

California 2024 Legislative Update

2024 California Employment Law Update

Presented by:
Chris Olmsted



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Minimum Wage

- 2024 California minimum wage: **\$16.00**
- City of San Diego: **\$16.85**
- Minimum California exempt salary: **\$66,560**

Next Steps: Update minimum wage posters; audit salary levels for exempt employees.



Expanded Paid Sick Leave (SB 616)

- Increases paid sick leave to 40 hours or 5 days
- Employer may limit annual use to 40 hours or five days



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Expanded Paid Sick Leave (SB 616)

Accrual Options

- Sick leave must accrue at a rate 1 hour per 30 worked; or
- Not less than 24 hours or 3 days by the 120th calendar day of employment and no less than 40 hours or 5 days by the 200th calendar day of employment
- Accrued paid sick days carry over to following year with accrual cap of 80 hours/10 days

Frontload Option

- May continue to frontload if prefer to do so

New Wage Theft Prevention Act Notice

Existing Law:

- Provide form (or info required by form) to non-exempt employees upon hire or within 7 days of change.

Amended Law:

- New form, includes new sick pay info and also "emergency of disaster disclosure."
 - https://www.dir.ca.gov/dlse/lc_2810.5_notice.pdf
 - <https://www.caloes.ca.gov/office-of-the-director/policy-administration/legal-affairs/emergency-proclamations/>
 - <https://www.fema.gov/locations/california#declared-disasters>

Noncompete Agreements (SB 699)

Current Law

- Noncompete agreements are unenforceable

Amended Law

- Makes it **unlawful** for employers to **enter into or attempt to enforce** noncompete agreements



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Noncompete Agreements (SB 699)

Also:

- Void in California even if employee signed when working out of state
- Prohibits nonsolicitation of customers
- But still **can** prohibit competition/solicitation **using trade secrets**
- Remedies: Damages, attorneys' fees and costs, and injunctive relief



Noncompete Agreements (AB 1076)

- Adds Business & Professions Code Section 16600.1
- Unlawful to include a noncompete clause in an employment contract or to require an employee to enter a noncompete agreement (narrow exceptions).
- **NOTICE TO EMPLOYEES:** Employers must notify current and former employees in writing by **February 14, 2024**, that the noncompete clause or agreement is void



Reproduction/Adoption Loss Leave (SB 848)

- 5 days of protected unpaid leave for employees with at least 30 days employment.
- For: miscarriage, unsuccessful assisted reproduction, failed adoption, and other similar events.
- Covers multiple events, but, total leave shall not exceed 20 days within a 12-month period
- Employees can use accrued and available paid sick leave

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Fast Food Industry Changes (AB 1228)

AB 1228 is part of a deal between union and fast food industry

- Fast food workers get \$20 minimum wage beginning in April 2024
- Annual COLA increases through 2029
- Fast food industry withdraws its November 2024 referendum to undo fast food law establishing the Fast Food Council.



Fast Food Industry Changes (AB 1228)

The bill re-establishes Fast Food Council as a governmental agency and re-establishes its duties

- Duties include establishing minimum wage for fast food restaurant employees, and requirements to review health safety procedures and employment standards



Restaurant Industry Changes (SB 476)

Food Handler Training Costs

- Training course is "compensable hours worked." Must pay wages.
- Must pay for cost of training.
- Cannot make having existing card a condition of hire.



California 2024 Legislative Update

Presumption of Retaliation (SB 497)

- Makes it easier for employees to establish “prima facie” case of retaliation
- Creates rebuttable presumption of retaliation if an employer **takes adverse action within 90 days** of certain protected activity specified in the provision



Presumption of Retaliation (SB 497)

- Protected activity:
 - Almost anything in employment law
 - Lawful conduct during nonworking hours
 - Complaints that employer is violating Equal Pay Act
- Adds **\$10,000 penalty** per employee for each violation to be awarded to complaining employee under Labor Code Section 1102.5



Workplace Violence Protection Plan (SB 553)

“An employer shall establish, implement, and maintain an effective workplace violence prevention plan.”

- Effective July 1, 2024



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SB 553 Requirements

- Written Plan
- Person responsible for the plan
- Plan available to employees
- Evaluate hazards
- Implement plan with engineering controls and administrative controls
- Training
- Recordkeeping (Violent Incident Log)



TROs and Protective Orders: Employee Harassment (SB 428)

Current Law:

Employer may seek court restraining order after workplace violence or threats of violence.

Amended Law:

- Allows an employer to seek employee *harassment* TRO
- Becomes operative January 1, **2025** (not 2024)



TROs and Protective Orders: Employee Harassment (SB 428)

What is “harassment”?

- Conduct directed at a specific person that ***seriously alarms, annoys, or harasses the person***, that serves no legitimate purpose, and causes emotional distress.

Also:

- Employee whose protection is sought must be allowed to decline to be named in the order



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Employment Discrimination: Cannabis Use (SB 700)

Current Law

- Beginning January 1, 2024, off duty cannabis use is a new "protected characteristic" under FEHA.
- Certain drug testing is prohibited:
 - Employer may not screen for **nonpsychoactive cannabis metabolites**
 - Doesn't apply to employees in building and construction trade
 - Doesn't preempt state or federal laws requiring testing for controlled substances.
 - Employee can't be impaired on the job



Employment Discrimination: Cannabis Use (SB 700)

Amended Law:

- Will make it unlawful for an employer to request information from an applicant for employment relating to *prior* use of cannabis
- Prior cannabis use obtained from criminal history may be considered if employer is otherwise allowed to inquire under CA FEHA or other state or federal law



Fair Chance Act Regulations

New Rules for Criminal Background Checks

- Regulations go into effect October 1, 2023
- General Process
 - Initial Assessment
 - Pre-Adverse Action Letter
 - Reasonable Waiting Period (5 business days)
 - Additional Assessment
 - Adverse Action letter



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Fair Chance Act Regulations

Current Law: 3 evaluation factors

1. **nature and gravity** of offense or conduct;
2. **time that has passed** since offense or conduct and/or completion of sentence; and
3. **nature of the job** held or sought.



Fair Chance Act Regulations

Current Law:

Adverse Action Letter must:

- Identify the specific conviction;
- Notice of right to respond to the letter;
- Right to respond with info re: rehabilitation or mitigation; and
- Give deadline to respond;
- Give procedure for internal appeals (if any); and
- Right to file a complaint with the CA Civil Rights Division.

Fair Chance Act Regulations

New Regulations

- Now includes **current employees**;
- Requires more letters and assessments;
- Requires evidence based analysis that the conviction has a direct and adverse relationship to job duties (consistent with business necessity).
- Eight factors to consider relating to nature and gravity of offense or conduct; must be considered at two different stages of process.
- Past drug addiction and mental impairment must be considered as well as trauma, domestic abuse, sexual assault, etc.

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Local Enforcement: Wage Theft (AB 594)

- Local public prosecutor can enforce Labor Code, also seek injunctive relief, and recover attorneys fees and costs and expert witness fees
- Recovered civil penalties are paid to the state



Local Enforcement: Wage Theft (AB 594)

- Arbitration agreements have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code

Also

- Labor Commissioner or public prosecutor to enforce willful misclassification.



Sexual Harassment Defamation Privilege (AB 933)

- **No defamation claims** on comments about sexual assault, sexual harassment, workplace harassment or discrimination, and cyber sexual bullying
- Individual must have a **reasonable basis to file a complaint** of sexual assault, etc., even if individual never did file a complaint
- Prevailing defendants may recover their attorneys' fees and costs, treble damages, and punitive damages

California 2024 Legislative Update

Displaced Hospitality Workers (SB 723)

Current Law:

- Hospitality workers laid off due to the COVID-19 pandemic have a right to recall. This law would have expired at the end of 2024

Amended Law:

- Presumption extended to 12-31-25
- 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.



Health Care Workers Minimum Wage (SB 525)

- Applies to "covered health facility employers" which includes most medical practices
- For some, requires a minimum wage of \$23/hour beginning June 1, 2024, and \$24/hour beginning June 1, 2025, and \$25/hour June 1, 2026, and until as adjusted as specified
- Certain other independent and rural facilities or those in counties with smaller populations will start at \$18 and increase over time to \$25 (in 2033) and other specified clinics and facilities start at \$21/hour and increase to \$25 over time

Health Care Workers Minimum Wage (SB 525)

- Salaried employees must receive the greater of 150% of health care worker minimum wage or 200% of the applicable minimum wage, whichever is greater
- Developing a waiver program by March 1, 2024
- Would apply to "covered health care employment" "performed on the premises of any covered health care facility, regardless of the identity of the employer"
- Includes "certified nursing assistants, patient aides, technicians, and food service workers, among many others"

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Questions



Thank you!

Chris Olmsted
Christopher.olmsted@Ogletree.com
(858) 652-3111

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The firm has more than 950 attorneys located in 55 offices across the United States and in Europe, Canada, and Mexico.

We represent a diverse range of clients, from small businesses to Fortune 500 companies.

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