Act protects all janitors, including employees, independent contractors and franchisees, against sexual violence and harassment. Under the law, covered employers must provide biennial, in-person sexual violence and harassment prevention training for supervisors and nonsupervisory employees. Covered employers must use a qualified organization for a list maintained by the DIR to train nonsupervisory employees. Prior to the amendment, employers had to pay training organizations \$65 per participant unless an alternative payment agreement was provided for under a collective bargaining agreement. The amendment requires employers to pay qualified organizations **\$80 per participant for training sessions with 10 or more participants and \$200 per participant for training sessions with fewer than 10 participants** until Jan. 1, 2026. Starting Jan. 1, 2026, and each year thereafter, the training session rates will increase by the percentage established in the most recent annual average California Price Index Changes report.

Enforcement of Antidiscrimination Laws (AB 3281)

The California Civil Code makes all protections, rights and remedies under state law available to all individuals, regardless of immigration status, who have applied for employment or are or have been employed in California. Under California law, an individual's immigration status is irrelevant for the purposes of enforcing the state's labor, employment and civil rights laws (unless there is clear and convincing evidence that it is necessary to comply with federal immigration law). This amendment **voids any waiver** that removes these rights or protections for applicants or employees.

Workplace Safety and Health

Workplace TRO for Harassment (SB 428)

California law permits an employer to seek a temporary restraining order (TRO) to protect an employee who has suffered unlawful violence or a credible threat of violence that can reasonably be construed to be carried out or has been carried out at the workplace. This law has been amended to allow an employer to seek a TRO on behalf of an employee who has suffered harassment. Under the amendment, "**harassment**" means a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys or harasses the person and serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress.

Workers' Compensation Notice Amendment (AB 1870)

California enacted new workers' compensation poster requirements, which require employers to **notify injured workers** that they can consult with a licensed attorney regarding their rights under workers' compensation laws. The poster must also advise injured workers that, in most instances, attorney fees will be paid from an injured worker's recovery.

Employer Action Steps

Employers should review these laws and update their employment policies, practices and procedures to remain compliant. 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 the [DIR's](#) communications for updates on these and additional labor and employment topics.

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