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California Ushers in a New Wave of Employment Laws, Effective Next Year

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Signing off on a busy legislative year, Governor Newsom just confirmed into law over a dozen bills from the California Legislature. As a result, many California employees will begin next year with new and enhanced rights related to wages, discrimination, retaliation, leave, and workplace disclosures, among others. Unless otherwise noted, these new laws will be effective January 1, 2025. As 2024 draws to a close, employers should take this time to review their policies to ensure compliance with these laws.

WAGE AND HOUR

PAGA Reform (AB 2288 and SB 92)

The Labor Code Private Attorneys General Act of 2004 ("PAGA") presently authorizes an aggrieved employee to stand in the place of the State of California to bring a civil action, on behalf of that employee and other current or former employees, to address a violation of any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA. To bring a PAGA claim, aggrieved employees must first file a PAGA claim notice with the LWDA. PAGA claims have a one-year statute of limitations.

AB 2288 and SB 92 amend PAGA in a number of employer-friendly ways:

- **Standing**: An aggrieved employee must prove they experienced the same Labor Code violations they are pursuing on a representative basis on behalf of other employees.
- **Statute of Limitations**: The one-year statute of limitations applies to the personal Labor Code violation that an aggrieved employee must experience in order to bring a PAGA action.
- **Manageability**: The bills codify the courts' ability to "limit the evidence to be presented at trial or otherwise limit the scope of any claim filed pursuant to this part to ensure that the claim can be effectively tried" so that a PAGA claim can be manageably tried.
- **Cure Provisions**: SB 92 expands opportunities for employers to "cure" violations of Labor Code Sections 226 (wage statements – previously, only certain parts of wage statement violations could be cured); 226.7 (meal and rest break premiums); 510 (overtime pay) and 2802 (expense reimbursements). For PAGA notices filed on or after October 1, 2024, the cure provisions will depend on the size of the employer. Employers with less than 100 employees can notify the LWDA of its intent to cure the alleged violations, at which point the LWDA will arrange a settlement conference to attempt resolution of the matter. Employers with more

than 100 employees can file a request for a stay and an Early Neutral Evaluation with the court to stay discovery and responsive pleading deadlines while the Court determines whether the employer cured their PAGA violations. If so, those PAGA claims will not be adjudicated further.

- **Penalties**: The bills significantly change the penalty structure under PAGA.
  - **Prior to PAGA Notice**: If an employer can establish it took "all reasonable steps to be in compliance" with the law prior to a PAGA notice (or personnel records request), available penalties are limited to 15% of the penalties sought by an aggrieved employee.
  - **After PAGA Notice**: If an employer can establish it took "all reasonable steps to be in compliance" with the laws it allegedly violated in a PAGA notice, available penalties are limited to 30% of the penalties sought by an aggrieved employee.
  - **Wage Statements**: Aggrieved employees can only seek penalties for wage statement violations under Labor Code Section 226. If these violations do not harm the aggrieved employee, the penalty is limited to $25.
  - **$200 Penalty**: $200 penalties are limited for subsequent violations of the Labor Code only after a court or agency finds that a violation has occurred, or if the court determines that an employer's violation was malicious, fraudulent, or oppressive.
  - **Derivative Penalties**: AB 2288 confirms that penalties cannot be awarded for derivative Labor Code violations.

AB 2288 and SB 92 were signed into law by Governor Newsom on July 1, 2024, and took immediate effect as an urgency statute—they apply to civil actions where the PAGA claim notice was filed on or after June 19, 2024. For more details about AB 2288 and SB 92, see our client alert, **here**.

Construction Industry PAGA Exemption (AB 1034)

Since 2018, employees in the construction industry have been exempt from the provisions of PAGA provided their work is performed under a valid collective bargaining agreement that expressly includes specified terms, including providing for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate. AB 1034 extends this exemption until January 1, 2038 provided the same conditions are met.

Freelance Worker Protection Act (SB 988)

SB 988 establishes the Freelance Worker Protection Act to establish minimum requirements relating to contracts between a hiring party and a "freelance worker." The term "freelance worker" is defined as "a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than two hundred and fifty dollars ($250), either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days."

That key provision requires a hiring entity to provide a written contract to the freelance worker and pay the freelance worker the compensation specified by such contract according to specific timing requirements. The contract must contain, at minimum:

- The name and mailing address of each party.
- An itemized list of all services to be provided, including their value and the rate and method of compensation.
- When the hiring party must pay the contracted compensation or the mechanism by which the date of payment is determined.
- When a freelance worker must submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.

SB 988 builds in non-retaliation protections, prohibiting a hiring entity from discriminating or taking any adverse action against a freelance worker that penalizes, or is reasonably likely to deter, a freelance worker from: (1) opposing any practice prohibited by the statute; (2) participating in proceedings related to the enforcement of the statute; (3) seeking to enforce rights provided by the statute; and (4) otherwise asserting or attempting to assert rights provided by the statute.

SB 988 will authorize an aggrieved freelance worker or a public prosecutor to bring a civil action to enforce these provisions. Among other forms of relief, if a hiring entity fails to pay the freelance worker the contracted compensation in a timely manner, the freelancer may be entitled to receive damages up to twice the amount that remained unpaid at the time payment was due.

Minimum Wage: Fast Food Industry (AB 610)

Governor Newsom previously signed into law AB 1228, which increased the minimum wage for "fast food restaurant employees" to $20 per hour and established a Fast Food Council empowered to make future increases to the minimum wage and adopt other minimum employment standards for fast food restaurants. AB 1228 included carve-outs only for certain bakeries and grocery store restaurants.

AB 610 exempts eight types of restaurants from the definition of "fast food restaurants" that are any of the following:

- Located in an airport.
- Connected to, or operated in conjunction with:
    a. a hotel
    b. an event center
    c. a theme park
    d. a public or private museum
    e. a gambling establishment

- Located in and operated in conjunction with buildings or a campus used for office purposes primarily or exclusively by a single, for-profit corporation and its affiliates; primarily or exclusively serves employees of that corporation rather than the general public; ***and*** is part of, or subject to, a concession or food service contract covering the buildings or campus.

- Located on land owned by the state, a city or county, or other political subdivision of the state, that is part of a port district or land managed by a port authority or port commission, a public beach, a public pier, state park, municipal or regional park, or historic district; ***and*** is operated pursuant to a concession agreement or food service contract.

As an urgency statute, AB 610 was signed into law by Governor Newsom on March 25, 2024 and is effective as of that date.

Minimum Wage: Health Care Workers Delay (SB 828)

Existing law provides a minimum wage schedule for healthcare workers, with a starting range of $18/hour to $23/hour depending on the type and size of the healthcare facility. The schedule provides for wage increases to be made overtime, with a goal of getting all employees up to $25/hour by 2023. While the original wage schedule projected June 1, 2024 as the health care minimum wage implementation date with future wage adjustments to occur on June 1 of subsequent years, SB 828 delays the minimum wage adjustments by one month, from June 1, 2024 to July 1, 2024.

The bill took effect on July 1, 2024 as an urgency statute.

State Minimum Wage Increase

Effective January 1, 2025, the minimum wage in the state of California will increase by 3.18% percent to $16.50/hour for all employers.

DISCRIMINATION, RETALIATION, AND HARASSMENT

California Worker Freedom from Employer Intimidation Act (SB 399)

"Captive audience" meetings are mandatory meetings during work hours, organized by an employer, where employees are paid for their time attending the meeting and are required to attend or face discipline. California joins a growing list of states, such as Minnesota, Maine, Illinois, and New York, that have enacted captive audience bans in recent years.

SB 399, referred to as the "California Worker Freedom from Employer Intimidation Act," prohibits an employer from subjecting, or threatening to subject, an employee to discharge, discrimination, retaliation, or other adverse employment action because the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives where the purpose of which is to communicate the employer's opinion about religious or political matters.

"Political matters" are "matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization." "Religious matters" are "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."

SB 399 contains numerous exceptions, namely for certain communications from religious and political organizations to their employees related to the employer's religious or political purposes. It also contains

exceptions for educational institutions requiring students and instructors to attend lectures as part of the institution's regular coursework, and for nonprofit training programs requiring students or instructors to attend classes or perform work related to the program's mission, among others.

SB 399 provides that it may be enforced by private court action or by the California Labor Commissioner. In addition to regular damages, relief for violations may be sought in the form of: (1) temporary and permanent injunctive relief; (2) punitive damages; and (3) a civil penalty of $500 per employee for each violation.

Victims of Violence (AB 2499)

AB 2499, which will take effect January 1, 2025, expands leave and workplace protections for victims and survivors of violence by ensuring survivors and their loved ones have the ability to take necessary time off and seek relief for specific reasons related to safety and recovery.

California law currently provides protections, such as prohibiting discrimination and retaliation, to employees who are victims of crimes so they can seek help related to their status as crime victims. These protections, which are currently found in the California Labor Code, are tied to one's status as a victim of a "crime of abuse." AB 2499 replaces this terminology with "qualifying acts of violence," or "QAV," which is defined as: (a) domestic violence, (b) sexual assault, (c) stalking, or (d) an act or conduct, including: an individual causing bodily injury or death to another, an individual exhibiting, drawing, brandishing, or using a firearm or other dangerous weapon on another, or an individual using or making a reasonably perceived or actual threat to use force against another to cause physical injury or death. A QAV includes such acts regardless of whether there is a criminal arrest, prosecution, or conviction.

AB 2499 moves the existing rules for crime victims from the Labor Code to the Fair Employment and Housing Act ("FEHA"), and as a result, the new rules will be enforceable as unlawful employment practices by the Civil Rights Department ("CRD"), which enforces FEHA, rather than the Division of Labor Standards Enforcement ("DLSE"), which is chiefly responsible for enforcing wage and hour laws. As a result of the transition to FEHA, where these victim protections apply not only to an employee who is a victim of a QAV, but also to an employee who has a "family member" who is a victim of a QAV, the term "family member" is defined consistent with the FEHA (i.e., a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, or designated person, as defined).

The Labor Code provisions distinguish between employers with more or less than 25 employees. AB 2499 removes this threshold for victims of crime or abuse, and accordingly, employers of any size are now prohibited from retaliating against or otherwise discriminating against employees who are victims of a QAV due to their status (or their family member's status) as such, or for participating in the legal process (e.g., taking time off to serve as required by law on an inquest jury or trial jury). AB 2499 does prohibit employers with more than 25 employees from discriminating or retaliating against an employee who is (or who has a family member who is) a victim of a QAV for taking time off from work for additional specific purposes (e.g., seeking medical attention to recover from injuries, obtain psychological counseling, or participate in safety planning).

AB 2499 provides that employees are permitted to use vacation, personal leave, paid sick leave, or compensatory time off that is available (unless otherwise provided in a collective bargaining agreement). However, AB 2499 permits employers to limit the total leave time taken depending on the status at issue. Specifically, if the victim of the QAV is the employee, the total leave taken can be capped at 12 weeks. If it is the employee's family member who is the victim, the leave may be capped at 5 days for

relocation purposes and otherwise leave can be capped at 10 days with the exception that the maximum is 12 weeks if the victim is deceased as result of the QAV. Such leave runs concurrently with any leave provided under the CFRA and the FMLA.

Finally, AB 2499 installs a new notice obligation. Employers will be required to inform each employee of their rights under AB 2499. Specifically, employers will need to inform new employees upon hire, all employees annually, at any time upon request, and any time an employee informs an employer that the employee or the employee's family member is a victim. The CRD will publish a form notice regarding employees' protections under AB 2499 by July 1, 2025. Although the law becomes effective January 1, 2025, the notice obligation will not apply until the CRD publishes the form notice on the CRD website. Employers are not required to use the CRD's form, but if they decline to do so, their written notice must be substantially similar in content and clarity to the CRD's form.

Driver's License Requirements in Job Postings (SB 1100)

According to SB 1100's author, Anthony Portantino, many employers require applicants to have a driver's license even if driving is not part of the job that they seek, which may pose barriers for certain segments of the population.

Under SB 1100, employers must satisfy a two-part test before including a statement in a job advertisement, posting, application, or other material requiring an applicant to have a driver's license: the employer must (1) reasonably expect driving to be one of the job functions for the position; and (2) reasonably believe that satisfying the job function using an alternative form of transportation (such as taxi, carpooling, bicycling, or walking) would not be comparable in travel time or cost to the employer's business.

Consistent with FEHA, employers can be subject to an injunction, declaratory relief, compensatory damages, punitive damages, attorney's fees, and costs if found in violation of the new statute.

Discrimination on the Basis of Multiple Protected Traits (SB 1137)

SB 1137 amends FEHA to protect against discrimination on the basis of "intersectionality" (i.e., a combination of protected characteristics). According to the California Legislature: "Intersectionality is an analytical framework that sets forth that different forms of inequality operate together, exacerbate each other, and can result in amplified forms of prejudice and harm." SB 1137 expressly affirms the Ninth Circuit decision, *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551, which held that where an individual alleges multiple bases for discrimination or harassment, liability may need to be examined on the basis of each protected characteristic, as well as a combination of these characteristics.

Local Enforcement of Employment Discrimination (SB 1340)

Currently, enforcement of FEHA by California government actors is limited to the CRD. Local governments are preempted from attempting such enforcement themselves. SB 1340 changes that enforcement landscape. SB 1340 permits local enforcement of employment discrimination complaints under the FEHA as long as the enforcement meets specified requirements, i.e.,

- The local enforcement concerns an employment complaint filed with the CRD.
- The local enforcement occurs after the CRD has issued a right-to-sue notice, as specified.

- The local enforcement commences before the expiration of the time to file a civil action specified in the right-to-sue notice.
- The local enforcement is pursuant to a local law that is at least as protective as state discrimination in employment law.

When the CRD issues a right-to-sue notice, the employee has one year to sue their employer. However, where local enforcement is involved, SB 1340 tolls the time to file a civil action under a right-to-sue issued by the CRD. If any local enforcement decides to engage in enforcement, it stops that one-year clock, potentially extending the time for an employee to sue in civil court.

The CRD must promulgate regulations governing local enforcement, with which local enforcement must comply within a year of their effective date.

Janitorial Working Conditions (AB 2364)

The California Legislature has focused on the working conditions of janitors in recent years. In 2016, for example, California started requiring sexual harassment and violence prevention training for janitorial employees, and in 2019, created peer counselors to train other janitors to prevent workplace sexual harassment and assault.

AB 2364 has three principal components:

- The Department of Industrial Relations ("DIR") must contract with the University of California, Los Angeles Labor Center to conduct a study evaluating opportunities to improve worker safety and safeguard employment rights in the janitorial industry, and requires the DIR, on or before May 1, 2026, to issue a completed report;
- The DIR must, by June 15, 2025, convene an advisory committee of specified government, employer, and worker representatives to make recommendations regarding the scope of the above-referenced study, which must receive the completed study report by May 15, 2026; and
- The amount per participant that janitorial employers must pay to qualified organizations providing required sexual violence and harassment prevention trainings must increase, from $65 per participant to $80 per participant for training sessions having 10 or more participants and $200 per participant for training sessions having fewer than 10 participants, which will further increase after January 1, 2026, consistent with the most recent annual average California Price Index Changes.

LEAVE & WORKERS' COMPENSATION

Access to Paid Family Leave (AB 2123)

California's Paid Family Leave Program ("PFL") provides wage replacement benefits to workers who take time off work to care for certain seriously ill family members, to bond with a minor child within one year of birth or placement, as specified, or to participate in a qualifying exigency related to the covered active duty or call to covered active duty of certain family members. The law currently allows employers to require employees to take up to 2 weeks of earned but unused vacation before, and as a condition of, the employee's initial receipt of these benefits during any 12-month period in which the employee is eligible for these benefits.

AB 2123 will amend the Unemployment Insurance Code to remove employers' ability to require employees to take vacation time before receiving PFL benefits.

Small Employer Family Leave Mediation Program & Reproductive Loss Leave (AB 2011)

Existing law under FEHA required the CRD to create a small employer family leave mediation pilot program for the resolution of alleged violations of prescribed provisions on family care and medical and bereavement leave, applicable to employers with between 5 and 19 employees. AB 2011 removes the current repeal date of January 1, 2025, making the pilot program offering permanent. It also extends the program to include reproductive loss leave. As a result, all family care and medical, bereavement, and reproductive loss leave claims brought against small employers with 5 to 19 employees can be sent to mediation instead of directly to court.

Workers' Compensation Notice to Employees (AB 1870)

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Employers who are subject to the workers' compensation system are generally required to keep posted a notice in a conspicuous location frequented by employees and easily read by employees during the hours of the workday that includes, among other information, to whom injuries should be reported, the rights of an employee to select and change a treating physician, and certain employee protections against discrimination.

With the passage of AB 1870, this notice now must disclose that injured employees may consult a licensed attorney to advise them of their rights under workers' compensations laws, and further, that in most instances attorney's fees will be paid from an injured employee's recovery.

Workers' Compensation: Electronic Signatures (AB 2337)

AB 2337 will make it easier for parties to electronically navigate Workers' Compensation Appeals Board proceedings, authorizing the use of electronic signatures for purposes of the workers' compensation system, subject to restriction or requirements that may be adopted by the administrative director or the Workers' Compensation Appeals Board. This authorization applies to all documents that require a signature, including the signature of a notary on an acknowledgement.

DISCLOSURE AND POSTING OBLIGATIONS

Whistleblower Posting (AB 2299)

California employers are required to satisfy various workplace-posting obligations, including posting a list of whistleblower rights and protections, set out in Labor Code section 1102.8. The Labor Commissioner, however, is not obligated to develop a model posting that employers may utilize to comply with this posting requirement, as is the case with other types of workplace posting requirements (e.g., sick leave).

AB 2299 requires the Labor Commissioner to develop a model list of employees' rights and responsibilities under the whistleblower laws. Employers that post the model list will be deemed in compliance with the California whistleblower law requirements to prominently display the list of employees' rights and responsibilities.

Disclosure Requirements for Social Compliance Audits (AB 3234)

"Social compliance audits" are nongovernmental audits that review an employer's operations to ensure that the employer is compliant with laws or social standards, including but not limited to social and ethical responsibilities, health and safety regulations, and labor laws. Supporters of this bill were concerned with employers hiring private firms to conduct such audits, often in response to negative press, but then conducting audits with flaws or conducting audits and then ignoring the findings. SB 3234 requires an employer that voluntarily subjects its business to a social compliance audit to post to the company's website a report detailing the audit findings regarding compliance with child labor laws, including:

- The year, month, day, and time the audit was conducted, and whether the audit was conducted during a day shift or night shift.
- Whether the employer did or did not engage in, or support the use of, child labor.
- A copy of any written policies and procedures the employer has and had regarding child employees.
- Whether the employer exposed children to any workplace situations that were hazardous or unsafe to their physical and mental health and development.
- Whether children worked within or outside regular school hours, or during night hours, for the employer.
- A statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Workplace Violence Protection Plans in Hospitals (AB 2975)

California has long required hospital employers to implement workplace violence prevention standards under the California Occupational Safety and Health Act of 1973 ("Cal/OSHA").

AB 2975 requires the Occupational Safety and Health Standards Board to amend the standards by March 1, 2027 to include a requirement that hospitals implement an automatic weapons detection screening policy that screens bodies at three specific hospital entrances (the main public entrance, the entrance to the emergency department, and the entrance to labor and delivery if separate).

The Standards Board will also need to include a requirement that hospitals assign appropriate personnel to manage the automatic weapons detection screening. These designated personnel must receive a minimum of eight hours of training in the hospital's "policies and procedures on how to respond if a dangerous weapon is detected at the point of screening," operation of the hospital's weapons detection devices, de-escalation, and implicit bias.

After the Standards Board adopts these standards, it will be required to set an effective date of no later than 90 days to allow hospitals to comply with these new requirements.

Requirement To Include Opioid Antagonists in First-Aid Materials (AB 1976)

AB 1976 addresses existing concerns of opioid overdoses in the workplace by requiring employers to include naloxone in their first-aid kits.

The bill requires the Division of Occupational Safety and Health to submit a draft rulemaking proposal to the Standards Board before December 1, 2027 to revise regulations to ensure that first-aid materials in the workplace include naloxone hydrochloride or another opioid antagonist approved by the U.S. Food and Drug Administration. The bill also requires the Division to provide guidance to employers on the proper storage for opioid antagonists in accordance with the manufacturer's instructions.

Inclusion of Household Domestic Service in Definition of "Employment" (SB 1350)

Beginning July 1, 2025, SB 1350 will expand the scope of Cal/OSHA's regulations at places of employment by including "household domestic service" in the definition of employment, which previously was exempted from Cal/OSHA's control.

The bill includes three exceptions for: (1) publicly funded household domestic services; (2) employment in family daycare homes; and (3) individuals in their own homes who privately employ individuals to perform ordinary domestic household tasks (e.g., housecleaning, cooking, caregiving).

ARTIFICIAL INTELLIGENCE (AB 2602)

AB 2602, championed by the performers' union, SAG-AFTRA, protects performers by placing restrictions on contracts involving the use of a "digital replica" of the voice or likeness of an individual instead of the work the individual would have performed in person. AB 2602 ensures informed consent by requiring performers to be represented in any such contracts by legal counsel or by a labor union.

Digital replica is defined 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 the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered."

The bill expressly excludes the following from the definition of digital replica: "the electronic reproduction, use of a sample of one sound recording or audiovisual work into another, remixing, mastering, or digital remastering of a sound recording or audiovisual work authorized by the copyrightholder."

WHAT SHOULD EMPLOYERS DO?

California-based employers and out-of-state-employers with employees in California should immediately review their policies, procedures, and practices to ensure compliance with the new laws. Paul Hastings has a leading practice in this area and our attorneys know how to work with companies to craft employment policies that align with evolving California law.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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