CALIFORNIA LEGISLATIVE UPDATE

New Legislation for the Workplace in 2023

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KDG California Legislative Digest: New Legislation in the Workplace 2023

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I. Introduction

Democrats continue to have supermajorities in both California legislative chambers and Governor Newsom is pursuing his previously announced policy agenda. As a result, there will be many changes impacting the relationship between California employees and their employers. While there was not much in the way of wage and hour changes, there were significant changes in leave law, discrimination and harassment, and what has now become the usual statutory and rulemaking efforts related to COVID.

California employers are well advised to familiarize themselves with the new statutory requirements so they can be ready to go as of January 1, 2023.[2, 3]

II. Wage and Hour

A. Reminder: Minimum Wage Increases to $15.50 per hour as of January 1, 2023, all employers regardless of employee number.

Based on the transitional implementation language of SB 3, passed in 2016, the California minimum wage rate for all employees, regardless of the number of workers employed by their employer, will be $15.50 as of January 1, 2023. Note: Employees working in a jurisdiction that has set a higher minimum wage will be entitled to receive that higher minimum wage. The California minimum wage after 2023 will be adjusted annually for inflation based on the consumer price index for urban wage earners and

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[1] Great appreciation and thanks are expressed to my colleagues Luciana Roble and Marinor Ifurung for their work in reviewing the new legislation and preparing the summaries. Special thanks are also extended to Maira Alvarez for her preparation of the materials.

[2] Disclaimer: The analysis and information provided in this Digest is general in its nature and content and cannot be applied to any specific situation without further analysis and gathering of facts. Users of this document are urged to consult with legal counsel.

[3] Unless otherwise stated, all legislation has an effective date of January 1, 2023.

clerical workers (CPI-W). The minimum wage cannot, however, be lowered even if there is a negative CPI. Further, going forward the greatest increase in the minimum wage allowed in any one year is 3.5 percent.

Also note, the minimum salary to qualify for the executive, administrative, and professional employee exemption will increase on January 1, 2023, will increase to $64,480.

III. Employee Leaves and Benefits

A. **Assembly Bill 1041:** Expansion of Who an Employee Can Care for under the CFRA and California Paid Sick Leave Law

Current Law: The Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act (CFRA), makes it an unlawful employment practice for any government employer or employer with 5 or more employees to refuse to grant a request by any employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period or who meets certain other requirements, to take up to a total of 12 workweeks in any 12-month period to, among other things, bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

The Healthy Workplaces, Healthy Families Act of 2014 (MPSL), generally entitles an employee who works in California for the same employer for 30 or more days within a year to paid sick days, as specified, including the use of paid sick days for diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Existing law defines "family member" for this purpose to include individuals who share a prescribed relationship with the employee.

New Law: This legislation amends section 12945.2 of the Government Code, and Section 245.5 of the Labor Code to expand the class of people for whom an employee may take leave to care for to include a designated person. The law defines "designated person" to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. The law authorizes a designated person to be identified at the time the employee requests the leave and authorizes an employer to limit an employee to one designated person per 12-month period.

B. **Assembly Bill 1949:** Bereavement Leave

Current Law: There currently is no California or Federal law that requires the granting of leave to an employee for the specific purpose of bereavement leave. Employees may be eligible for protected leaves (e.g. CFRA) in the context of bereavement, but the leave would have to be based on the protected leave.

New Law: This legislation requires an employer with 5 or more employees to allow an employee, upon the employee's request, to take up to 5 business days of unpaid bereavement leave due to the death of a family member (spouse, child, parent, parent-in-law, sibling, grandparent, grandchild, or registered domestic partner) within three months of the death. Although the leave is unpaid, employees will have the option to utilize accrued vacation, PTO, or sick leave as a source of payment.

This new legislation also requires the California Civil Rights Department (CRD, formerly known as "DFEH") to expand the mediation pilot program available for alleged violations of specified family care and medical leave provisions, applicable to employers with between 5 and 19 employees, to include mediation for alleged violations of these provisions.

The provisions of AB 1949 will not apply where the employee is covered by valid collective bargaining agreement that provides for bereavement leave.

C. Senate Bill 951: SDI and Paid Family Leave Weekly Benefit Amount Changes

Current Law: Existing unemployment compensation disability law provides a formula for determining benefits available to qualifying disabled individuals. Under existing law, for periods of disability commencing on and after January 1, 2023, if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest exceeds $1,749.20, the weekly benefit amount is 55% of those wages divided by 13. Under existing law, a benefit that is not a multiple of $1 shall be computed to the next higher multiple of $1, and the amount of the benefit is prohibited from exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount. Under existing law, the maximum amount of benefits payable to an individual during any one disability benefit period is 52 times their weekly benefit amount, as specified.

Existing law also establishes, within the above state disability insurance program, a family temporary disability insurance program, also known as the paid family leave program, for the provision of wage replacement benefits for up to 8 weeks to workers who take time off work to care for a seriously ill family member or to bond with a minor child within one year of birth or placement, as specified. Existing law defines "weekly benefit amount" for purposes of both employee contributions and benefits under this program to mean the amount of weekly benefits available to qualifying disabled individuals pursuant to unemployment compensation disability law.

New Law: SB 951 amends Sections 985 and 2655 of the Unemployment Insurance Code to revise the formulas used for periods of disability commencing after January 1, 2023, but before January 1, 2025, by redefining the weekly benefit amount to be equal to (A) $50 if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is less than $722.50, (B) the greater of 70% of wages divided by 13, but not exceeding the maximum workers' compensation

temporary disability indemnity weekly benefit amount, or 63% of the state average weekly wage, if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is more than 70% of the state average quarterly wage, or (C) 90% of wages divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount, if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is $722.50 or more, but 70% or less than the state average quarterly wage.

SB 951 also amends Section 3301 of the Unemployment Insurance Code to revise the formulas used for the weekly benefit amount under the family temporary disability insurance program to conform to the changes for periods of disability commencing before January 1, 2025. The bill would also revise the formula for periods of disability commencing on or after January 1, 2025, by redefining the weekly benefit amount to be equal to (A) $50 if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is less than $722.50, (B) the greater of 70% of wages divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount, or 63% of the state average weekly wage, if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is more than 70% of the state average quarterly wage, and (C) 90% of wages divided by 13, but not exceeding the maximum workers' compensation temporary disability indemnity weekly benefit amount, if the amount of wages paid an individual during the quarter of their disability base period in which those wages were highest is $722.50 or more, but 70% or less than the state average quarterly wage.

IV. Discrimination, Harassment, and Retaliation

A. **Assembly Bill 2188:** Protection in the Workplace for Marijuana Users

Current Law: California Civil Rights Department (CRD, formerly known as "DFEH") prohibits discrimination in employment on the basis of specific categories.

New Law: Under AB 2188, on and after January 1, 2024, it is unlawful for an employer 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, except for preemployment drug screening, as specified, or upon an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. However, use of cannabis on the job would continue to be prohibited.

Certain applicants and employees are excluded from the law, including employees in the building and construction trades and applicants and employees in positions requiring a federal background investigation or clearance, as specified. The law also specifies that

the bill 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.

This legislation states that the Legislature finds and declares that employers now have access to "impairment tests which measure an individual employee against their own baseline performance and tests that identify the presence of THC in an individual's bodily fluids."

B. Assembly Bill 2777: Sexual Abuse Cover Up Accountability Act

Current Law: Existing law sets the time for commencement of any civil action for recovery of damages suffered as a result of sexual assault, as defined, as the later of within 10 years from the date of the last act, attempted act, or assault with the intent to commit an act of sexual assault against the plaintiff or within 3 years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from those acts. Under existing law, this provision applies to any action that is commenced on or after January 1, 2019.

New Law: Under AB 2777, claims seeking to recover damages suffered as a result of a sexual assault that occurred on or after January 1, 2009, that would otherwise be barred solely because the statute of limitations has or had expired would be revived until December 31, 2026. The law additionally revives claims seeking to recover damages suffered as a result of a sexual assault that occurred on or after the plaintiff's 18th birthday when one or more entities are legally responsible for damages and the entity or their agents engaged in a cover up, as defined, and any related claims, that would otherwise be barred prior to January 1, 2023, solely because the applicable statute of limitations has or had expired, and would authorize a cause of action to proceed if already pending in court on the effective date of the bill or, if not filed by the effective date of the bill, to be commenced between January 1, 2023, and December 31, 2023. The law would not revive claims that have been litigated to finality before January 1, 2023, and claims that have been compromised by written settlement agreements entered into before January 1, 2023.

In order to revive a claim, there must be a certification that includes the opinion of at least one mental health provider, as well as an attorney's good faith belief that the claim value is more than $250,000. This law also revives related claims such as sexual harassment and wrongful termination.

C. Senate Bill 523: Contraceptive Equity Act of 2022

Current Law: The California Fair Employment and Housing Act (FEHA), establishes the Civil Rights Department within the Business, Consumer Services, and Housing Agency, under the direction of the Director of Civil Rights, to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified

characteristics or status, including, but not limited to, race, age, sex, or medical condition.

New Law: SB 523 revises the FEHA to include protection for reproductive health decision making, as defined, with respect to the opportunity to seek, obtain, and hold employment without discrimination. Among other provisions, the law prohibits specified discriminatory practices, based on reproductive health decision making, by employers, labor organizations, apprenticeships and training programs, and licensing boards. The law also makes it unlawful for an employer to require, as a condition of employment, continued employment, or a benefit of employment, the disclosure of information relating to an applicant's or employee's reproductive health decision making.

Reproductive health decision-making includes, but not limited to, a decision to use or access a particular drug, device, product or medical service for reproductive health.

Section 12920 of the Government Code will read, "It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment 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, reproductive health decision making, or military and veteran status."

V. Arbitration and Mediation

A. H.R. 4445: Limitations on Arbitration Agreements Regarding Sexual Assault and Harassment Claims: The "Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act"

Prior Law: The Federal Arbitration Act and recent US Supreme Court decisions establish broad support for mandatory arbitration of employment related disputes.

Adopted Law: On March 3, 2022, President Biden signed HR 4445 which allows a claimant of sexual assault or sexual harassment to void an arbitration clause or a class action/collective action waiver. This applies to any dispute or claim that arises or accrues on or after March 3, 2022.

Note: The bill passed the House on a vote of 335 yes and 97 no. It passed the Senate on a voice vote.

"Sexual harassment" is defined as "a dispute relating to conduct that is alleged to constitute sexual harassment under Federal, Tribal, or State law." "Sexual assault" is defined as "a dispute involving a nonconsensual sexual act or sexual contact." Arbitration of sexual harassment and sexual assault claims can still occur if both parties

agree. The validity or enforceability of the arbitration clause or class action collective action waiver is to be determined by a court, not an arbitrator.

VI. Miscellaneous

A. Assembly Bill 2243: Health Emergencies and Employment Safety – Ag Workers Wildfire Smoke

Current Law: Existing law establishes the California Department of Public Health ("CDPH") to implement various programs throughout the state relating to public health, including licensing and regulating health facilities and control of infectious diseases. Existing law establishes the Division of Occupational Safety and Health ("DOSH") and the Occupational Safety and Health Standards Board within the Department of Industrial Relations and sets forth their powers and duties relating to the adoption of health and safety standards for workers. Under existing law, the California Occupational Safety and Health Act of 1973 (Cal/OSHA), requires employers to comply with certain safety and health standards, as specified, and charges the division with enforcement of the act. Under existing law, certain violations of a standard, order, or special order pursuant to these provisions are crimes.

The existing Maria Isabel Vasquez Jimenez heat illness standard provides for the prevention of heat-related illness of employees in outdoor places of employment, as prescribed. There is also an existing standard for workplace protection from wildfire smoke.

New Law: The law requires Cal/OSHA to submit a rulemaking proposal to the Occupational Safety and Health Standards Board to revise the regulation on heat illness "to include an ultrahigh heat standard for employees in outdoor places of employment for heat in excess of 105 degrees Fahrenheit." The revised standard is to include provisions such as "additional mandatory work breaks," access to cool water, shade with cooling features, and "increased employer monitoring of employees for symptoms of heat-related illnesses." Further, employers would be required to provide a copy of the Heat Illness Prevention Plan to all new employees when temperatures exceed 80 degrees and to all employees on an annual basis.

The law also requires that Cal/OSHA make certain changes to the wildfire smoke regulation, 8 CCR Section 5141.1. The regulation, originally adopted in 2019, placed certain requirements on workplaces where the Air Quality Index (AQI) for PM2.5 was at least 151 and where the employer should "reasonably anticipate employees may be exposed to wildfire smoke." The law requires that Cal/OSHA remove the "reasonably anticipate" requirement, thereby narrowing the scope in which the regulation would apply. The legislation also requires Cal/OSHA to lower the threshold at which respiratory equipment becomes mandatory from an AQI for PM2.5 of 500 or greater to "at a maximum, an AQI of 200 or more."

The law requires Cal/OSHA to submit the proposals to the standards board before December 01, 2025 so that the standards board may review and adopt revised standards before December 31, 2025.

B. **Senate Bill 1044:** Protection for Workers Who Refuse to Work in an "Emergency Condition" or "State of Emergency"

Current Law: California Occupational Safety and Health statutes prohibit an employer from discharging or otherwise discriminating against an employee who refuses to perform work in violation of prescribed safety standards where the violation would create a real and apparent hazard to the employee or his or her fellow employees.

New Law: This law, amends Part 2 of Division 2 of the Labor Code, and prohibits an employer, in the event of an emergency condition, as defined, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe, except as specified. The law also prohibits an employer from preventing any employee, including employees of public entities, as specified, from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to confirm their safety.

The law requires an employee to notify the employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite, as specified. These provisions are not intended to apply when emergency conditions that pose an imminent and ongoing risk of harm to the workplace, the worksite, the worker, or the worker's home have ceased. Aggrieved employees may file a PAGA claim to enforce their rights and employers have the right to cure.

An "emergency condition" is defined as: [a]n event that poses serious danger to the structure of a workplace or to a worker's immediate health and safety" or "[a]n order to evacuate a workplace, a worker's home or the school of a worker's child." "Feels unsafe" means "that a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enter or remains on the premises.

Note: This legislation would not apply to a "state of emergency" based on "a health pandemic."

C. **Assembly Bill 257:** Establishes Fast Food Sector Council to Set Wages, Hours, Health, and Safety Standards in the Fast Food Industry

Current Law: Wage and hour regulation of the fast-food industry is established the Labor Code and applicable Wage Order. Health and safety regulation fast-food industry is established in California and local health and safety statutes and ordinances.

New Law: AB 257 Establishes the Fast-Food Sector Council within the Department of Industrial Relations with the power to establish sector-wide minimum standards for wages, working hours, health, safety, with a focus on necessary cost of proper living. Enacts the Fast Food Accountability and Standards Recovery Act ("FAST Recovery Act".) The Committee is in effect until January 01, 2029.

A "Fast Food" restaurant subject to this law is defined as a restaurant that is "part of a set of fast food restaurants consisting of 20 or more establishments nationally that share a common brand, or that are characterized by standardized options for décor, marketing, packaging, products, or services." This new act applies to franchisees and franchisors and provides that franchisees and franchisors are jointly and severally liable.

D. Senate Bill 1162: Pay Data Reporting and Listing of Pay Scale

Current Law: Employers of 100 or more employees must report specific pay data on an annual basis in an Employer Information Report on or before March 31st of each year.

New Law: SB 1162 amends Section 432.3 of the Labor Code, and Section 12999 of the Government code to require employers of 100 or more employees (directly employed or through a labor contractor) to submit pay data reports to the California Civil Rights Department (CRD, formerly known as "DFEH") on or before the second Wednesday of May each year. The data provided is to be the "median and mean hourly rate for each combination of race, ethnicity, and sex within each job category."

Beginning in the 2025 calendar year, CRD is required to publish, on an internet website available to the public, pay data for employers of 1,000 or more employees. The reporting obligation is reduced to 500 or more employees in 2026 and 250 or more employees in 2027.

This legislation imposes civil penalties of $100 per employee for a first violation and $200 per employee for subsequent violations. This new law notably also requires employers of 15 or more employees to include the pay scale for a position in any job posting.

E. Assembly Bill 1601: Employment Protections: Mass Layoffs, Relocations, or Termination of Employees: Call Centers

Current Law: Existing law prohibits an employer from ordering a mass layoff, relocation, or termination, as defined, at a covered establishment, as defined, without giving a written notice of the order to certain parties and entities, including the employees, the Employment Development Department, and specified local officials.

New Law: AB 1601 authorizes the Labor Commissioner to enforce certain notice requirements concerning a mass layoff, relocation, or termination of employees, including call center employees. The bill would grant the Labor Commissioner the authority to investigate an alleged violation, order appropriate temporary relief to mitigate a violation pending completion of a full investigation or hearing, and issue a

citation in accordance with certain procedures. A mass layoff is defined as a layoff during any 30-day period of fifty (50) or more employees at a covered establishment.

This law requires an employer of employees in a call center that intends to relocate to a different location 100 miles away to notify the Labor Commissioner at least 120 days before the relocation. The bill would authorize the Labor Commissioner to impose a civil penalty of up to $10,000 for every day that an employer fails to provide this notice. The Labor Commissioner would be required compile a list of employers that provide the requisite notice and employers appearing on the list would be ineligible to be awarded or have renewed state grants or state-guaranteed loans for 5 years after the date that the list is published, and those companies would be ineligible to claim tax credits for 5 taxable years beginning on and after the date that the list is published. Private entities that have contracted with the state for call center services as of January 1, 2023, must ensure that a certain percentage of services are performed in California.

F. ***VETOED BY THE GOVERNOR*** **– Assembly Bill 2847:** Pilot Program to Extend UI to Undocumented Workers

Current Law: Existing law authorizes the payment of unemployment compensation benefits and requires that they be made in accordance with regulations of the Director of Employment Development. Existing law generally requires the Employment Development Department to promptly pay benefits if claimants are eligible or to promptly deny benefits if they are ineligible. Existing law prohibits payment of unemployment compensation benefits for services performed by a person who is not a citizen or national of the United States, unless that person is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, as specified.

Proposed Law: The "Excluded Workers Pilot Program" would allow the payment of UI-like benefits to undocumented workers until January 1, 2025 at a rate of $300 per week.

Veto Message: In his veto statement, the Governor stated this bill would require EDD to take immediate steps to upgrade their IT systems in order to accept applications at a cost of over $200 million in upfront general fund costs and over $20 million in ongoing funds without providing funding for the actual benefits.

"California has taken critical actions to support inclusion and opportunity for undocumented immigrants and mixed status families. Just this year, California made historic investments to ensure more undocumented Californians have access to health care, food assistance, and to provide inflation relief regardless of immigration status. As we continue forward, this bill needs further work to address the operational issues and fiscal concerns, including a dedicated funding source for benefits."

"With our state facing lower-than-expected revenues over the first few months of this fiscal year, it is also important to remain disciplined when it comes to spending, particularly spending that is ongoing. We must prioritize existing obligations and priorities, including education, health care, public safety and safety-net programs."

VII. COVID

A. Assembly Bill 1751: Extension of Presumption of Worker's Compensation for COVID-19

Current Law: Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a rebuttable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment. Existing law governs the procedures for filing a claim for workers' compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

Existing law defines "injury" for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. Existing law creates a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. Existing law requires an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. Existing law also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Existing law, until January 1, 2023, allows for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

New Law: AB 1751 amends sections 32112.86, 3212.87, and 3212.88 of the Labor Code to extend the above-described provisions relating to COVID-19 until January 1, 2024. The law also expands the above-described provisions applicable to firefighters and police officers to include active firefighting members of a fire department at the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veterans Affairs and to officers of a state hospital under the jurisdiction of the State Department of State Hospitals and the State Department of Developmental Services.

B. ETS 3205: Cal-OSHA Cal OSHA Approved Updated ETS-3205 COVID Workplace Regulation (Approved Effective by the end of the first week of May 2022 through December 31, 2022.)

1. The key updates to CAL OSHA's updated COVID Regulations are as follows:
    a. Face Coverings requirements are deferred to the CDPH Guidelines. CDPH guidelines are currently a "strong recommendation" rather than a requirement regarding face coverings. Note that local health departments can require more.
        i. Any face coverings will no longer be required to pass light test.
    b. All references to Vaccination status have been removed (deleted "fully vaccinated").
        i. All symptomatic employees (regardless of vaccination status) are to be tested on Company time at Company cost if exposed to COVID in the workplace.
    c. The type of COVID test no longer restricted. However, the test by the FDA. This allows for use of at home tests, self-test and self-administered if no other option exists (e.g. date/time stamped photo).
    d. Requirements for Cleaning/Disinfecting of surfaces have been eliminated.
    e. The requirement for partitions to separate workers in absence of physical distancing has been removed.
    f. A new term "returned case" has been added and refers to employees who return to work after having had COVID and recovered from COVID.
    g. Employers are not required to make COVID testing available to returned cases.
    h. The exclusion and return to work requirements for COVID exposures and cases are deferred to the CDPH guidelines.
    i. The definition for "close contact" was deferred to CDPH guidelines in June 2022, about a month after the third readoption of ETS 3205. CDPH defines "close contact" as "someone sharing the same indoor airspace (e.g. home, clinic waiting room, airplane, etc.) for a cumulative total of 15 minutes or more over a 24-hour period."

C. Assembly Bill 2693: Covid-19 Exposure Notification

Current Law: The California Occupational Safety and Health Act of 1973, authorizes the Division of Occupational Safety and Health to prohibit the performance of an operation or process, or entry into that place of employment when, in its opinion, a place of employment, operation, or process, or any part thereof, exposes workers to the risk of infection with COVID-19, so as to constitute an imminent hazard to employees. Existing law requires that the prohibition be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power, renewable natural gas, or water. Existing law requires that these provisions not prevent the entry or use, with the division's knowledge and permission, for the sole purpose of eliminating the dangerous conditions.

Under existing law, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer is required to take specified actions within one business day of the notice of potential exposure, including providing written

notice to all employees on the premises at the same worksite that they may have been exposed to COVID-19. The existing law repeals those provisions on January 1, 2023.

New Law: AB 2693 amends Labor Code Sections 6325 and 6409.6 of the Labor Code to revises and recast the notification requirements to, among other things, authorize an employer to satisfy the notification requirements by prominently displaying a notice in all places where notices to employees concerning workplace rules or regulations are customarily posted that includes the dates on which an employee with a confirmed case of COVID-19 was on the worksite premises within the infectious period and the location of the exposure. The new law also requires the notice to remain posted for 15 days, and requires an employer to keep a log of all the dates the notice was posted, and would require the employer to allow the Labor Commissioner to access those records. These requirements are extended until January 1, 2024.

Current Law: Existing law also requires an employer, if they are notified of the number of cases that meets the definition of a COVID-19 outbreak, to notify the local public health agency within 48 hours, except as specified. Existing law also requires the State Department of Public Health to make workplace industry information received from local public health departments pursuant to these provisions available on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace.

New Law: AB 2693 also amends Labor Code Sections 6325 and 6409.6 of the Labor Code to eliminate the above requirements of notifying the public health agency within 48 hours.

D. Assembly Bill 152: Extends Covid-19 Supplemental Paid Sick Leave and Provides Grants to Eligible Small Businesses

Current Law (AB 84)	New Law (AB 152)
Effective January 1, 2022 until September 30, 2022, California employers of 26 or more employees are required to provide COVID-19 Supplemental Paid Sick Leave (SPSL) to full-time and part-time employees who are unable to work or telework for COVID-19-related reasons.	Effective September 29, 2022, the availability of SPSL has been extended to December 31, 2022 to covered employers (employers of 26 or more employees). **Employees do not receive additional hours under AB 152 who may have already exhausted their allotted SPSL for the year.** Provisions of the bill will expire on January 1, 2024.
No tax credit available for covered employers.	The amended law establishes the California Small Business and Nonprofit COVID-19 Relief Grant Program within the Governor's Office of Business and Economic Development (GO-Biz) to assist small

	businesses and nonprofits with incurred costs for COVID-19 SPSL. Grant moneys awarded are no more than the actual costs incurred for supplemental paid sick leave between January 1, 2022, through December 31, 2022 with the maximum grant amount awarded of $50,000.
Covered employers are allowed to require submission to a diagnostic test on or after the fifth day an employee first test positive for COVID-19.	No changes. However, the amended law also allows employers to require an employee to submit a second diagnostic test that is taken no earlier than at least 24 hours after any positive result on a test taken on or after the fifth day an employee first test positive for COVID-19. Employers have no obligation to provide additional paid leave if an employee refuses to comply with an employer's required return to work diagnostic test.
Covered employers who require diagnostic testing in order to return to work must make test kits available at no cost to the employees.	No changes. If employers require a second diagnostic test, employers must make test kits available at no cost to the employees.
Covered employers are to provide full-time covered employees with one "bucket" of up to 40 hours of SPSL that can be used for the following: 1. Vaccine-Related: The covered employee is attending a vaccine or booster appointment for themselves or a family member or cannot work or telework because they have vaccine--related symptoms or are caring for a family member with vaccine-related symptoms. An employer may limit an employee to 24 hours or 3 days of leave for each vaccination or booster appointment and any consequent side effects, unless a health care provider verifies that more recovery time is needed. * 2. Caring for Yourself: The employee is subject to quarantine or isolation period related to COVID19 as defined by an order or guidance of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local public health officer with jurisdiction over the workplace; has been advised by a healthcare provider to quarantine; or is experiencing COVID-19 symptoms and seeking a medical diagnosis. 3. Caring for a Family Member : The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation	No changes.

period or has been advised by a healthcare provider to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.	
Covered employers are to provide full-time covered employees with a second "bucket" of up to 40 hours of SPSL that can be used for the following: 1. The covered employee tests positive for COVID-19. 2. The covered employee is caring for a family member* who tested positive for COVID-19. * A family member includes a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling.	No changes.
Covered employers are to provide part-time covered employees may take a leave up to the amount of hours they work over two weeks, with half of those hours available only when they or a covered family member test positive for COVID-19.	No changes.

VIII. Inactive Bills that didn't pass…. but might in the future

A. **INACTIVE (Failed House of Origin Deadline) Assembly Bill 2932:** Would Have Reduced Weekly Overtime Trigger From 40 Hours to 32 Hours

Current Law: The California Labor Code and the Federal Fair Labor Standards Act require employers (regardless of the number of employees) to pay overtime to employees who work over 40 hours in a workweek.

Proposed Law: If passed, AB 2932 would have amended California Labor Code Section 510 to require employers of more than 500 employees to pay overtime for any hours worked over 32 hours in a workweek at the rate of 1.5 times the employee's regular rate of pay. Employers would have been prohibited from reducing an employee's wage as a result of the reduction from 40 hours to 32 hours.

B. **INACTIVE (Failed House of Origin Deadline) Assembly Bill 1761:** Workplace Flexibility Act of 2022 Would Have Allowed Individual Alternative Workweek Schedules

Current Law: Current law allows for alternative workweek schedules without the payment of overtime after disclosure and a vote of 2/3s of the employees in the affected work unit.

Proposed Law: If passed, AB 1761 would have allowed an individual employee to request an "employee-selected flexible work schedule" providing for workdays of up to 10 hours without the payment of daily overtime between 8 and 10 hours worked. It would not have required the detailed Alternative Workweek Schedule (AWS) required by Labor Code Section 511; however, it would require an AWS to be in writing and signed by the employee. Employers would be prohibited from offering incentives or other benefits or threatening detrimental actions for those who chose to participate.

C. **INACTIVE - Assembly Bill 2110:** Would Have Shortened Reporting of AWS Vote Results from 30 Days to 15 Days

Current Law: Current law requires that employers report the results of a vote on an alternative workweek schedule to the Division of Labor Standards Enforcement (regardless of the outcome of the vote) within 30 days of the vote.

Proposed Law: If passed, AB 2110 would have shortened the reporting period from 30 days to 15 days.

D. **INACTIVE - Assembly Bill 1818:** Would Have Provided Indefinite Extension for Licensed Manicurists from AB 5 ABC Test

Current Law: Existing law requires a 3-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission.

Proposed Law: If passed, AB 1818 would have deleted the January 1, 2025, inoperative date thereby making licensed manicurists subject to the exemption indefinitely.

E. **INACTIVE - Assembly Bill 1920:** Would Have Provided Tax Credit to Offset Supplemental Paid Sick Leave

Current Law: The Healthy Workplaces, Healthy Families Act of 2014, entitles an employee who works in California for the same employer for 30 or more days within a year from the commencement of employment to paid sick days. Existing law, until September 30, 2022, provides for COVID-19 supplemental paid sick leave for covered employees, in-home supportive service providers, and waiver personal care service providers who are unable to work due to certain reasons related to COVID-19, and requires specified employers to compensate the covered employees and providers at specified rates, as provided.

Proposed Law: AB 1920 if passed, for taxable years beginning on or after January 1, 2022, and before January 1, 2023, would allow a credit against the taxes imposed by those laws to specified employers for the amount paid by the employer as COVID-19 supplemental paid sick leave benefits.

F. **INACTIVE (HELD IN COMMITTEE) – Assembly Bill 1872:** Would Have Established Election Day as a State Holiday

Current Law: Existing law requires that an election for congressional and state elective offices be held on the first Tuesday after the first Monday in November of each even-numbered year. Existing law requires a presidential general election to be held on the first Tuesday after the first Monday in November in any year that is evenly divisible by the number 4.

Existing law designates specific days as holidays in this state. Existing law designates holidays on which community colleges and public schools are required to close. Existing law entitles state employees, with specified exceptions, to be given time off with pay for specified holidays. Existing law designates optional bank holidays. Employers are required to provide employees with two (2) hours of paid leave to employees who cannot otherwise vote outside working hours. This is limited to general elections.

Proposed Law: This bill would add the day on which a statewide general election is held, which is the first Tuesday after the first Monday in November of any even-numbered year, to these lists of holidays. The bill would require community colleges and public schools to close on any day on which a statewide general election is held. The bill would require the California State University, and request the University of California, to close campuses on a day on which a statewide general election is held. The bill would require that state employees, with specified exceptions, be given time off with pay for days on which a statewide general election is held. The bill would provide that the third Monday in February, also known as Washington Day, is observed only in odd-numbered years.

G. **INACTIVE (HELD IN COMMITTEE) – Assembly Bill 2182:** New Protected Classification for FEHA

Current Law: The Fair Employment and Housing Act lists classifications (e.g. race, sex, age, sexual orientation) that receive protections from discrimination or harassment in the workplace.

Proposed Law: AB 2182 would add "familial responsibilities" to the FEHA as a protected classification. "Familial responsibilities" in AB 2182 is defined as "… a need for an accommodation due to obligations arising from a need to care for a minor child or care recipient because of an unforeseen closure or unforeseen unavailability of a minor child or care recipient's school or care provider ..."

This classification would only apply in certain reasonable accommodations, including, "Excusal from mandatory overtime", temporary or part-time work, remote work, swapping of shifts, shifting of hours or days of work, temporary restructuring of job duties, permission to communicate with care provider by telephone, and time off."

H. **INACTIVE - Senate Bill 1189:** Would Have Addressed Restrictions on Collection and Use of Biometric Information

Current Law: The California Privacy Rights Act of 2020 gives consumers rights with data.

Proposed Law: The proposed law would become effective September 1, 2023, and would prohibit private companies from collecting or disclosing biometric data (e.g. fingerprints and facial scans) without first acquiring affirmative consent from persons whose data is being collected or disclosed. It would require that consumers (including employees) to be informed, in detail, about what information is being collected, stored, used, or disclosed; the respective purposes; and any recipients of the data. It would also require implementation of reasonable industry security practices.

The bill is similar to the Illinois Biometric Information Privacy Act, and would provide mandatory destruction dates to business entities, as well as prohibit the sale of collected biometric data.

I. **INACTIVE – Assembly Bill 1651:** Workplace Technology Accountability Act

Current Law: The California Consumer Privacy Act sets forth a broad range of restrictions and requirements with respect to the collection, storage, and sale of data collected from consumers. Some employers, in specific respects, are exempt from the application of the CCPA.

Proposed Law: If passed, the CCPA will be amended to confer on employees the right to know, review, correct, and secure data collected from them by their employer and would impose limitations on the purpose and effect of using Automatic Decision Systems (ADS). The use of ADS would undergo an impact assessment (with worker input) if it is demonstrated that such use poses a higher risk of producing bias-based decisions.

Note: The FEHC has drafted regulations (2 CCR 11008) that will regulate the use of "automated-decision systems" in making decisions on applications for employment or the terms and conditions of employment if those systems screen out or tend to screen out applicants or employees or classes of the same based on characteristics protected by the FEHA. The draft regulations that an employer must demonstrate job-relatedness and business necessity.

J. **INACTIVE – Senate Bill 1454; Senate Bill 2871; Senate Bill 2891:** Creation of Exemption to the CCPA for Employee and Business-to Business Data

Current Law: The California Consumer Privacy Act sets forth a broad range of restrictions and requirements with respect to the collection, storage, and sale of data collected from consumers. The general exemption of employers from the CCPA is set to expire January 1, 2023.

Proposed Law: The various versions of the amendments to the CCPA all include extensions of the January 1, 2023, exemption repeal deadline. SB 1454 and AB 2871 would continue the exemption indefinitely and AB 2891 would extend the exemption through January 1, 2026.

Go Forward: The CCPA exemptions now expire and will become fully effective on January 1, 2023. Requirements:

- Giving privacy notices – with the same level of detail currently required for consumer-facing privacy notices – to personnel, job applicants and business contacts
- Honoring requests from personnel, job applicants and business contacts to exercise rights under the CCPA, including rights to:
    - know how their personal information is used and shared
    - access a copy of the personal information
    - delete personal information they provided
    - correct personal information
    - opt out of certain uses and sharing of personal information, including any sale of personal information, sharing of personal information for behavioral advertising purposes or use of sensitive personal information for certain purposes
    - exercise rights free of discrimination
- Ensuring vendors with access to HR data are subject to specific contractual data-use prohibitions necessary to qualify the vendors as "service providers" or "contractors" and that granting such access does not constitute restricted "selling" or "sharing" of personal information from which Californians can opt out.

K. **INACTIVE – Assembly Bill 2095:** Employers of 1,000 or More Employees Would Have Been Required to Submit Employee Statistical Reports

Current Law: The Labor and Workforce Development Agency of the State of California has, as one of its purposes to promote, foster, and develop the welfare of wage earners in California.

Proposed Law: AB 2095, if passed, would establish a program within the LWDA to require employers of 1,000 or more employees to submit specified data and to rank employers and certify qualified employers, on a LWDA website, as a "high-road" employers. This would require the collection of data. Beginning March 31, 2024, and annually thereafter, employers of 1,000 or more employees would be to report numbers of domestic and foreign employees, pay, hours, scheduling, benefits, ratio of supervisors to non-supervisory employees, safety, turnover, and diversity, equity, and inclusion metrics.