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EDUCATION LEGISLATIVE ROUNDUP

News and developments in education law, employment law and labor relations for School and Community College District Administration

2020

40 years
1980 - 2020

*Education Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the legal issues our clients are facing. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), bills are effective on **January 1, 2021**, unless otherwise noted. Urgency legislation will be identified as such. Many of the bills summarized below apply directly to public education districts. Bills that do not directly apply to public education districts are presented either because they indirectly apply, may set new standards that apply or would generally be of interest to our school clients.*

If you have any questions about your districts's obligations under the new or amended laws as outlined below, please contact our Los Angeles, San Francisco, Fresno, San Diego or Sacramento office and an attorney will be happy to answer your questions.

EMPLOYMENT

CLASSIFIED EMPLOYEES

AB 1859 – Extends Appointment Exception For LAUSD.

Existing law provides that in a school district with a pupil population over 400,000, the school district may make an appointment for specified positions from other than the first three ranks of eligible applicants on the eligibility list if the position requires a second language, driver's license, specialized license, or a specific gender, until December 31, 2020. Existing law requires a school district to study the effectiveness of the selection method, the vacancy rates for each class, and the length of time to hire for each class, and to submit a report of its findings to any affected labor union.

AB 1859 extends the operation of these provisions from December 31, 2020, until January 1, 2027 for the Los Angeles Unified School District only.

(AB 1859 amends Section 45277.5 of the Education Code.)

AB 2234 – Allows Personnel Commission Members To Declare Conflict.

Existing law requires a school district or community college district that adopts a merit system to appoint a personnel commission. Legal counsel of the governing board must represent the commission in all legal matters, except in circumstances in which the legal counsel knows, or has reason to know, that a conflict exists between the interests of the commission and the interests of the governing board of the school or community college district.

This bill authorizes a member of the personnel commission to declare that there is a conflict, and authorizes the commission to employ its own attorney if the commission approves that declaration of a conflict by majority vote.

(AB 2234 amends Sections 45313 and 88132 of the Education Code.)

CRIMINAL BACKGROUND CHECKS

SB 905 – Prohibits DOJ LiveScan Background Checks From Requiring Certain Applicants To Provide A Residence Address, And Expands LiveScan Access To FBI Background Checks.

Currently, employers with applicants seeking a license, employment, or volunteer position where the applicant would have supervisory or disciplinary power over a minor, can request a LiveScan background check from the California Department of Justice (DOJ), showing the applicant's conviction record and any arrest pending adjudication involving specific offenses. SB 905 clarifies that such a LiveScan background check request must include the applicant's fingerprints, but cannot require the applicant to disclose their residence address.

SB 905 also expands LiveScan background checks to enable all authorized agencies and entities who get such background checks from the DOJ to also include background check information from the Federal Bureau of Investigation (FBI). Previously, only certain entities could receive FBI background checks as part of the DOJ LiveScan background check.

(SB 905 amends Sections 11105 and 11105.3 of the Penal Code.)

EMPLOYEE HOUSING

AB 3308 – Allows School Districts To Allow Public Employees In Affordable Housing.

The Teacher Housing Act of 2016 authorized a school district to establish programs that address the housing needs of teachers and school district employees who face challenges in securing affordable housing. This bill authorizes a school district to allow other public employees and members of the public to occupy housing created under the Teacher Housing Act. However, the school district retains the right to prioritize school district employees in the programs to address housing needs.

(AB 3308 amends Section 53571, 53572, and 53574 of the Health and Safety Code.)

EMPLOYMENT SETTLEMENT AGREEMENTS

AB 2143 – Makes Clarifying Changes To Law Prohibiting No-Rehire Provisions In Employment Settlement Agreements.

Last year's AB 749 (effective January 1, 2020) prohibited settlement agreements from containing a provision that restricts an employee from obtaining future employment with the employer (frequently referred to as a "no re-hire" clause) if that employee has filed a claim or civil action against the employer. However, AB 749 provided an exception to this restriction on no re-hire clauses in settlement agreements where the employer made a good faith determination that the aggrieved person engaged in sexual harassment or sexual assault.

AB 2143 makes several clarifying changes to this law, as follows:

- Expands the sexual harassment/sexual assault exception to allow no re-hire clauses in situations where the employer determined the employee engaged in any criminal conduct.
- Requires that employer make **and document** the good faith determination of sexual harassment, sexual assault, or any criminal conduct before the aggrieved person filed the claim or civil action against the employer, thus preventing employers operating in bad faith from making an after-the-fact determination of misconduct.
- Finally, the law now also requires that the aggrieved person file their claim or complaint against the employer in good faith. This avoids the potential for an employee filing an unfounded complaint just to invoke the protections of this law and avoid a no re-hire clause.

Although AB 2143 further clarifies the application of these exceptions to the prohibition on no-rehire clauses in employment settlement agreements, the burden is still on the employer to meet the qualifications and establishment of "good faith" determinations for the reasons noted above in order to use a no re-hire clause. Employers looking to invoke the exception should therefore do so cautiously, and we recommend consulting legal counsel to assist in making the determinations.

(AB 2143 amends Section 1002.5 of the Code of Civil Procedure.)

INDEPENDENT CONTRACTORS

AB 2257 – Amends, Clarifies, And Expands Exemptions To AB 5's "ABC Test" For Determining Independent Contractor Status (Urgency Bill Effective Immediately On September 4, 2020).

In 2018, the California Supreme Court issued its decision in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*), and applied a stricter "ABC" test for determining the status of an independent contractor under the Wage Orders. In response, the Legislature passed AB 5 last year (effective January 1, 2020) to codify this new "ABC" test in the Labor Code and Unemployment Insurance Code for purposes of employment, workers' compensation coverage, and eligibility for unemployment insurance benefits. AB 5 also included a number of exceptions to the application of the "ABC" test for certain types of work that could then be governed by the older and more flexible multifactor standard established in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).

AB 2257 is clean-up legislation to AB 5, and amends certain exceptions to the "ABC" test, in addition to reorganizing its statutory structure in the Labor Code so it is easier to understand.

AB 2257 was designated an urgency bill, and so became effective immediately upon Governor Newsom signing it into law on September 4, 2020.

First, AB 2257 reorganized the provisions in the previous Labor Code Section 2750.3 that were added by AB 5, and separated them out into new Labor Code Sections 2775-2787.

AB 2257 also amended the "business-to-business" exemption to the "ABC" test that was a part of AB 5 to now expressly include public agencies – something that was unclear previously. This exemption allows contracting relationships between a "business service provider" providing contracted services to a "contracting business" to be governed under the *Borello* standards instead of the "ABC" Test. However, the amended language still does not list public agencies in the types of entities that can constitute a "business service provider." Thus, there is still an open question whether the business-to-business exemption would apply in situations where one public agency provides services under contract to another.

AB 2257 also makes the following additional changes to some of the eligibility criteria for the "business service provider" exemption:

- Currently, under AB 5, the business service provider must provide services directly to the contracting business rather than to customers. AB 2257 modifies this restriction to clarify that it **does not** apply if the business service provider's employees are solely performing services under the name of the business service provider and the business service provider regularly contracts with other businesses.

- Specifies that a contract with a business service provider must include the payment amount, rate of pay, and the due date for the payment.

- Allows a residence to qualify as the separate business location of the business service provider.

- Previously, AB 5 required that the business service provider "*actually*" contract with other businesses and provide similar services. AB 2257 changes this requirement to "*can*" contract with other businesses.

- Clarifies that the business service provider may use proprietary materials of the contracting agency that are necessary to perform the services of the contract.

AB 2257 also amends the requirements for several other *Borello* exemptions AB 5 created for specific professions and occupations, and created several additional occupation-specific *Borello* exemptions. For example, AB 2257 exempts individuals who provide underwriting inspections and other services for the insurance industry, a manufactured housing salesperson, people engaged by an international exchange visitor program, consulting services, animal services, competition judges, licensed landscape architects, specialized performers teaching master classes, registered professional foresters, real estate appraisers and home inspectors, videographers, photo editors, translators, feedback aggregators, and a variety of occupations in the music industry. It also no longer requires that freelance writers, photographers, and editors limit their work to no more than 35 submissions per year to each putative employer.

Finally, AB 2257 adds several cross-references to the amended "ABC" test to the statutes governing personal income tax and other employment-related taxes.

Even with this clean-up legislation, the application of the more stringent "ABC" test for independent contractors or whether one of the *Borello* exemptions may apply is a very fact-specific analysis. Employers should seek legal counsel to review this law as applied to determining whether an individual is an independent contractor or employee.

(AB 2257 repeals Section 2750.3 of the Labor Code, adds Sections 2775 through 2787 to the Labor Code, amends Sections 17020.12 and 23045.6 of the Revenue and Taxation Code, and adds Sections 18406, 21003.5, and 61001 to the Revenue and Taxation Code.)

LEAVES OF ABSENCE AND BENEFITS

SB 1383/AB 1867 – Expands CFRA Family And Medical Leave To Smaller Employers And Expanding Overall Uses Of CFRA Leave; Creates Small Employer Family Leave Mediation Pilot Program.

SB 1383 significantly expands the California Family Rights Act (CFRA) family and medical leave law under Government Code Section 12945.2 by now applying it to all public sector employers with five or more employees and all public sector employees, adding the ability to care for a serious health condition of more family members, and eliminating other previous restrictions on the use of CFRA leave. By doing so, this means that CFRA will now deviate further from the federal Family Medical Leave Act (FMLA) that it otherwise generally ran concurrently with, and could potentially create entitlements for employees under both laws for up to 24 weeks of protected leave in a 12-month period under certain circumstances.

CFRA Leave is Now Applicable to All Employees Who Work for a Public Employer with Five or More Employees

Currently, CFRA applies to all public agencies. However, an employee could only qualify to take CFRA leave if their worksite had 50 or more employees in a 75-mile radius. As a result, only those public agencies, including school districts, county offices of education, charter schools, or community college districts, or California State Universities with 50 or more employees in a 75-mile radius would have employees who could qualify for CFRA leave. This matched the FMLA standard, which uses the same definitions.

SB 1383 eliminates the 50 or more employees in a 75-mile radius definition for an employee to qualify for CFRA leave. The impact on this for smaller public education employers with less than 50 employees is that they now must provide CFRA leave to all of their qualified employees. A public employee now only has to meet the following criteria in order to qualify for CFRA leave:

- Worked for the employer for at least 12 months of service (can be nonconsecutive work for employer over a 7-year period, except that any military leave time while employed counts towards this 12 months of service); and
- Worked at least 1,250 hours in the 12-month period prior to taking CFRA leave.

Therefore, any public education employer with less than 49 employees who were not previously covered under CFRA are now covered once this law becomes effective on January 1, 2021 and will have to provide qualified employees the following leave entitlements:

- Up to 12 weeks of unpaid family and medical leave for qualifying purposes in a 12-month period;
- Continuation of health insurance benefits at the same level as if the employee had been continuously employed during the CFRA leave; and
- Right to reinstatement to the employee's same or comparable job position to the extent that the employee would have remained in that position if they had been continuously employed during the CFRA leave.

Because of SB 1383's expansion of CFRA leave to all public sector employers, SB 1383 repealed the existing New Parent Leave Act (NPLA) that became law in 2018 and provided CFRA-like bonding leave rights to smaller employers with 20-49 employees under Government Code Section 12945.6, as it is no longer needed.

While the federal FMLA remains unchanged and still does not apply to smaller private employers and public agencies with less than 50 employees, CFRA leave will now apply to those agencies effective January 1, 2021.

Expanded Uses of CFRA Leave

The other major impact of SB 1383 that is applicable to all employers – including those that have already been covered under CFRA – is the expansion of the types of leave that employees can use under CFRA.

SB 1383 expanded CFRA leave to care for a family member with a serious health condition to include more family members of the qualified employee. Covered family members now include *grandparent, grandchild, and sibling* – in addition to the existing parent, child, spouse, or registered domestic partner. This brings CFRA in line with both California's Paid Sick Leave Law (Labor Code Sections 245, *et. seq.* – effective January 1, 2015) and the revisions to California's Family Sick Leave law (Labor Code Section 233 – effective January 1, 2016), which already includes these family members. However, this

change also expands CFRA's deviation from the FMLA, which does not cover leave to care for a grandparent, grandchild, sibling, or registered domestic partner.

In an interesting twist, SB 1383 also adds a definition of "parent-in-law" to CFRA, but does not reference the term anywhere else in the statute and therefore does not actually provide an employee a new right to take CFRA leave to care for the serious health condition of a parent-in-law. It is unclear at this time if future legislation may expand CFRA leave to also cover an employee taking leave to care for a parent-in-law with a serious health condition.

In addition, SB 1383 eliminates the previous restrictions under CFRA, which indicated that an employee could not take leave to care for their adult child over 18 years of age with a serious health condition unless that child was incapable of self-care because of a physical or mental disability. This restriction had mirrored the FMLA's definition of "child," but now will deviate from that FMLA standard and allow a qualified employee to take CFRA leave to care for an adult child who has a serious health condition.

In a move that now brings CFRA more in line with FMLA, SB 1383 also is adding "qualifying exigency" leave related to the covered active duty or call to covered active duty for an employee's spouse, registered domestic partner, child, or parent in the United States Armed Forces. This generally mirrors the FMLA's "qualifying exigency" family military leave that was added in 2008, and only slightly expands it beyond the FMLA to also include an employee's registered domestic partner who is in the United States Armed Forces.

With SB 1383's new additions to CFRA leave use, a qualified employee can take CFRA leave for one of the following reasons (with the new additions in **bold text**):

- Leave for reason of the birth of a child of the employee or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee;
- Leave to care for a child (**including an adult child over 18 years of age**), parent, **grandparent, grandchild, sibling**, spouse, or registered domestic partner who has a serious health condition;
- Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions; or
- **Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, registered domestic partner, child, or parent in the United States Armed Forces.**

The result is that CFRA qualified employees will now have the ability to use CFRA leave for more reasons, including some that will not run concurrently with FMLA.

Other Significant Changes to CFRA

SB 1383 also makes two additional significant changes to the terms and conditions of CFRA leave that also deviate from the FMLA:

- Eliminates the existing restriction in CFRA that allows an employer who employs both ***parents*** to limit their total amount of CFRA leave for both individuals to a total of 12 weeks for bonding with a newborn child, adopted child or foster care placement. The FMLA has a similar provision allowing such a limitation of a total of 12-weeks for bonding leave where both ***spouses*** are employed by the same employer. Because of this change, where both parents are employed by the same employer and take CFRA bonding leave, they are now both entitled to a total of 12 weeks individually for such leave.
- Eliminates the "key employee" exception to an employee's right to reinstatement. Currently under CFRA (which mirrors the FMLA), there is a very limited "key employee" exemption that allows an employer the ability to deny reinstatement to an employee who takes CFRA leave where the employee is among the highest paid 10% of the employer's employees, the denial is necessary to prevent substantial and grievous economic injury to the operations of the employer, and where the employer notifies the employee of its intent to deny reinstatement. SB 1383 now eliminates this limited "key employee" exemption and requires an employer to provide a right to reinstatement to all employees. Following this change, the only other permissible defenses for an employer to deny a right to reinstatement is where the employee's employment would have otherwise ceased or been modified independent of the CFRA leave (*e.g.*, layoff, reduction in hours or disciplinary action unrelated to CFRA leave), or where the employee fraudulently took CFRA leave when they did not otherwise qualify for the leave. The burden is on the employer to establish both such defenses.

Small Employer Family Leave Mediation Pilot Program (AB 1867)

In a companion budget trailer bill to SB 1383, AB 1867 establishes a small employer family leave mediation program, for employers between 5 and 19 employees. This pilot program would allow a defined small employer or employee who is newly covered under the expanded CFRA to request mediation to resolve an alleged CFRA violation within 30 days of receipt of a right-to-sue notice based on such violation. If an employer or employee requests mediation, the employee is prohibited from pursuing a civil action until the mediation is complete. In exchange, the employee's statute of limitation on claims will be tolled until the mediation is complete.

This provision of AB 1867 will take effect when SB 1383 does on January 1, 2021, and will automatically sunset on January 1, 2024.

Impacts of SB 1383's Changes to CFRA on Its Interaction with FMLA

Because SB 1383 makes significant changes to CFRA, a number of these changes also create a greater potential for an employee who is covered under both FMLA and CFRA to have their leaves not run concurrently, and therefore be entitled to a greater amount of protected leave.

With SB 1383's changes, an employee's CFRA leave does not run concurrently with FMLA under the following circumstances (with the expanded reasons in **bold text**):

- Leave due to pregnancy related conditions – *which is considered a "serious health condition" under FMLA* – is generally not considered a "serious health condition" under CFRA unless the employee has already exhausted their separate Pregnancy Disability Leave (PDL) entitlement under California Government Code Section 12945;

- Leave to care for a serious health condition of a registered domestic partner, **adult child who is not incapable of self-care, grandparent, grandchild, or sibling;**

- **Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's registered domestic partner in the United States Armed Forces**; and

- Leave to care for an employee's parent, child, spouse or "next of kin" who is a covered servicemember with a serious injury or illness for up to 26 weeks under FMLA *(although, CFRA leave may run up to 12 weeks to the extent such leave also qualifies as leave to care for a parent, child or spouse with a serious health condition).*

The impact of these expanded leave areas where CFRA leave does not run concurrently with FMLA is that a qualified employee may be therefore be able to receive up to 12 weeks of CFRA leave and a separate 12 weeks of FMLA leave – *for a total of 24 weeks of protected leave* – in a 12-month period. For example, if a qualified employee takes 12 weeks of CFRA leave to care for a grandchild with a serious health condition (something that is not covered under FMLA), that employee would then still have 12 weeks of FMLA leave available in the relevant 12-month period. As a result, SB 1383 will create more scenarios where an employee can be out on a protected unpaid leave of absence with continued health insurance benefits and a guaranteed right to reinstatement for up to 24 weeks in a 12-month period.

Employer Preparations for SB 1383

Because SB 1383 is not effective until January 1, 2021, employers do have some time to prepare for its changes. Here are some suggested preparations that employees should make:

- For smaller public education employers with fewer than 50 employees who have not been previously covered under CFRA, it is important to modify existing policies and procedures to provide for CFRA leaves of absence. CFRA is a very complex law and there are a number of specific issues such as application of accrued paid leaves, concurrent use of SDI/PFL benefits, medical certifications, and specific employee notice requirements that must be properly implemented. Public education employers should train supervisors and Human Resources staff on the application of CFRA leaves and applicable forms and procedures should be implemented so the public education employer is prepared to provide CFRA leaves to qualified employees upon the implementation of this new law.

- For larger employers with 50 or more employees who have already been covered under CFRA (and FMLA), employers should make revisions to existing FMLA/CFRA leave policies to incorporate these revisions to CFRA. In addition, employers should examine how they track FMLA and CFRA leaves to ensure they properly track when such leaves run concurrently or separately, as referenced above. Public education employers should also train supervisors and Human Resources staff on the changes to CFRA and the new qualifying uses of the leave.

It is also important to note that the existing CFRA regulations promulgated by the Department of Fair Employment and Housing (DFEH) (Cal. Code Regs., tit. 2, §§ 11087-11097) interpret the existing CFRA law and contain Sections that are inconsistent with the changes made under SB 1383. Until the DFEH's Fair Employment and Housing Council can propose and implement revisions to these regulations in accordance with the changes made by SB 1383, employers should be cautious in their reliance on the regulations and seek legal counsel to ensure compliance with the law.

(SB 1383 amends Sections 12945.2 and 12945.6 of the Government Code. AB 1867 adds Section 12945.21 to the Government Code.)

AB 2017 – Clarifies That The Designation Of Sick Leave As Protected Sick Leave Under Labor Code 233 Is Solely At The Employee's Discretion.

Prior to 2016, Labor Code Section 233 provided employees an entitlement and protection to use accrued and available sick leave (including paid time off (PTO) leave that can be used for sick leave purposes) in an amount no less than that accrued over a six-month period in a calendar year to care for a parent, child, spouse, or registered domestic partner who was sick. This law was frequently referred to as the "kin care" law.

Following the 2015 implementation of the Paid Sick Leave Law (Labor Code Section 245, *et. seq*.) and its protections for additional sick leave uses (including the employee's own need to use sick leave), the Legislature amended Labor Code Section 233 in 2016 to broaden its protections to any sick leave use covered under the Paid Sick Leave Law. Instead of just being limited to protecting sick leave use to care for a family member who is sick, Section 233 expanded those protections to the following sick leave uses provided in the Paid Sick Leave Law:

- Diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee;
- Diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee's family member (parent, parent-in-law, child, spouse, registered domestic partner, grandparent, grandchild, or sibling); or
- For various specific purposes as provided in Labor Code Sections 230 and 230.1 for an employee who has been the victim of domestic violence, sexual assault, or stalking.

One unintended drawback of this expansion is that the sick leave use now protected under Labor Code Section 233 is not just limited to care for covered family members, as was the case with the prior version of the law. As a result, where the first one-half of an employee's annual sick leave accruals (e.g., first 48 hours of sick leave where 96 hours are accrued annually) used were protected under Section 233, if such protected sick leave was used for the employee's own need for sick leave, any additional sick leave used later in the calendar year to care for a covered family member would be technically unprotected.

To address this issue, AB 2017 amends Labor Code Section 233 to allow employees the sole discretion to specify whether to designate used sick leave as being taken for one of these protected reasons under the law. For example, an employee can now indicate that sick leave taken for their own illness not count towards the one-half of their annual sick leave accruals protected under Labor Code Section 233, so the employee can then have such protected sick leave available later for other purposes. In such circumstances, any sick leave not designated by an employee for protection under Labor Code Section 233 would then be technically unprotected and subject to the impacts of an employee's absenteeism policies and procedures.

Employers should review and revise their sick leave policies to determine how they apply the protections of Labor Code Section 233 towards an employee's sick leave use during a calendar year to incorporate the new ability for an employee to designate such sick leave use as protected under this law. In addition, employers should also implement sick leave tracking procedures to better differentiate between an employee's sick leave use that is designated as protected under Labor Code Section 233 versus any such other sick leave used by the employee.

(AB 2017 amends Section 233 of the Labor Code.)

AB 2399 – Makes Technical And Clarifying Changes To Paid Family Leave Provisions For Qualifying Exigence Leave Related To Active Duty Military Service.

In 2018, the Governor signed SB 1123 into law and expanded California's Paid Family Leave (PFL) wage replacement benefits program administered by the EDD to also provide benefits to include time off to participate in a "qualifying exigency" related to covered active duty or a call to covered active duty for an individual's spouse, domestic partner, child, or parent in the Armed Forces of the United States. "Qualifying exigency" leave is one of the leave of absence entitlements already made available to covered employees under the federal Family and Medical Leave Act (FMLA). AB 2399 makes several technical and clarifying amendments to this law, including the addition of a list of "qualifying exigencies"

and definitions of covered military members who would create a "qualifying exigency" to qualify an employee for PFL benefits.

It is important to remember that PFL is not an actual leave of absence entitlement, but rather a wage replacement benefit that covered employees can use while out of work for a specified reason. As applied to "qualifying exigency" leaves of absence, any such leave of absence entitlement would be covered under FMLA or the California Family Rights Act (CFRA) [as revised by SB 1383]. In addition, public employers are excluded by default from PFL, but can opt-in either as a full employer or by bargaining unit. Therefore, these PFL benefits are only provided to employees whose public education employer have opted into the PFL program.

(AB 2399 amends Sections 3302 and 3307 of the Unemployment Insurance Code.)

AB 2992 – Expands Labor Code Sections 230 and 230.1 Protections For Any Employee Who Is A Victim Of A Crime, Or Whose Immediate Family Member Died As A Direct Result Of Crime.

Currently, Labor Code Section 230 prohibits employers from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking, to allow employees to take time off to obtain legal relief to help ensure their health, safety, and welfare, or that of their child. For employers with 25 or more employees, Labor Code Section 230.1 also currently extends these leave protections for several additional specified purposes directly relating to an incident of domestic violence, sexual assault, or stalking, including seeking medical attention, psychological counseling, or certain social services. In addition, California's Paid Sick Leave Law (Labor Code, §§ 245, *et. seq*.) also allows for the use of paid sick leave for victims of domestic violence, sexual assault, or stalking for the reasons noted in Labor Code Sections 230 and 230.1.

AB 2992 now extends eligibility for these protections under Labor Code Sections 230 and 230.1 to a broader category of employees who are a "victim," defined as:

- A victim of stalking, domestic violence, or sexual assault;
- A victim of a crime that caused physical injury, or that caused mental injury and a threat of physical injury;
- A person whose immediate family member is deceased as the direct result of a crime.

The bill also makes corresponding changes to the types of counseling and social services that are eligible for leave protection. The bill does not, however, provide a clear definition of when a family member's death is the "*direct result of a crime*."

In an interesting twist, AB 2992 did not amend the provisions of the Paid Sick Leave Law to use the expanded definition of "victim" for paid sick leave purposes. Accordingly, only victims of domestic violence, sexual assault, or stalking are entitled to use statutory paid sick leave for the purposes set forth in Labor Code Sections 230 and 230.1. However, Labor Code Section 230.2 does allow a victim or an immediate family member of a victim of a serious or violent felony to use sick leave to attend judicial proceedings related to that crime. For other crime victims, employers can likely require that leave taken for these purposes is unpaid if the employee does not have other paid leave available.

Employers should review and revise their policies and procedures to incorporate this expanded definition of "victim" for purposes of Labor Code Section 230 and 230.1 and ensure that supervisors and managers are aware of these expanded protections for employees.

(AB 2992 amends Sections 230 and 230.1 of the Labor Code.)

PUBLIC SAFETY

AB 846 – Amends Peace Officer Screening Standards And Job Descriptions To Eliminate Bias And Emphasize Community Policing.

AB 846 is a police reform bill that broadens the minimum standards for peace officers to screen for an applicant's biases during the hiring process. In addition, AB 846 requires law enforcement departments, including campus police departments that employ sworn officers, to review and revise peace officer job descriptions and law enforcement recruiting practices to emphasize community-oriented policing.

Under Government Code Section 1031, peace officers are required to meet certain minimum standards, including undergoing an evaluation that finds them to be free from any physical, emotional or mental condition that might adversely affect their exercise of peace officer powers. AB 846 amended Section 1031 to specify that a disqualifying condition includes any bias based on race or ethnicity, gender, nationality, religion, disability, or sexual orientation.

The bill also requires the Commission on Peace Officer Standards and Training (POST) to study and update its regulations and associated peace officer screening materials by January 1, 2022 to incorporate the identification of explicit and implicit bias based on race

or ethnicity, gender, nationality, religion, disability, or sexual orientation.

In addition, AB 846 requires every law enforcement agency, including those that are part of a school district, community college district, California State University, or University of California that employs peace officers to review their job descriptions used in the recruitment and hiring of peace officers to make changes to emphasize community-based policing, community interaction, and collaborative problem solving, while de-emphasizing the paramilitary aspects of the job. However, the bill clarifies that this provision does not alter the job duties of peace officers.

In response to AB 846, public educational institutions with police departments should begin reviewing their peace officer hiring procedures and look for further guidance from POST to incorporate these new prohibitions on explicit and implicit biases. In addition, public educational institutions that have police departments should review and revise their peace officer job descriptions to incorporate community-based policing, community interaction, and collaborative problem solving.

(AB 846 amends Section 1031 of the Government Code, adds Section 1031.3 to the Government Code, and adds Section 13651 to the Penal Code.)

AB 1196 – Prohibits The Use By Peace Officers Of Any Choke Hold Or Carotid Restraint.

In another police reform bill, AB 1196 eliminates the use of any choke hold or carotid restraint technique by law enforcement. The bill prohibits any state or local law enforcement agency, including campus police, from authorizing the use of a carotid restraint or choke hold by any peace officer employed by that agency. The bill defines a choke hold as any defensive tactic or force option involving direct pressure applied to a person's trachea. It also defines a "carotid restraint" as any restraint, hold, or other defensive tactic that applies pressure to the sides of a person's neck in order to subdue or control that person, that involves a substantial risk of restricting blood flow, and that may render the person unconscious.

While a number of law enforcement agencies have already prohibited the use of these techniques, AB 1196 now creates a uniform statewide policy that will become effective on January 1, 2021. Public educational institutions with police departments that have not yet prohibited their peace officer from using the choke hold or carotid restraint should take action to implement this prohibition in order to comply with this new law.

(AB 1196 adds Section 7286.5 to the Government Code.)

AB 1506 – Requires Attorney General To Investigate Officer-Involved Shootings That Result In The Death Of An Unarmed Civilian, And Establishes A Police Practices Division Within The State DOJ To Review Law Enforcement Agencies' Use-Of-Force Policies On Request.

Enacted as another police reform bill in response to several highly publicized incidents involving the use of deadly force by law enforcement officers, AB 1506 increases the level of the California Attorney General's oversight over local law enforcement's use of deadly force, and does so in two distinct ways.

Currently, the Attorney General has discretionary authority to conduct investigations of officer-involved shootings. Now, AB 1506 requires a state prosecutor from the Attorney General's office to investigate any incidents where an officer-involved shooting resulted in the death of an unarmed civilian – defined as any person not in possession of a deadly weapon. AB 1506 authorizes the assigned state prosecutor to do the following as part of their investigation:

- Investigate and gather facts related to the officer-involved shooting;
- Prepare and submit a written report that must include a statement of facts, a detailed analysis and conclusion for each issue under investigation, and – if applicable – recommendations to modify the policies and practices of the law enforcement agency in question; and
- Initiate and prosecute a criminal action against the officer if criminal charges are warranted.

The bill also requires the Attorney General to maintain a public website where these officer-involved shooting investigations are posted, subject to redaction for information that is required by law to be kept confidential.

Beginning July 1, 2023, AB 1506 also requires the Attorney General to operate a Police Practices Division within the Department of Justice. The purpose of this new Division is to review a local law enforcement agency's policies regarding the use of deadly force upon request of the agency. As part of the Division's review, it will make specific and customized policy recommendations based on recommended best practices to the local law enforcement agency, including campus police.

As an important note, AB 1506 indicates that the Attorney General is required to implement this new law "*subject to an appropriation for this purpose by the Legislature*." The significance of this bill language is

that the Attorney General is not yet technically required to implement this new law until the Legislature can appropriate the funding to do so – something that has not yet happened. As a result, the implementation of this new law may be delayed until the Legislature provides for the necessary appropriation of funding.

(AB 1506 adds Section 12525.3 to the Government Code.)

AB 1945 – Defines "First Responder" For Purposes Of The California Emergency Services Act.

AB 1945 amends the California Emergency Services Act (CESA) to add a formal definition of "first responder" for purposes of this law, and includes public safety dispatchers and telecommunicators in that definition. AB 1945 provides that, for purposes of the CESA, a "first responder" is any employee of a state or local public agency who provides emergency response services, including any peace officer, firefighter, paramedic, emergency medical technician, public safety dispatcher, or public safety telecommunicator.

However, the application of this definition of "first responder" is limited only in application to CESA. The bill expressly specifies that the designation of these professions as "first responders" does not by itself confer any rights to public safety retirement benefits. In a similar fashion, AB 1945 does not modify workers compensation benefits for safety employees (*e.g.*, Labor Code Section 4850), nor does it affect federal wage and hour laws (*e.g.*, FLSA) for safety employees.

(AB 1945 adds Section 8562 to the Government Code.)

AB 2655 – Prohibits "First Responders" From Photographing A Deceased Person At The Scene Of An Accident Or Crime Except For Official Purposes.

AB 2655 makes it a criminal misdemeanor for a first responder who responds to the scene of an accident or crime to take photographs of a deceased person by any means, including either a personal electronic device or one belonging to the employing agency, except if the picture is taken for an official law enforcement purpose or to advance a genuine public interest. The bill makes this offense punishable by a fine of up to $1,000.

AB 2655 was drafted in response to reports that some first responders who responded to the death of former NBA player Kobe Bryant inappropriately circulated images of the scene for personal reasons. The bill was therefore enacted to protect the privacy of mourning families, the dignity of the deceased, and the public trust in first responders.

For purposes of this new law, a "first responder" is defined as a state or local peace officer, firefighter, paramedic, emergency medical technician, rescue service personnel, emergency manager, coroner, or employee of a coroner. The bill also requires that any agency that employs first responders must notify its employees of this prohibition on January 1, 2021.

To assist law enforcement agencies in reviewing a first responder's personal electronic device as part of a criminal investigation of this new law, AB 2655 also allows law enforcement to get a search warrant to seize property or items that contain evidence that a violation of this prohibition has occurred. However, the ability to obtain such a search warrant is limited only to a criminal investigation under this law and does not allow law enforcement to search for or seize evidence for only departmental policy violations.

In preparation for the implementation of AB 2655, law enforcement agencies need to notify their first responders of this new prohibition.

(AB 2655 adds Section 647.9 to and amends Section 1524 of the Penal Code.)

SB 480 – Prohibits Law Enforcement From Wearing Uniforms Resembling Military Uniforms.

SB 480 prohibits any department or agency, including public educational agencies, other than the Department of Fish and Wildlife that employs peace officers from authorizing or allowing its employees to wear any uniform that is "substantially similar" to a uniform used by the armed forces or a state militia.

Under the bill, a uniform is "substantially similar" to a uniform used by the armed forces or a state militia, and therefore prohibited, if it resembles an official uniform of the United States Armed Forces or a state active militia closely enough that an ordinary person might believe the person wearing the uniform is a member of the armed forces or state militia.

However, a uniform is not "substantially similar" to a uniform used by the armed forces or a state militia if it includes at least two of three specified components:

1. A badge or star (or a facsimile thereof) mounted on the chest area;

2. A patch on one or both sleeves displaying the insignia of the employing public educational institution; and
3. The word "Police" or "Sheriff" prominently displayed across the back or chest area of the uniform.

Separately, SB 480 also prohibits law enforcement agencies from authorizing or allowing employees to wear a uniform made with a camouflage print or pattern.

The bill specifies that the prohibitions apply to any personnel who are assigned to uniformed patrol, uniformed crime suppression, or uniformed duty at any event – including protests and demonstrations, or similar disturbances.

However, these prohibitions do not apply to members of a Special Weapons and Tactics (SWAT) team, sniper team, or tactical team when engaged in a tactical response or operation.
Law enforcement agencies should review their current peace officer uniforms and make necessary adjustments to ensure compliance with these new requirements.

(SB 480 adds Section 13655 to the Penal Code.)

RETIREMENT

AB 2101 – Amends County Employees' Retirement Law To Allow Purchased Service Credit After Parental Leave And Military Leave And Require Service Reinstatement For Terminated Employees Who Win Reinstatement On Appeal.

AB 2101 is an omnibus clean-up bill relating to the Public Employees' Retirement Law (PERL), and the Teachers' Retirement Law (TRL).

AB 2101 makes numerous technical and conforming changes to the PERL and TRL it substantively amends the TRL in the following areas:

1. Previously, a STRS member was required to file an election with another public retirement system if the member took a position that provided a defined benefit in another public retirement system and wanted to continue deferred benefit coverage in STRS. This bill removes that requirement and requires the employer to retain a copy of the election form.

2. This bill includes as creditable service activities performed by an audiometrist who holds a certificate of registration issued by the State Department of Health Care Services.

3. This bill changes the definition for "leave of absence" for purposes of the TRL to include an employer-approved compensated leave taken on or after January 1, 2016, that is otherwise excluded from the definition of leave of absence. The bill requires that remuneration that is paid for an employer-approved compensated leave be creditable compensation.

4. This bill defines sick leave as the number of days of accumulated and unused leave of absence for illness or injury granted by each employer. It also defines basic sick leave to include the days of paid leave of absence due to illness or injury granted by each employer, not to exceed 12 days per school year. The bill provides that a member is prohibited from receiving service credit for accumulated, unused sick leave that the member receives service credit for in another public retirement system. The bill grants an elected officer of an employee organization on a compensated leave of absence STRS benefits that the member would otherwise have received.

5. This bill requires a termination benefit under the Defined Benefit Supplement Program and Cash Benefit Balance Program to be payable 180 calendar days after the member terminates employment.

6. This bill requires penalties and interest overpaid to STRS to be considered additional contributions and to be treated the same as other STRS contributions.

(AB 2101 amends Sections 22106.2, 22119.5, 22144.3, 22156.1, 22170.5, 22501, 22509, 22711, 22714, 22717, 22718, 24204, 25025, 26113, 26801, 26803, 26804, 26808, 26810, and 27204 of, adds Sections 23011 and 26303.7 to, and repeals Section 22151 of the Education Code. It also amends Sections 20230, 20731, 22772, 22960.95, 22970.85, 31465, 31627.1, 31627.2, 31631.5, 31641.45, 31646, 31662.2, 31670, 31672, 31672.1, 31672.2, 31672.3, 31706, 31760.1, 31760.2, 31765, 31765.1, 31776.3, 31781.1, 31781.2, 31785, 31785.1, 31786, 31786.1, 31787, 31787.5, 31855.3, and 75088.3 of, adds Sections 31454.7 and 31680.10 to, repeals Sections 31649.5, 31649.6, 31650, and 31651 of, and repeals and adds Section 31649 of the Government Code.)

AB 2967 – Prohibits Public Agencies Grom Amending Their Contract With CalPERS To Selectively Exclude Groups Of Employees.

Under existing law, a public education employer that has a contract with the California Public Employees' Retirement System (CalPERS) to provide retirement benefits is generally required to cover all its employees under the contract, except for employees who are excluded from CalPERS membership by law, or groups of employees that CalPERS agrees to exclude. Current law allows an agency to seek a contract amendment to exclude specific groups of future employees.

AB 2967 was enacted in response to a city in California that recently withdrew from a regional firefighting authority and decided instead to re-establish its own fire department in an effort to save costs. As part of those cost-saving measures, it sought to save of pension costs by excluding its new firefighters from the City's CalPERS contract and instead providing them with a defined contribution plan instead.

In an effort to prevent CalPERS agencies from taking such action in the future, AB 2967 restricts member agencies' ability to selectively exclude groups of employees in any contract entered into, amended, or extended on or after January 1, 2021.

The bill replaces a provision of the Public Employees' Retirement Law that allowed agencies to exclude groups of future employees from CalPERS membership by way of a contract amendment with an explicit prohibition on doing so. However, it clarifies that where a contract already excludes groups of employees, an amendment that enumerates or clarifies that exclusion without expanding it is not prohibited. AB 2967 also adds a provision expressly stating that membership is compulsory for all employees included under a contract.

This bill does not contain provisions applicable to CalPERS.

(AB 2967 amends Sections 20460 and 20502 of the Government Code.)

TEMPORARY EMPLOYEES

AB 3374 – Clarifies Temporary Employee Exception For Nursing Faculty.

The Education Code classifies any person employed to teach adult or community college classes for not more than 67% of the hours per week considered a full-time assignment for regular employees having comparable duties, as a temporary employee. Community colleges may not employ these employees for more than two semesters or three quarters in any three consecutive academic years. Prior to AB 3374, community college districts could hire full-time or part-time clinical nursing faculty as temporary employees for up to four semesters or six quarters.

AB 3374 clarifies the requirement to employ clinical nursing faculty as temporary employees. Community college districts may employee full-time or part-time nursing faculty as temporary employees for only up to four semesters or six quarters **within any period of three consecutive years**. Previously, the law did not contain the limitation of "within any period of three consecutive years."

AB 3374 also makes technical changes to Education Code Section 87786, revising "his or her" to "their" or "the employee."

(AB 3374 amends Sections 66022.5, 87482, 87786, 88810, 94923 of the Education Code.)

UNEMPLOYMENT INSURANCE

AB 1731 – Temporarily Streamlines Application Process For Employers To Participate In The Unemployment Insurance Work Sharing Program (Urgency Bill Effective Immediately On September 28, 2020).

Currently, employers who are facing an economic downturn have the option to participate in the Employment Development Department's (EDD) Unemployment Insurance Work Sharing program as a temporary alternative to layoffs. The work sharing program allows an employer to reduce an employee's hours in lieu of layoff and allow the employee to receive partial unemployment benefits, even if the reduction of hours and compensation would not otherwise make them eligible for such benefits. However, this EDD program is not frequently used by employers because the application process can be administratively burdensome by requiring the submission of a detailed written plan to the EDD that can then take several days to be approved.

In response to the economic uncertainty following the COVID-19 pandemic, the Legislature enacted AB 1731 to minimize the risk of widespread layoffs and increase the use of this work sharing program by streamlining the application process. AB 1731 automatically deems any work sharing plan application submitted by eligible employers between September 15, 2020, and September 1, 2023 approved for one year unless the employer requested a shorter plan.

As an urgency bill, AB 1731 became effective immediately upon Governor Newsom signing it into law on September 28, 2020.

(AB 1731 amends Section 1279.5 of and adds Sections 1279.6 and 1279.7 to the Unemployment Insurance Code.)

WAGE AND HOUR / WHISTLEBLOWER CLAIMS

AB 1947 – Extends Deadline On Claims Before The Labor Commissioner To One Year, And Provides Attorneys' Fees In Successful Labor Code Section 1102.5 Whistleblower Retaliation Proceedings.

Currently, any person who has a claim against an employer under the Labor Code that is under the jurisdiction of the Division of Labor Standards Enforcement (DLSE or Labor Commissioner) has six months from the occurrence of the violation to file the claim. AB 1947 now extends the deadline for filing a complaint from six months to **one year** from the occurrence of the violation. This change may have minimal impact on school districts, county offices of education, charter schools, community college districts, California State Universities, or the University of California because many provisions of the Labor Code do not apply to them. Nonetheless, for those more limited claims under the Labor Code that the Labor Commissioner does have jurisdiction over public education employers, the impact of this change is that current and former employees will now have more time to file any such applicable claims.

AB 1947 also adds a provision to Labor Code Section 1102.5 that authorizes courts to award reasonable attorney's fees to a plaintiff who brings a successful action for a violation of that law's "whistleblower" protections that prohibit an employer from retaliating against an employee who discloses suspected violations of law to a government or law enforcement agency.

(AB 1947 amends Sections 98.7 and 1102.5 of the Labor Code.)

SB 1384 – Authorizes The Labor Commissioner To Represent Claimants Who Are Financially Unable To Afford Legal Counsel In Arbitration Proceedings Arising From Claims Within The Commissioner's Jurisdiction.

Currently, in a superior court proceeding challenging a Labor Commissioner decision, the Labor Commissioner has discretion to represent a claimant who is unable to afford their own counsel and has requested such representation. In addition, if the claimant is only seeking to uphold an amount awarded by the Labor Commissioner and is not objecting to any part of the Commissioner's order, the Labor Commissioner must represent the claimant in the superior court proceeding.

SB 1384 now expands the Labor Commissioner's discretion to represent a claimant who is unable to afford their own counsel to also include arbitration proceedings that are applicable to the claim in lieu of a judicial forum. In addition, SB 1384 also provides that any claimant who is unable afford legal counsel and has a claim normally adjudicated by the Commissioner that is now subject to arbitration to have the Labor Commissioner represent them in the arbitration. In such cases, the Labor Commissioner, upon request, must represent such a claimant who is unable to afford counsel if the Labor Commissioner determines that the claim has merit, after conducting an informal investigation.

Finally, SB 1384 requires that a party filing any petition to compel arbitration of a claim pending before the Labor Commissioner serve the petition on the Labor Commissioner. The bill then gives the Labor Commissioner the authority to represent the claimant in any arbitration proceeding to determine the enforceability of the arbitration agreement.

While the impact of this bill may be minimal to public education employers based on the Labor Commissioner's limited jurisdiction over public employee claims, this could still apply to employees unable to afford legal counsel who do have a valid claim and are subject to a mandatory arbitration agreement of such claims.

(SB 1384 amends Section 98.4 of the Labor Code.)

COVID-19 RELATED LEGISLATION

AB 276 – Conforms State Law To Federal CARES Act Increase On The Amount That May Be Borrowed Against A Qualified Employer Retirement Plan Without An Adverse Tax Penalty.

This bill brings California's tax treatment of retirement account loans in line with the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act was an economic relief package passed by Congress and signed into law by President Trump in March. The economic relief package includes many provisions to help Americans with the economic impacts of the COVID-19 pandemic. One such provision allows qualified borrowers impacted by COVID-19, to borrow up to $100,000 from qualified employer retirement plans (such as 401(k), 403(b), 457(b) or 401(a) plans), without facing a federal income tax penalty. This is an increase from the standard limit of $50,000. This bill applies these same rules to California's personal income tax laws, allowing qualified borrowers impacted by COVID-19 to borrow

up to $100,000 from a qualified employer retirement plans without facing an adverse tax penalty under *state* law.

(AB 276 amends Section 17085 of the Revenue and Taxation Code.)

AB 685 – Expands Cal/OSHA Enforcement Powers And Enacts Stricter Health And Safety Rules Relating To COVID-19.

In response to the COVID-19 pandemic and its impact on maintaining a safe workplace, AB 685 amended the Labor Code in several areas to require employers to adhere to stricter occupational health and safety rules and empowers Cal/OSHA with expanded enforcement powers to address such standards as follows.

New COVID-19 Employer Notice and Reporting Requirements

AB 685 requires employers to comply with certain reporting requirements and provide the following four notices related to potential COVID-19 exposures in the workplace **within one business day** of being informed of the potential exposure:

1. New COVID-19 Employer Notice and Reporting Requirements

If an employer or the employer's representative receives a notice of a potential exposure to COVID-19 in the workplace by a "qualifying individual," the employer must provide a written notice to all employees, and to the employers of subcontracted employees, who were present at the same worksite within the infectious period (as defined by the State Department of Public Health), stating that they may have been exposed to COVID-19.

For purposes of this requirement, a "*qualifying individual*" means a person who can establish any of the following requirements:

- The individual has a laboratory-confirmed case of COVID-19;
- The individual has a positive COVID-19 diagnosis from a licensed health care provider;
- The individual is subject to a COVID-19 related isolation order issued by a public health official; or
- The individual has died due to COVID-19, as determined by the County public health department.

The notice must be sent in a manner the employer normally uses to communicate employment-related information. This can include personal service, email, or text message so long as it can be reasonably anticipated that employees will receive notice within the one business day requirement. The notice must be in both English and the language understood by the majority of employees.

2. Potential COVID-19 Exposure Notice to Exclusive Representative of Represented Employees

If the affected employees who are required to receive the COVID-19 exposure notice include represented employees, the employer must send the same notice to the exclusive representative of any affected bargaining unit.

3. Notice of COVID-19 Related Benefits and Employee Protections

An employer must also provide all affected employees and the exclusive representative, if any, with information regarding any COVID-19-related benefits or leave rights under federal, state, and local laws, or pursuant to employer policy, as well as the employee's protections against retaliation and discrimination.

4. Notice of Safety Plan in Response to Potential COVID-19 Exposure

Finally, the employer must notify all employees, the employers of subcontracted employees, and any exclusive representative, of the employer's plans for implementing and completing a disinfection and safety plan pursuant to guidelines issued by the federal Centers for Disease Control.

Failure to comply with these four requirements may subject the employer to a civil penalty. AB 685 also prohibits employers from requiring employees to disclose medical information except as required by law, and prohibits employers from retaliating against an employee for disclosing a qualifying case of COVID-19.

In addition, where employers are notified of a number of cases that meet the definition of a COVID-19 "outbreak" as defined by the California Department of Public Health (CDPH), the employer must also notify the applicable local public health agency within 48 hours of the names, number, occupation, and worksite of any "qualifying individuals" related to the "outbreak."

An "outbreak" is currently defined by CDPH as "three or more laboratory-confirmed cases of COVID-19 within a two-week period among employees who live in different households." (See CDPH's "COVID-19

Employer Playbook – Supporting a Safer Environment for Workers and Customers – available online at https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf.)

CDPH is also required to make workplace statistics received from local health departments under this provision – other than personally identifiable employee information – available on its website, such that members of the public can track the number of cases and outbreaks by industry.

These new COVID-19 notice and reporting requirements apply to all private and public employers, with two exceptions:

1. Health facilities, as defined in Section 1250 of the Health and Safety Code, are exempt from reporting an "outbreak" within 48 hours as described above;

2. The notice requirements do not apply to exposures by employees whose regular duties include COVID-19 testing or screening or who provide patient care to individuals who are known or suspected to have COVID-19, unless the "qualifying individual" is also an employee at the same worksite.

Cal/OSHA Will Be Authorized to Shut Down A Workplace, Operation, or Process that Creates an Imminent Hazard Due To COVID-19 Exposure Risk

Under current law, whenever Cal/OSHA finds that a place of employment or specific equipment in the workplace creates an imminent hazard to employees, Cal/OSHA has the authority to prohibit entry into the affected part of the workplace or to prohibit the use of the dangerous equipment in the workplace.

AB 685 expands and clarifies Cal/OSHA's authority within the context of COVID-19 related issues in the workplace. Under AB 685, if Cal/OSHA finds that a workplace or operation/process within a workplace exposes employees to a risk of COVID-19 infection and thereby creates an imminent hazard to employees, Cal/OSHA now has authority to prohibit entry to the workplace or to the performance of such operation/process. If Cal/OSHA uses its authority to apply such a workplace restriction, it must then provide the employer with notice of the action and post that notice in a conspicuous place at the worksite. Any restrictions imposed by Cal/OSHA must be limited to the immediate area where the imminent hazard exists and must not prohibit any entry into or operation/process within a workplace that does not cause a risk of infection. In addition, Cal/OSHA may not impose restrictions that would materially interrupt "critical government functions" essential to ensuring public health and safety functions, or the delivery of electrical power or water. This expanded authority sunsets on January 1, 2023, and will be repealed automatically on that date unless further extended by the Legislature.

Amends Cal/OSHA Procedures for "Serious Violation" Citations Relating to COVID-19

Currently, before Cal/OSHA can issue a citation to an employer alleging a "serious violation" of occupational safety and health statutes or regulations, it must make a reasonable attempt to determine and consider whether certain mitigating factors were taken by an employer to rebut the potential citation. Cal/OSHA satisfies this requirement by sending an employer a description of the alleged violation at least 15 days before issuing a citation, and provides the employer an opportunity to respond. Even if an employer does not provide information in response to Cal/OSHA's inquiries, an employer is still not precluded from presenting such information at a later hearing to contest the citation.

AB 685 modifies this procedure until January 1, 2023 as applied to serious violation citations Cal/OSHA issues related to COVID-19. For COVID-19-related serious violation citations, Cal/OSHA is not obligated to provide an alleged violation at least 15 days prior to issuing the citation to allow an employer the opportunity to respond and can instead issue the citation immediately. The employer would still be able to contest the citation through the existing Cal/OSHA appeal procedures.

Impact of AB 685 on Employers

Because AB 685 is not effective until January 1, 2021, employers have some time to prepare for its new notice and reporting requirements. Employers should review and revise their existing procedures related to notification of COVID-19 exposures in the workplace in order to ensure they are ready to comply with the new notice and reporting requirements imposed by AB 685 once it becomes effective.

(AB 685 amends Sections 6325 and 6432 of and adds Sections 6325 and 6409.6 to the Labor Code.)

AB 2537 And SB 275 – Impose Requirements On General Acute Care Hospital Employers And Other Healthcare Employers Regarding Personal Protective Equipment.

During the COVID-19 global pandemic, health care facilities in California quickly experienced a severe supply shortage of personal protective equipment (PPE), such as surgical masks, respirators, and eye protection. The resulting shortage led health care employers in some cases to require their employees to ration and even re-use PPE. AB 2537 and SB 275 were enacted to protect

healthcare workers from the spread of infectious diseases and to ensure an adequate supply of PPE to prepare for the future public health emergencies. The two bills impose a number of requirements on public and private health care employers.

AB 2537 applies to any employer that employs workers to provide direct patient care in a general acute care hospital. SB 275 has a broader scope and **also** applies to employers that employ workers in a skilled nursing facility, a medical practice that is operated or maintained as part of an integrated health system or health facility, or a licensed dialysis clinic.

Both bills codify existing law by specifying that covered health care employers must supply PPE to any employees who provide direct patient care, or who provide services that directly support patient care in a general acute care hospital, and must ensure that employees actually use the PPE supplied to them.

In addition, AB 2537 requires general acute care hospital employers to maintain a stockpile of specific types of PPE, in which any single-use equipment must consist of unexpired, new equipment. The bill also imposes certain reporting requirements relating to the stockpiling and consumption rate of PPE. SB 275 requires the State to maintain a similar stockpile for emergency use, as well as imposing additional stockpiling and reporting obligations on covered health care employers beginning January 1, 2023.

(AB 2537 adds Section 6403.3 to the Labor Code. SB 275 adds Section 131021 to the Health and Safety Code and adds Section 6403.1 to the Labor Code.)

AB 1867 – Provides "COVID-19 Supplemental Paid Sick Leave" To Public Employees Exempted From The Federal Families First Coronavirus Response Act's (FFCRA) Emergency Paid Sick Leave (EPSL) Benefits.

AB1867 adds Labor Code Section 248.1, which provides up to 80 hours of COVID-19 related supplemental paid sick leave (COVID-19 Supplemental Paid Sick Leave) for "emergency responder" and "health care provider" employees exempted from the Emergency Paid Sick Leave (EPSL) benefits under the Families First Coronavirus Response Act (FFCRA).

As a budget trailer bill, this bill became law immediately upon the Governor's signature on September 9, 2020 and its supplemental paid sick leave provisions became effective 10 days later on September 19, 2020.

Qualifying Conditions for Receipt of COVID-19 Supplemental Paid Sick Leave

As applied to school district, county office of education, charter school, community college district, California State University, or University of California, this new Labor Code Section 248.1 entitles "emergency responder" and "health care provider" employees who have been exempted from the FFCRA's EPSL paid sick leave benefits to instead receive COVID-19 Supplemental Paid Sick Leave if the employee is unable to work for any of the following three (3) reasons, which are generally modeled after the EPSL:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;

2. The employee is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or

3. The employee is prohibited from working by the employer due to concerns related to the potential transmission of COVID-19.

The first two qualifying conditions under AB 1867 mirror those provided for EPSL under the FFCRA. The third qualifying condition is slightly different from any qualifying condition for EPSL provided under the FFCRA, and would allow a covered employee to qualify for COVID-19 Supplemental Paid Sick Leave if the employer directs the employee not to report to work for reasons related to COVID-19.

Importantly, the COVID-19 Supplemental Paid Sick Leave **does not** provide any statutory entitlement to supplemental paid sick leave for the other EPSL-related reasons under the FFCRA where the affected employee is either:

- Caring for an individual who is subject to a federal, state, or local quarantine or isolation order or has been advised by a health care provider to self-quarantine; or

- Caring for their son or daughter whose school or place of childcare is closed for reasons related to COVID-19.

Benefits under COVID-19 Supplemental Paid Sick Leave

Just as with EPSL, employees who qualify to receive COVID-19 Supplemental Paid Sick Leave are entitled to up to 80 hours of such paid leave if they are full-time employees and work at least 40 hours per week. Part-time employees will be entitled to a prorated amount of such leave based on their normally scheduled work

hours over a two-week period. However, if the part-time employee does not have a normal work schedule, the paid sick leave entitlement will be based on the amount of hours that is 14 times their average daily schedule as determined by hours worked over the preceding six-month period. In the same manner as EPSL, employees who qualify to receive COVID-19 Supplemental Paid Sick Leave will be compensated for each hour of such leave at their "regular rate of pay" up to $511 per day and $5,110 in the aggregate.

For active duty firefighters, including active duty firefighting members of a fire department of the University of California and the California State University, who were scheduled to work more than 80 hours in the two weeks preceding the date upon which the employee took COVID-19 Supplemental Paid Sick Leave, AB 1867 provides that such employees will be entitled to COVID-19 Supplemental Paid Sick Leave equal to the total number of hours that the individual was scheduled to work in the preceding two weeks. However, the same paid compensation limits of $511/day and $5,110 in the aggregate still apply.

AB 1867 expressly provides that COVID-19 Supplemental Paid Sick Leave is to supplement, and not run concurrent to, paid sick leave entitlements provided to employees under the Paid Sick Leave Law (Labor Code Section 246). Therefore, where an employee qualifies for COVID-19 Supplemental Paid Sick Leave, the employer should not reduce the amount of other statutory paid sick leave that the employee earned or accrued under Labor Code Section 246 or by the employer's alternative accrual methodology.

Some employers exempted "emergency responders" and/or "health care providers" from receiving EPSL under the FFCRA, but then provided the exempted employees a comparable benefit to leave and compensation by contractual agreement. For such employers, AB 1867 expressly provides that the employer may attribute the supplemental benefits provided under that agreement for the purpose of satisfying the requirements of Labor Code Section 248.1.

For employers that provided leave for such qualifying conditions, but not compensation, AB 1867 provides that such employers may retroactively provide for such compensation now in order to satisfy their obligations to provide employees *both* leave *and* compensation.

The supplemental paid sick leave benefits provided under AB 1867 expire on December 31, 2020 or the date of expiration for the benefits provided under the Emergency Paid Sick Leave Act should the federal government extend such benefits, whichever is later.

(AB 1867 adds Section 12945.21 to the Government Code, adds Section 113963 to the Health and Safety Code, adds Sections 248 and 248.1 to the Labor Code, and amends Section 248.5 of the Labor Code.)

AB 2288 – Allows Nursing Programs To Revise Clinical Experience Requirements Due To COVID-19 (Urgency Bill Effective Immediately On September 29, 2020).

This bill allows the director of an approved nursing program to submit a request to a Board of Registered Nursing educational consultant to revise clinical experience requirements during the 2020-2021 academic year. A director may also submit a request during a state of emergency in which an agency or facility used by an approved nursing program for direct patient care clinical practice is located and is no longer available due to the conditions giving rise to the state of emergency.

The director of an approved nursing program may request to utilize a clinical setting during the 2020-2021 year or a state of emergency without approval from the Board of Registered Nursing, written agreements with clinical faculty, or submitting evidence of compliance with board regulations.

The director may also request to utilize preceptorships without having to maintain written policies identifying preceptor selection criteria, providing for a preceptor orientation program, identifying preceptor qualifications, describing preceptorship responsibilities, and planning for ongoing evaluation for preceptor use.

The director may also request to reduce the required number of direct patient care hours to 50 percent in geriatrics and medical-surgical and 25 percent in mental health-psychiatric nursing, obstetrics, and pediatrics if all of the following conditions are met:

- There is no alternative agency or facility that has a sufficient number of open placements that are available and accessible within 25 miles of the approved nursing program for direct patient care clinical practice hours in the same subject matter area.

- The substitute clinical practice hours not in direct patient care provide a learning experience that is at least equivalent to the learning experience provided by the direct patient care clinical practice hours.

- Once the applicable state of emergency has terminated the temporary reduction shall cease as soon as practicable or by the end of the academic term, whichever is sooner.

- The substitute clinical practice hours not in direct patient care that are simulation experiences are based on the best practices published by the International Nursing Association for Clinical Simulation and Learning, the National Council of State Boards of Nursing, the Society for Simulation in Healthcare, or equivalent standards approved by the board.

- A maximum of 25 percent of the direct patient care hours in geriatrics and medical-surgical may be completed via telehealth.

The director may also request that the approved nursing program allow theory to precede clinical practice if all of the following conditions are met:

- No alternative agency or facility located within 25 miles of the impacted approved nursing program, campus, or location, has a sufficient number of open placements that are available and accessible to the approved nursing program for direct patient care clinical practice hours in the same subject matter area.

- Clinical practice takes place in the academic term immediately following theory.

- Theory is taught concurrently with clinical practice not in direct patient care if no direct patient care experiences are available.

Because this was an urgency bill, this bill took effect on September 29, 2020.

(AB 2288 adds Section 2786.3 to the Business and Professions Code.)

SB 117 - Education Finance Appropriations Bill Regarding COVID-19 ADA And Timeline Waivers And Appropriations For Personal Protective Equipment And Cleaning (Urgency Bill Effective Immediately On March 17, 2020).

Provides Hold Harmless Funding for Local Educational Agencies with School Closures Due to COVID-19

Existing law requires local educational agencies to report to the Superintendent of Public Instruction during each fiscal year the average daily attendance of the school for all full school months. Existing law describes the period between July 1 and April 15 as the "second period" report for the second principal apportionment. SB 117 provides that local educational agencies that comply with the Governor's Executive Order N-26-20, which provided for the maintenance of funding for schools that closed due to the COVID-19 pandemic, the second period and annual period reporting of average daily attendance must include only all full school months from July 1, 2019 to February 29, 2020, inclusive. The Legislature referred to this as a "hold harmless" apportionment, and stated its intent that the local educational agency continues to compensate its employees and contractors during the period of school closure due to COVID-19.

Deems Local Educational Agencies to Have Met Instructional Days and Minutes during the Time a School Was Closed Due to COVID-19

Currently, the law requires reduction of a local educational agency's apportionment of funds if the local educational agency fails to offer a specified number of instructional days and minutes. SB 117 deems local educational agencies to have met instructional days and minutes requirements of existing law during the period of time a school was closed due to COVID-19. This will prevent the loss of funding related to an instructional time penalty. The superintendent of a school district, county superintendent of schools, or charter school administrator must certify in writing to the State Superintendent of Public Instruction that the local educational agency closed the school due to COVID-19.

Waives Requirement for Charter School to Materially Revise its Charter Petition to Offer Independent Study or Distance Learning Programs

Under existing law, charter schools must submit a request for material revision to its charter if they seek to operate independent study or distance learning programs. SB 117 waives that requirement for charter schools that offer independent study or distance learning programs during the period of time that the charter school is closed due to the COVID-19 and complying with Executive Order N-26-20.

Deems COVID-19 a Qualifying Event for After School Education and Safety Program to Obtain Pupil Attendance Credit when Temporarily Prevented from Operating

Existing law establishes the After School Education and Safety Program and describes the purpose of the program as creating incentives to establish locally driven before and after school enrichment programs that partner public schools and communities to provide academic and literacy support and safe, constructive alternatives for youth. If a program grantee is temporarily prevented from operating its entire program due to natural disaster, civil unrest, or imminent danger to pupils or staff, the State Department of Education may approve a grantee's request for pupil attendance credit equal to the average

annual attendance that the grantee would have received had it been able to operate its entire program during that time period.

SB 117 specifies that a school closure due to COVID–19 is a qualifying event for the purposes described above, if the local educational agencies that comply with Executive Order N-26-20. The bill would waive a grantee's obligation to submit a request for pupil attendance credits, and would require the Superintendent of Public Instruction to credit a grantee with the average annual attendance it would have received had it been able to operate its entire program during the time the school was closed due to COVID–19.

Extends English Learner Assessment Deadline by 45 Days

Existing law requires a school district that has one or more pupils who are English learners, and, to the extent required by federal law, a county office of education and a charter school, to assess the English language development of each pupil in order to determine the pupil's level of English proficiency. Existing law requires a school to conduct this assessment upon a pupil's initial enrollment and at least annually during a 4-month period after January 1. SB 117 extends the deadline to conduct the English learner assessment by 45 days, unless otherwise determined by the Superintendent of Public Instruction.

Extends CAASPP Testing Window for the English Learner Assessment

California law establishes the California Assessment of Student Performance and Progress (CAASPP) as the statewide system of pupil assessments, under which the Education Code requires or authorizes local educational agencies to administer various assessments in public schools. Existing law also requires the governing board of a school district maintaining any of grades 5, 7, and 9 to administer to each pupil in those grades a physical performance test, as specified.

SB 117 extends the testing window for the annual English learner assessment described in the CAASPP, and the physical performance test by the length of time a school is closed due to COVID–19, or until the end of the testing window, whichever comes first.

Extends Deadline to Provide Assessment Plan for Pupil with Exceptional Needs

School districts, county offices of education, and charter schools normally must provide to parents a proposed assessment plan to determine if a pupil is an individual with exceptional needs to be developed within 15 calendar days of referral for assessment, excluding calendar days between the pupil's regular school sessions or terms and calendar days of school vacation in excess of 5 schooldays.

SB 117 requires the State Department of Education to consider the days a school is closed due to COVID–19 as days between a pupil's regular school sessions for purposes of the timelines affecting special education programs. The bill waives certain special education timelines if a local educational agency has closed due to COVID–19 up until the school reopens and the regular school session reconvenes. However, SB 117 does not waive any special education requirements under federal law.

Budget Appropriation for Local Educational Agencies for Personal Protective Equipment and Cleaning Costs

SB 117 appropriates $100,000,000 from the General Fund to the Superintendent of Public Instruction for the Superintendent to apportion to certain local educational agencies for purposes of purchasing personal protective equipment, or paying for supplies and labor related to cleaning school sites, or both.

Because SB 117 was an appropriations bill, it took effect immediately upon approval by the governor on March 17, 2020.

(SB 117 is an appropriations bill and, therefore, does not add or amend any Section to or of the Education Code.)

SB 820 – Provisions Regarding COVID-19 (Budget Bill) (Urgency Bill Effective Immediately On September 18, 2020).

Extends Time for Conducting English Language Development Assessment

Existing law requires the State Department of Education to develop a standardized English language teacher observation protocol for use by teachers in evaluating a pupil's English language proficiency on or before, December 31, 2021. Existing law also requires a local educational agency to assess the English language development of each pupil annually during a 4-month period after January 1. SB 820 extends the date for completion of the English language teacher observation protocol to December 31, 2022. SB 820 also extends the time for conducting the English language development assessment for 2020-2021 school year by 45 calendar days and requires local educational agencies to screen new pupils at the time of enrollment to determine English learner status.

Suspends Requirement of Site Visit by County Superintendent of Schools to Schools that Meet Criteria for Low Performance

Existing law requires a county superintendent of schools to annually submit a report, at a regularly scheduled November board meeting, to the governing board of each school district, the county board of education, and the county board of supervisors describing the state of schools in the county that meet specified criteria for low performance. Existing law requires the county superintendent of schools to visit those schools at least annually for purposes of developing that report. SB 820 suspends the visit requirement during the 2020-2021 school year in which schools are closed due to the COVID-19 pandemic. The county superintendent may rely on information gained through other means than a physical visit to complete the report. The report must include a justification indicating why the county superintendent of schools did not conduct a school site visit and an outline of plans to conduct a school site visit as soon as possible. The county superintendent must provide an update report before July 1, 2021.

Reimbursement to Contracting Agencies Operating State-Subsidized Childcare Programs for Impacts of the Ongoing COVID-19 Pandemic

The Superintendent of Public Instruction is required to reimburse contracting agencies for certain state-subsidized childcare programs from July 1, 2020 to June 30, 2020 due to ongoing impacts of the COVID-19 pandemic if the contracting agency's program is open and offering services throughout the 2020-2021 school year. SB 820 adds to that requirement and requires the Superintendent of Public Instruction to reimburse contracting agencies for the ongoing impacts of the COVID-19 pandemic if the contracting agency's program is operated on the campus of a local educational agency closed due to a public health order and the local educational agency has required the childcare program to close.

Extends Date by Which Local Educational Agencies Must Use Funds to Support Pupil Achievement and Mitigate Learning Loss Due to COVID-19

Existing law appropriates $355,227,000 from the Federal Trust Fund, $4,439,844,000 from the Coronavirus Relief Fund, and $539,926,000 from the General Fund to the Superintendent of Public Instruction for allocation during the 2020-2021 fiscal year. The Superintendent allocates the funds to eligible local educational agencies to support pupil academic achievement and mitigate learning loss related to COVID-19 school closures. Previous law required local educational agencies to use the funds appropriated Federal Trust Fund between March 13, 2020 and September 30, 2021 and the funds appropriated from the Coronavirus Relief Fund and General Fund between March 1, 2020 to December 30, 2020. SB 820 extends the dates, as follows:

- Local educational agencies must use the funds appropriated from the Federal Trust Fund between March 13, 2020 and September 30, 2022; and
- Local educational agencies must use the funds appropriated from the General Fund between March 1, 2020 and June 30, 2021.

Allocates Funds to Reimburse Alternative Payment Childcare Providers and Reimbursed State-Subsidized Childcare Providers

Existing law appropriates $198,000,000 from the Federal Trust Fund for the 2020-2021 fiscal year to the Superintendent of Public Instruction for COVID-19 pandemic-related relief and assistance for childcare providers, the families those childcare providers serve, and essential workers. Existing law allocates $62,500,000 of that amount to reimburse alternative payment program providers with a one-time stipend. SB 820 splits that amount between alternative payment program providers and state-subsidized childcare providers as follows:

- Allocates $31,250,000 to reimburse alternative payment program providers with a one-time stipend; and
- $31,250,000 to reimbursed state-subsidized childcare providers for providing childcare to eligible children when a provider is closed due to the COVID-19 pandemic.

Appropriates Funds for the Cost of School Meals

SB 820 appropriates $80,000,000 from the General Fund to the State Department of Education to reimburse local educational agencies for costs relating to providing school meals from the months of March 2020 to August 2020, inclusive.

Waives Requirement to Pass Certain Assessments Required for Credential Because of Closures Due to COVID-19

Applicants for a California teaching credential must pass various assessments and examinations approved by the Commission on Teacher Credentialing to obtain a credential. SB 820 suspends the requirement for preliminary multiple subject credential candidates and Level 1 or preliminary education specialist credential candidates to complete a reading instruction

competence assessment to obtain a credential who, between March 19, 2020, and August 31, 2021, are unable to complete a reading instruction competence assessment due to testing center closures related to COVID-19. These candidates must complete and pass a reading instruction competence assessment approved by the Commission on Teacher Credentialing before the Commission will recommend them for a clear credential.

Existing law requires that candidates for admission to a credential program must pass a basic skills proficiency test. SB 820 suspends this requirement for applicants who, between March 19, 2020 and August 31, 2021, are unable to complete the basic skills proficiency test due to testing center closures related to COVID-19. These applicants for credential programs must complete the basic skills proficiency test during the credential program before the Commission on Teacher Credentialing will recommend them for a preliminary credential.

Excludes Moneys Appropriated to Mitigate Learning Loss Due to COVID-19 from Calculation of Minimum Amounts for Major Maintenance Accounts

The Leroy F. Greene School Facilities Act establishes a program in which the State Allocation Board is required to provide state per-pupil funding for new construction and modernization of school facilities. Applicant school districts who receive funding under the Act must establish a restricted account within the district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings. School districts must also agree to deposit minimum amounts into the restricted account based on certain calculations.

SB 820 excludes from those calculations certain moneys appropriated to mitigate learning loss and to reimburse local educational agencies for school meals program costs from school closures caused by COVID-19.

Exemption for Basic Skills Examination

Existing law authorizes any person 16 years of age or older, and certain other persons, to have their proficiency in basic skills taught in the public high schools verified according to criteria established by the department. Existing law authorizes the State Department of Education to award a certificate of proficiency. Existing law requires administration of the test once in the fall semester and once in the spring semester.

SB 820 provides for administration of the exam more often, *at least* once in the fall semester and at least once in the spring semester. SB 820 provides for administration of the tests in 2020-2021 only if the State Department of Education can administer the test in accordance with state and local public health orders, as determined by the Superintendent of Public Instruction.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

SB 1159 – Presumes COVID-19 Qualifies For Workers' Compensation If Employees Test Positive Within 14 Days Of Reporting To Work, Or After A Workplace Outbreak (Urgency Bill Effective Immediately On September 17, 2020).

SB 1159 amends existing workers' compensation laws to address the impact of employees who contract COVID-19 and the extent that such illness is considered industrial, and therefore entitles the employee to workers' compensation benefits.

SB 1159 is an urgency bill and so became effective immediately upon the Governor Newsom's signing it into law on September 17, 2020.

Employees injured in the course and scope of employment are generally entitled to receive workers' compensation benefits for their injuries. Existing law establishes a series of specific injuries and illnesses for certain public safety employees that are presumed to be industrial in nature and therefore qualify them for workers' compensation benefits immediately, unless an employer can provide sufficient information to indicate that the injury or illness is non-industrial.

Recognizing the unique challenges posed by the COVID-19 pandemic, SB 1159 now creates a similar presumption for illness or death resulting from COVID-19 in the following three ways:

1. Codifies Executive Order N-62-20, issued by Governor Newsom on May 6, 2020, and expands the workers' compensation presumption to ANY employee who reported to their place of employment between March 19 and July 5, 2020, and who tested positive for or was diagnosed with COVID-19 within the following 14 days.

2. Extends this presumption beyond July 6, 2020, for fire fighters, peace officers, fire and rescue coordinators, and certain kinds of health care and health facility workers. For health facility employees other than those who provide direct patient care, and other than custodial employees in contact with COVID-19 patients, the presumption does not apply if the employer can show the employee did not have contact with a COVID-19 positive patient within the 14-day period.

3. Creates a similar presumption for all other employees who work for an employer – including a school district, a county office of education, a charter school, a community college district, or a California State University, with five or more employees, and who test positive for COVID-19 within 14 days after reporting to their place of employment, if the positive test occurred during an "outbreak" at the employee's specific work place. For purposes of this presumption, an "outbreak" exists if within 14 calendar days one of the following occurs at a "specific place of employment" (which excludes the employee's home):

    - If the employer has 100 employees or fewer at a specific place of employment, 4 employees test positive for COVID-19;

    - If the employer has more than 100 employees at a specific place of employment, 4% of the number of employees who reported to the specific place of employment, test positive for COVID; or

    - A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19

For purposes of administering this "outbreak" presumption, the bill requires employers to report to their workers' compensation claims administrator in writing within three business days when they know or reasonably should know that an employee has tested positive for COVID-19, along with other relevant information.

The Workers' Compensation Appeals Board (WCAB) is bound by these presumptions unless presented with controverted evidence to dispute the presumption. Workers' compensation awarded for covered COVID-19 relate illness or death includes full hospital, surgical, medical treatment, disability indemnity, and death benefits. The bill also makes a claim relating to a COVID-19 illness presumptively compensable, as described above, after only 30 days, rather than the typical 90 days.

However, SB 1159 requires an employee to exhaust any COVID-19 related supplemental paid sick leave benefits (*e.g.*, FFCRA's Emergency Paid Sick Leave or California's supplemental paid sick leave under AB 1867) and meet certain certification requirements before receiving temporary disability benefits or an industrial injury leave of absence.

In addition, the effective timeframe for workers' compensation benefits under SB 1159 based on illness or death due to COVID-19 is limited, as the law will remain in effect only until January 1, 2023, after which the law will sunset and be repealed unless extended further by the Legislature.

SB 1159 also requires the Commission on Health and Safety and Workers' Compensation to conduct a study of the impact of COVID-19 on the workers' compensation system, to deliver a preliminary report to the Legislature and Governor by December 31, 2021, and to deliver a final report to the legislature by April 30, 2022.

As SB 1159 is now law, employers need to be vigilant and prepared to respond to any indication that an employee has contracted COVID-19 and should coordinate with their workers' compensation insurance carriers and claims adjusters to establish best practices for reporting and responding to potential workers' compensation claims based on COVID-19.

(SB 1159 adds Sections 77.8, 3212.86, 3212.87, and 3212.88 to the Labor Code.)

GOVERNANCE ISSUES

BROWN ACT

AB 992 – Clarifies That The Brown Act Does Not Prohibit Elected Officials From Discussing With The Public Matters Within The Agency's Jurisdiction On Social Media.

AB 992 is a bill intended to bring the provisions of the Brown Act more in line with the realities of political discourse in the age of social media.

Currently, the Brown Act generally requires a legislative body of any public agency noticed their meetings in advance and open and make them accessible to the public. The Act defines a "meeting" as any gathering, including by telecommunication, of a majority of the members of any legislative body to hear, discuss, deliberate, or take action on any item that is within the jurisdiction of that agency. The Brown Act also prohibits members of legislative bodies from engaging in "serial communications," whereby a majority of the members of the legislative body discuss, deliberate, or take action by means of a series of communications between themselves, either directly or through intermediaries. In recent years, these provisions have raised questions about what type of activity elected officials can engage in on social media, which – if the Brown Act is read strictly – could create a number of potential pitfalls for elected officials.

AB 992 adds a new exception to the ban on "serial communications," stating that it does not prevent a member of a legislative body from engaging in conversations on a social media platform that is open and accessible to the public if the purpose of those communications are as follows:

- To answer questions, provide information to the public, or solicit information from the public; and
- As long as a majority of the members of that legislative body do not discuss agency business of a specific nature among themselves.

The bill specifically prohibits a member of a legislative body from responding directly to any communication made, posted, or shared by another member of that body regarding any matter within the agency's jurisdiction.

This provision will remain in effect until January 1, 2026, at which time it will automatically sunset unless the Legislature extends it further.

(AB 992 amends Section 54952.2 of the Government Code.)

BOARD OF GOVERNORS OF THE CALIFORNIA COMMUNITY COLLEGES

SB 820 – Adds The Lieutenant Governor To Board Of Governors (Urgency Bill Effective Immediately On September 18, 2020).

Existing law establishes the California Community Colleges, under the administration of the Board of Governors of the California Community colleges, as one segment of public postsecondary education in California. Under existing law, the Board of Governors has 16 voting members and one non-voting member. SB 820 adds the Lieutenant Governor to the Board of governors as a voting member.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Section 71000 of, the Education Code.)

STUDENTS – BILLS SPECIFIC TO K-12 PUPILS

ATHLETICS AND EXTRA-CURRICULAR ACTIVITIES

AB 908 – Allows Extension Of Extracurricular Probationary Period And Authorizes Issuance Of Work Permits In the Absence Of The Minor And The Minor's Parent Or Guardian (Urgency Bill Effective Immediately On September 11, 2020).

Existing law allows a governing board of a school district to adopt a policy that allows a student that does not achieve satisfactory educational progress to remain eligible for extracurricular activities during a probationary period. Existing law caps the probationary period to a maximum of one semester. This law allows a probationary period to exceed one semester in length through the completion of the 2020–21 school year due to the impact of COVID-19.

SB 908 also provides for the waiver of the in-person meeting requirement for the issuance of a work permit. SB 908 authorizes school districts, charter schools, or county superintendents of schools to issue a work permit in the absence of the appearance of the minor and the minor's parent or guardian if:

- The minor's school is closed for an extended period of time;

- The minor submits his or her application is electronically; and

- The minor and the minor's parent or guardian attend a video conference with the person issuing the permit.

In addition, school districts, private schools, charter schools, or the county superintendent of schools may not deny a work permit based on a student's grades, grade point average, or school attendance when the minor's school has been physically closed for an extended time due to a natural disaster, pandemic, or other emergency.

As an urgency bill, AB 908 became effective immediately upon Governor Newsom signing it into law on September 11, 2020.

(AB 908 amends Sections 35160.5 and 49132 of the Education Code and adds Section 49200.)

AB 2300 – Authorizes Emergency Medical Technician, Paramedic, Or Higher-Level Licensed Medical, Who Must Be Present At All Contact Football Games, To Provide Student Athletes With Prehospital Emergency Medical Care Or Rescue Services Consistent With Their Certification Or License.

AB 2300 revises the California Youth Football Act to expand the ability of an emergency medical technician, paramedic or higher-level licensed medical professional to "evaluate" student athletes participating in tackle football games provided by a "youth sports organization," and instead, specifies that a "certified emergency medical technician, state-licensed paramedic or higher-level licensed medical professional" may provide prehospital emergency care or rescue services consistent with their certification or license.

The California Youth Football Act defines a youth sports organization broadly as "an organization, business, or nonprofit entity that sponsors or conducts amateur sports competition, training, camps, clinics, practices, or clubs." This bill applies to a school district, charter school, private school, or any organization or nonprofit entity that sponsors or conducts amateur youth tackle football competitions, training, camps, clinics, practices, or clubs or participate in a youth football league.

In 2019, the Legislature passed AB 1, which required youth sports organizations to put in place a number of safety measures by January 1, 2021, such as limiting full-contact portions of practice to 30 minutes in a day; annual training coaches on tackling and blocking; regular safety inspections of equipment; dissemination of information to parents about concussions and opioid use; and a number of other program requirements.

One of these safety measures was a requirement that at least one ***state-licensed emergency medical technician, paramedic***, or higher-level licensed medical professional must be present during all preseason, regular season, and postseason games. AB 2300 modifies this requirement slightly to state that at least one ***certified emergency medical technician, state-licensed paramedic*** or higher-level licensed medical professional (Professional) shall be present during all preseason, regular season, and postseason games.

Further, AB 2300 gives the Professional the authority to not only "evaluate and remove any youth tackle football participant from the game who exhibits an injury," but expands this authority to provide "prehospital emergency medical care or rescue services consistent with their certification or license."

(AB 2300 amends Section 124241 of the Health and Safety Code.)

ATTENDANCE

AB 901 – Revises Truancy Law.

This bill eliminates the county superintendent's authority to petition the juvenile court on behalf of a pupil if the district attorney or probation officer did not elect to participate in a truancy mediation program.

This bill also repeals the juvenile court's authority to consider a minor a ward of the court based on the minor's habitual refusal to obey the reasonable and proper orders or directions of school authorities.

The bill authorizes the probation officer to contract with certain entities to provide vocational training or skills, counseling and mental health resources, educational supports, and arts, recreation, and other youth development services.

(AB 901 amends Sections 48263, 48267, 48268, and 48269 of the Education Code. It also amends Sections 236, 601, 601.3, 653.5, and 654 of and adds Section 651.5 to the Welfare and Institutions Code.)

CULTURAL COMPETENCE

SB 820 – Requires The Young People's Task Force To Evaluate Law Enforcement Presence On School Campuses (Urgency Bill Effective Immediately On September 18, 2020).

Existing law appropriates $200,000 from the General Fund for the 2020-2021 fiscal year to the State Department of Education for the creation of the Young People's Task Force to develop guidance to promote culturally competent interactions between school resources officers and young people on school campuses.

SB 820 requires the task force to conduct a balanced evaluation of the presences of peace officers and other law enforcement personnel on school campuses and identify and consider possible alternative options to ensure pupil safety on a school campus, pupil safety coming and going to and from school, and pupils' academic and social-emotional success based on the needs of the local school community. SB 820 also requires the task force to develop recommended guidance to ensure pupil health and safety during interactions between law enforcement and young people on school campuses. Further, the task force must conduct at least two meetings in compliance with the Bagley-Keene Open Meeting Act, but all other meetings of the task force are exempt from the Bagley-Keene Open Meeting Act.

SB 820 also notes that the purpose of exempting task force meetings from the Bagley-Keen Open Meeting Act because it is necessary that this act limit the public's right of access to that information is in order to protect the privacy of minors and young adults and to allow discussion of information contained in confidential pupil records.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

FOSTER YOUTH

SB 860 – Requires Foster Youth Services Plans To Describe How The Program Will Coordinate Efforts To Ensure Completion Of The FAFSA.

Existing law establishes the Foster Youth Services Coordinating Program, under the administration of the Superintendent of Public Instruction, to provide supplemental funding to county offices of education, or a consortium of county offices of education, to coordinate and ensure that local educational agencies within its jurisdiction are providing services to foster youth pupils pursuant to a foster youth services coordinating plan with the purpose of ensuring positive educational outcomes. As part of the program, a county office of education, or a consortium of county offices of education, may apply to the Superintendent for grant funding to operate an education-based foster youth services coordinating program. As a condition of receiving funds, a program must develop and implement a foster youth services plan that includes, among other things, a description of how the local program will facilitate coordination with local postsecondary educational institutions to ensure foster youth pupils meet admission requirements and access programs that support their matriculation needs.

SB 860 requires the foster youth services plan to describe how the program will coordinate efforts to ensure, to the extent possible, the completion of the Free Application for Federal Student Aid or the California Dream Act Application for foster youth pupils who are in grade 12.

SB 860 requires the State Superintendent of Public Instruction to include in reports regarding the Foster Youth Services Coordinating Program the number and percentage of pupils in foster care who successfully complete a Free Application for Federal Student Aid or California Dream Act Application while in grade 12.

(SB 860 amends Sections 42921 and 42923 of the Education Code.)

GRADUATION REQUIREMENTS

AB 1350 – Allows Retroactive Diplomas For Seniors Interrupted By COVID-19.

AB 1350 allows a high school district, unified school district, county office of education, or a charter school to retroactively grant a high school diploma to a person that was a high school senior during the 2019–20 school year if:

1. The person was in good academic standing and on track to graduate at the end of the 2019–20 school year, as of March 1, 2020; and

2. Was unable to complete the statewide graduation requirements as a result of the COVID-19 pandemic.

(AB 1350 amends Sections 51430 of the Education Code.)

MANDATED REPORTING

AB 1929 – Authorizes Counties Statewide To Implement Systems For Internet-Based Mandated Reporting Of Non-Emergency Suspicions Of Child Abuse And Neglect.

In 2015, Governor Jerry Brown signed SB 478, which established a five-year pilot program authorizing up to 10 county welfare agencies to develop programs for internet-based reporting of child abuse and neglect. The systems could only be used by certain mandated reporters, such as peace officers and teachers, and only for certain non-emergency reports. The pilot program is scheduled to sunset as of January 1, 2021. This bill, AB 1929, expands the pilot project created by SB 478 statewide, removes the sunset date, and removes the pilot project's limitations on which mandated reporters may use an internet-based reporting system, instead, allowing any mandated reporter to use it, while continuing restrictions relating to emergency reporting.

Specifically, AB 1929 allows any county welfare agency to develop a program for internet based reporting of child abuse and neglect, so long as the system does all of the following:

- Restricts the reports of suspected child abuse or neglect to reports indicating that the child is not subject to an immediate risk of abuse, neglect or exploitation and that the child is not in imminent danger of severe harm or death;

- Includes standardized safety assessment qualifying questions in order to obtain necessary information required to assess the need for child welfare services and a response, and, if appropriate, redirect the mandated reporter to perform a telephone report;

- Requires a mandated reporter to complete all required fields, including the identity and contact information of the mandated reporter, in order to submit the report; and

- Has appropriate security protocols to preserve the confidentiality of the reports and any documents or photographs submitted through the system.

In a county where an internet-based system is active, a mandated reporter may use that system instead of the initial telephone report and the mandated reporter does not have to submit the written follow-up report. However, if the mandated reporter uses the internet-based system, they are required to cooperate, as soon as possible, with the agency on any requests for additional information if needed to investigate the report.

AB 1929 also requires the California Department of Social Services to oversee internet-based reporting through the issuance of written directives and requires each county that implements an internet-based system to hire an evaluator to monitor the implementation of the program and submit evaluations to CDSS during the first two years of implementation

(AB 1929 amends Section 11166.02 of the Penal Code and Section 10612.5 of the Welfare and Institutions Code.)

AB 1963 – Requires Businesses That Employ Minors To Provide Mandated Reporter Training To Employees.

The Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever they, in their professional capacity or within the scope of their employment, have knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure by a mandated reporter to report an incident of known or reasonably suspected child abuse or neglect is a misdemeanor punishable by up to 6 months of confinement in a county jail, by a fine of $1,000, or by both that imprisonment and fine. Under existing law, employers are strongly encouraged to provide their employees who are mandated reporters with training in these duties, including training in identification and reporting of child abuse and neglect. We note that public schools are required to provide annual mandated reporter training to employees, and licensed childcare providers are required to provide employees mandated reporter training every two years.

AB 1963 adds a human resource employee of a business with 5 or more employees that employs minors to the list of mandated reporters. AB 1963 defines a "human resource employee" as the employee or employees designated by the employer to accept any complaints of misconduct as required by the Fair Employment and Housing Act.

For the purposes of reporting sexual abuse, AB 1963 adds an adult whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business with 5 or more employees to the list of mandated reporters.

AB 1963 further requires businesses with 5 or more employees that employs minors to provide their employees who are mandated reporters with training on identification and reporting of child abuse and neglect. This training must include training in child abuse and neglect identification and training in child abuse and neglect reporting. The business may meet the training requirement by completing the general online training for mandated reporters offered by the Office of Child Abuse Prevention in the State Department of Social Services. By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, AB 1963 imposes a state-mandated local program.

(AB 1963 amends Section 11165.7 of the Penal Code.)

SCHOOL PLAN FOR STUDENT ACHIEVEMENT

SB 820 – Requires Single School Districts And Charter Schools To Use The Stakeholder Engagement Process For The Learning Continuity And Attendance Plan For Adoption Of Their School Plan For Student Achievement (Education Budget Bill) (Urgency Bill Effective Immediately On September 18, 2020).

Existing law requires a local educational agency to ensure that each school of the local educational agency to ensure that each school of the local educational agency that operates certain programs to consolidate those programs into a single plan, known as the School Plan for Student Achievement (SPSA). Existing law requires a school with a program requiring a SPCA to establish a school site council to develop and approve the SPSA. SB 820 requires single school districts and charter schools to use the stakeholder engagement process for the learning continuity and attendance plan in Education Code 43509 for the adoption of the SPSA.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

SEX OFFENDERS

SB 145 – Exempts From Automatic Registration Certain Offenses Involving Minors If The Person Convicted Is Not More Than 10 Years Older Than The Minor.

The Sex Offender Registration Act, requires a person convicted of one of certain crimes, as specified, to register with law enforcement as a sex offender while residing in California or while attending school or working in California, as specified. A willful failure to register, as required by the act, is a misdemeanor or felony, depending on the underlying offense. SB 145 exempts from mandatory registration under the Act, and instead provides judges with discretion regarding registration requirements, to a person convicted of certain offenses involving minors if the person convicted is not more than 10 years older than the minor and if that offense is the only one requiring the person to register.

(SB 145 amends Sections 290 and 290.006 of the Penal Code.)

STUDENTS WITH EXCEPTIONAL NEEDS

SB 820 – Allows The State Board Of Education To Designate An Applicant County Office Of Education To Administer The California Dyslexia Initiative (Urgency Bill Effective Immediately On September 18, 2020).

Existing law establishes the California Dyslexia Initiative and requires the State Department of Education and the California Collaborative for Educational Excellence. Prior law provided for approval from the executive director of the State Board of Education to designate an applicant county office of education to administer the initiative by September 1, 2020. Prior law appropriated $4,000,000 from the General fund to the Superintendent of Public Instruction to allocate to the designated county office of education for the initiative.

SB 820 revises existing law to require the State Department of Education and the California Collaborative for Educational Excellence, with approval from the executive director of the State Board of Education, to designate an applicant county office of education to administer the initiative by November 15, 2020. SB 820 also reduces the appropriation from the General Fund to $2,000,000 and funds the remaining $2,000,000 from the Federal Trust Fund.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

TESTING

SB 820 - Waives Requirement For Student Physical Performance Test For 2020-2021 School Year (Urgency Bill Effective Immediately On September 18, 2020).

Existing law requires school districts maintaining any of grades 5, 7, and 9 to annually administer to each pupil in those grades a physical performance test designated by the State Board of Education. SB 820 waives the physical performance test requirement for the 2020-2021 school year. SB 820 also requires the State Superintendent of Public Instruction to submit a report with recommendations on the purpose and administration of the test to the appropriate fiscal and policy committees of the Legislature, the Department of Finance, and the State Board of Education.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

STUDENTS – BILLS SPECIFIC TO COLLEGE STUDENTS

ADMISSIONS

AB 3374 – Restricts Admission By Exception.

Commencing with admissions for the 2021–22 academic year, AB 3374 prohibits a campus of the California State University and, if adopted by the Regents of the University of California, the University of California, from admitting an applicant by exception unless one of the following applies:

1. The admission by exception has been approved, prior to the student's enrollment, by at least 3 senior campus administrators;

2. The applicant is a California resident who is receiving an institution-based scholarship to attend the campus; or

3. The applicant is accepted by an educational opportunity program for admission.

(AB 3374 amends Sections 66022.5, 87482, 87786, 88810, 94923 of the Education Code.)

CURRICULUM

AB 1460 – Adds Ethnic Studies Courses To CSU Campuses.

This law provides that, starting with the 2021–22 academic year, the California State University must provide for courses in ethnic studies at each of its campuses.

The California State University must collaborate with the California State University Council on Ethnic Studies and the Academic Senate of the California State University to develop core competencies for an ethnic studies course required for undergraduate graduation. The council and the academic senate must approve the core competencies before commencement of the 2021–22 academic year.

The university may not increase the number of units required to graduate. This graduation requirement shall not apply to a post-baccalaureate student if the student has satisfied either of the following:

1. The student has earned a baccalaureate degree from an institution accredited by a regional accrediting agency; and

2. The student has completed an ethnic studies course at a postsecondary educational institution accredited by a regional accrediting agency.

(AB 1460 added Section 89032 to the Education Code.)

COLLEGE AND CAREER ACCESS

AB 2253 – Clarifies "Qualifying Experience" For Waiver Of Licensure Requirement.

Existing law provides the licensure requirements for professional personnel in governmental health facilities must not be less than the licensure requirements for professional personnel in health facilities under private ownership. Professional personnel includes psychologists, marriage and family therapists, clinical social workers, and professional clinical counselors.

Existing law authorizes the State Department of Public Health to temporarily waive that requirement for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling that are gaining qualifying experience for licensure in that profession in California.

Additionally, existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to waive the licensure requirement for persons employed or under contract to provide diagnostic, treatment, or other mental health services in the professions of psychology or social work that are gaining qualifying experience for licensure. The Bronzan-McCorquodale Act requires persons employed or under contract to provide mental health services to meet applicable licensure requirements. It also prohibits a person from providing services without a valid license. The Act requires the State Department of Health Care Services to waive these requirements for persons who are gaining the qualifying experience required for licensure.

This law clarifies that "qualifying experience" is determined by reference to the act regulating the profession. Specifically, "qualifying experience" means one of the following:

- Two years of supervised professional experience under the direction of a licensed psychologist;

- A minimum of 3,000 hours supervised experience related to the practice of marriage and family therapy;

- A minimum of 3,000 hours of post-master's degree supervised experience related to the practice of clinical social work.

- A minimum of 3,000 hours of post degree hours related to the practice of professional clinical counseling.

(AB 2253 amends Section 1277 of the Health and Safety Code, Section 5068.5 of the Penal Code, and Section 5751.2 of the Welfare and Institutions Code.)

CRIMINAL BACKGROUND CHECKS

SB 118 – Prohibits Postsecondary Educational Institutions From Asking Prospective Students About Criminal History On An Application Or During The Admissions Process.

SB 118 prohibits a postsecondary educational institution in California, except for applications for a professional degree or law enforcement basic training courses and programs, from inquiring about a prospective student's criminal history on an initial application form or at any time during the admissions process before the institution's final decision relative to the prospective student's application for admission.

SB 118 provides that postsecondary educational institutions must make any necessary changes to their application form to comply with subdivision (b) by the fall term of the 2021–22 academic year.

(Amends Sections 4021.5, 4187.2, and 4187.5 of the Business and Professions Code, adds Section 66024.5 to the Education Code, amends Sections 15402, 15420, 15421, 15422, and 15819.403 of, and repeals Section 15403 of, the Government Code, amends Sections 290.5, 851.93, 977.2, 1170, 1203.425, 11105, 16532, 18010, 30400, 30405, 30406, 30412, 30414, 30442, 30445, 30447, 30448, 30450, 30452, 30454, 30456, 30470, 30485, 30515, 30900, and 30955 of, add Sections 3000.01, 5003.7, and 30685 to, and repeal Article 5 (commencing with Section 2985) of Chapter 7 of Title 1 of Part 3 of, the Penal Code, and amends Section 1731.7 of the Welfare and Institutions Code.)

FINANCIAL AID

AB 2416 – Allows Consideration Of Homelessness For Determinations Of Satisfactory Academic Progress.

Student financial aid programs including the Cal Grant Program, the Chafee Educational and Training Vouchers Program, the Willie L. Brown, Jr. Community Service Scholarship Program, the California State Work-Study Program, the Middle Class Scholarship Program, and the California DREAM Loan Program, require students to make satisfactory academic progress to qualify. The Seymour-Campbell Student Success Act of 2012 and the Community Colleges Student Success Completion Grant program also require that a student make satisfactory academic progress.

This bill requires that determinations of "satisfactory academic progress" by the institutions participating in these student aid programs consider homelessness as an extenuating circumstance for students who are otherwise unable to meet the requirements deemed to constitute "satisfactory academic progress." Extenuating circumstance may be considered by the institution to alter or excuse compliance with progress requirements.

This bill borrowed the definition of "homeless" from the McKinney-Vento Homeless Assistance Act, which defines a "homeless individual" as:

- An individual who lacks a fixed, regular, and adequate nighttime residence;
- An individual with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- An individual living in a supervised publicly or privately operated shelter;
- An individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided; or
- An individual who will imminently lose their housing as evidenced by:
  - A court order;
  - The individual having a primary nighttime residence that is a room in a hotel or motel and they lack the resources necessary to reside there for more than 14 days;
  - Credible evidence indicating that the owner or renter of the housing will not allow the individual to stay for more than 14 days; or
  - Any oral statement from an individual seeking homeless assistance that is found to be credible.

(AB 2416 amends Sections 69432.7, 69519, 69731, 69956, 70032, 78220, 88931 of the Education Code.)

AB 3137 – Extends California College Promise For Members Of The Armed Forces.

Existing law establishes the California College Promise, which authorizes a community college to use funding to waive some or all of the fees for certain first-time students at the college for two academic years.

This law allows a student who is a member of the armed forces that is called to duty to withdraw from participation in the California College Promise and resume participation in the program upon the student's return without losing eligibility for the fee waiver. The time during which the student was obliged to withdraw because of active duty shall not count toward the two-year limit.

(AB 3137 amends Section 76396.3 of the Education Code.)

SEXUAL HARASSMENT AND SEXUAL ASSAULT

AB 3092 – Revises Statute Of Limitations For Claims Of Sexual Assault By Physicians At UCLA.

Existing law limits the recovery of damages suffered as a result of sexual assault to claims commenced within 10 years from the date of the last act, attempted act, or assault with intent to commit an act, of sexual assault by the defendant or claims commenced within three years from the date the plaintiff discovers or reasonably should have discovered that an injury or illness resulted from an act, attempted act, or assault with intent to commit an act, of sexual assault.

This bill extends the statute of limitations for claims for damages arising out of a sexual assault or other inappropriate contact, communication, or activity of a sexual nature by a physician employed by a University of California, Los Angeles medical clinic, or an active physician at a University of California, Los Angeles hospital. This bill allows claims to proceed if the underlying event took place between January 1, 1983, and January 1, 2019 and the claim is filed by December 31, 2021.

(AB 3092 amends Section 340.16 of the Code of Civil Procedure.)

SB 439 – Provides Additional Rights To Students In California Institutions Of Higher Education For Sexual Harassment Allegations.

Title IX of the Education Amendments of 1972 prohibits a person, based on sex, from being excluded from participation in, or being denied the benefits of, or being subject to discrimination in any program or activity receiving federal financial assistance. Existing state law also declares that it is the policy of the State of California that all persons, regardless of sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state. SB 439 adds additional protections to persons in institutions of higher education with respect to sexual harassment, and clarifies the process for adjudicating complaints of sexual or gender-based violence, including dating or domestic violence.

SB 493 applies to campuses of the University of California, the California State University, and California Community Colleges. It defines sexual harassment as a form of sex discrimination prohibited by Education Code Section 66270, and also states that "sexual harassment" has the same definition as the definition in Education Code Section 212.5 and includes sexual battery, sexual violence, and sexual exploitation. The bill also defines sexual violence as physical sexual acts perpetrated against a person without the person's affirmative consent, including rape, sexual battery, and sexual exploitation. Sexual exploitation includes trafficking, recording of images, video, or audio of another person's sexual activity or intimate parts, distribution of such images, video, or audio, or viewing another person's sexual activity or intimate parts in a place where the other person would have a reasonable expectation of privacy.

This bill appears to be the Legislature's answer to the federal Department of Education's recently released Title IX Regulations. The statutes created by SB 493 do not go into effect until **January 1, 2022,** so the identified postsecondary institutions have some time to implement these regulations. However, it is important for postsecondary institutions to know that state funds **are conditioned upon meeting the requirements of SB 493**. These regulations seem to require similar procedures to the Title IX procedures for complaints that would otherwise not fall within the Title IX requirements.

SB 493 also sets forth a number of procedural requirements for the addressing of sexual harassment, as defined. SB 493 defines a "responsible employee" as individuals in certain positions who have the authority to take action to redress sexual harassment or the duty to report sexual harassment. This includes:

- The Title IX Coordinator;
- Residential advisors (for institutions that have student housing);
- Housing directors, coordinators, or deans;

- Student life directors, coordinators, or deans; Coaches of any student athletic or academic team or activity;
- Faculty and associate faculty, teachers, instructors, or lecturers;
- Graduate student instructors, while performing the duties of employment by the institution;
- Laboratory directors, coordinators, or principal investigators;
- Internship or externship directors or coordinators; and
- Study abroad program directors or coordinators.

This does not include the following persons who would otherwise fall under the list above:

- Therapists, including a University of California Center for Advocacy, Resources, and Education (CARE) director, advocate or employee;
- California State University victim advocate or other position with similar responsibilities; or
- An individual acting in a professional capacity for which confidentiality is mandated by law.

The above individuals exempt from status as responsible employees must inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

Postsecondary institutions identified above must also adopt the following procedural requirement and doing so is a condition of receipt of state funding under Education Code 213:

- Distribute a notice of nondiscrimination, including, but not limited to all information required by Education Code 66281.5 to all of the following:
  - Each employee of the postsecondary institution;
  - Each volunteer who will regularly interact with students; and
  - Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.
- Designate at least one employee of the institution to coordinate its efforts to comply with and carry out its responsibilities under SB 493. This may be the same employee who acts as the institution's Title IX Coordinator.
  - The instruction must provide the employee with adequate training regarding what constitutes sexual harassment and on trauma-informed investigatory and hearing processes; and
  - The employee must understand how the institution's grievance procedures operate.
- Adopt rules and procedures within the policies required by Title IX and Education Code Section 67386 for the prevention of sexual harassment.
- The rules and procedures the institution adopts must include all of the following elements:
  - The institution's primary concern must be student safety.
    - Any disciplinary measures imposed by the institution for violations of the institution's student conduct policy at or near the time of the incident being investigated must be consistent with Education Code Section 67386, subdivision (b)(10), which provides the following victim-centered requirement:
      - An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines the violation was egregious.
  - The institution must take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus if, based on the allegations, there is any reason to believe the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education. **This provision likely conflicts with the jurisdictional requirements of the Title IX Regulations, though the Title IX Regulations allow institutions the ability to use their own,**

separate processes to address allegations that fall outside of the jurisdiction of the Title IX Regulations. This would apply the provisions in this Bill to allegations and complaints that may fall outside of the jurisdiction of the Title IX Regulations.

- If the institution knows, or reasonably should know about possible sexual harassment involving individuals subject to the institutions policies at the time, regardless of whether or not any person has filed a complaint, the institution must: (1) Promptly investigate to determine whether the conduct more likely than nor occurred; or (2) Otherwise respond if the institution determines that an investigation is not required.
  - If the institution determines that the alleged conduct more likely than not occurred it must immediately take reasonable steps to end the harassment, address the hostile environment, prevent its reoccurrence, and address its effects.
- A postsecondary institution is presumed to know of sexual harassment if a responsible employee knew, or in the exercise of reasonable care, should have known, about the sexual harassment. **This provision is different from the standard in the Title IX Regulations, which set forth a deliberate indifference standard. This is the standard that was originally set forth in Title IX Dear Colleague Letters, and represents a greater duty on the part of the educational institution.**
- An educational institution can rebut the presumption that it knew, or should have known, about the harassment if it shows **all** of the following:
  - The institution provides training and requires all non-confidential responsible employees to report sexual harassment;
  - The institution provided each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question with training and direction to report sexual harassment.
  - Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.
- A postsecondary institution must consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education. This applies only if both individuals are, at the time of the request, subject to the institution's policies.
- If a student requests confidentiality or requests that the postsecondary institution refrain from pursuing an investigation or disciplinary action, the institution must take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment. The institution shall generally grant the request. However, in deciding whether to disclose a complainant's name or proceed with an investigation over the objection of the complainant, the institution may consider the following:
  - There are multiple prior reports of sexual misconduct against the respondent;
  - The respondent reportedly used a weapon or physical restraints, or engaged in battery;
  - The respondent is a faculty or staff member with oversight of students;
  - There is a power imbalance between the complainant and respondent.
  - The complainant believes that the complainant will be less safe if the postsecondary institution discloses the complainant's name or conducts and investigation; or
  - The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

- Postsecondary institutions must adopt and publish on their internet websites grievance procedures that provide for prompt and equitable resolution of sexual harassment complaints filed by a student against and employee or another student. The grievance procedures must contain the following:
  - The investigation and adjudication of alleged misconduct under this section is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for postsecondary institutions to comply with obligations under existing law. The burden to prove the underlying allegation or allegations rests with the postsecondary institution.

- A requirement to provide notice to students of the grievance procedures, including how and where to file a complaint.

- Ensure that the persons or entities responsible for conducting investigations, finding facts, and making disciplinary decisions are neutral.

- Ensure trauma-informed and impartial investigation of complaints.

  - This includes allowing parties the ability to identify witnesses and other evidence.

  - The postsecondary institution must inform the parties that any evidence available but not disclosed during the investigation might not be used at a subsequent hearing.

- Include reasonable and equitable evidentiary guidelines, including page or word limits on party submissions.

- Provide that the investigator or hearing officer may not consider:

  - The past sexual history of a complainant or respondent except in limited circumstances described in the next two provisions;

  - The prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to provide that physical injuries alleged to have been caused by the respondent were inflicted by another individual.

  - The existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations.

- The mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

- Provide for the procedures under which the investigator or hearing officer allows consideration of evidence of prior sexual history.
- Cross-examination of either party may not be conducted directly by a party or a party's advisor. This is a departure from the Title IX Regulations, which require a party advisor to conduct cross-examination.

- Either party or any witness may request to answer questions by video from a remote location.

- Student parties have the opportunity to submit written questions to the hearing officer in advance of the hearing, and the parties may note an objection to the questions at the hearing. Neither the hearing officer nor the postsecondary institution are required to respond, other than to include the objection in the record.

- The hearing officer has the discretion to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. The hearing officer is not bound by formal rules of evidence, but may take guidance from them.

- Provide that parties may not introduce evidence at the hearing a party did not identify during the investigation. However, the hearing officer has discretion, for good cause, to admit the new evidence.

- Require a preponderance of evidence standard and include an explanation of the standard in the published grievance procedures.

- Provide a reasonably prompt timeframe for all of the major stages of the complaint process.

- Provide a process for extending the postsecondary institution's timelines for good cause. Provide that the institution shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examination or school closures.

  - The procedures must provide for written notice to the parties of any extension of time.

- Provide for written notice to the parties of the outcome of the complaint, including whether a policy violation occurred, the basis for the determination, factual findings, and any discipline imposed.

- Provide assurance that the postsecondary institution will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant, if appropriate.
- Require notice to student parties if the institution is conducting a formal investigation.

  - The notice must include the allegations and the alleged institutional policy violations under review.

□ Any new allegations are subject to the same notice requirement.

◦ Provide for student parties to each have a support person or advisor to accompany them during any stage of the process and advise of the right to consult an attorney, at their own expense.

◦ Provide notice to student parties regarding appropriate counseling resources.

◦ Provide that either party may appeal the outcome of the grievance proceeding **if the institution has such an appeals process. Unlike the Title IX Regulations, SB 493 does not require an appeals process.**

◦ Outline possible interim measures that the postsecondary institution may put in place during the pendency of the investigation, the supportive measures that the postsecondary institution may provide in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility.

◦ Provide that the postsecondary institution will not mandate mediation to resolve allegations of sexual harassment, and shall not allow mediation, even on a voluntary basis to resolve allegations of sexual violence.

◦ When requested by a complainant or otherwise determined to be appropriate, a postsecondary institution must issue an interim no-contact directive prohibiting the respondent from contacting the complainant during the pendency of the investigation. An institution may also issue an interim mutual no-contact directive based on the specific circumstances of each case.

◦ Describe the obligations of all faculty and staff designated by the institution as required to report concerns of sexual harassment to the Title IX Coordinator or other designated employee.

◦ Require the Title IX Coordinator or other designated employee to assess each report of sexual harassment and provide outreach to each identifiable student who is alleged to be the victim of reported conduct.

◦ Provide a process for students to report sexual harassment by a third party.

- Postsecondary institutions must publish in a prominent place on its internet website, the name, title, and contact information, which shall include the telephone number, office location, and email address of the Title IX Coordinator or other designated employee and any individual official within the institution who has the authority to investigate complaints or institute corrective measures.

- Postsecondary institution must provide the training set forth in Education Code Section 67386, subdivision (b)(12) to all employees engaged in the grievance process related to sex discrimination, including sexual violence, including trauma-informed investigatory and hearing processes.

- If the postsecondary institution has on-campus housing, it must ensure that residential life student and nonstudent staff or their equivalent, annually receive training on how to handle reports of sexual harassment in a trauma-informed manner.

- Postsecondary educations must notify employees of their obligation to report harassment to appropriate school officials.

- Postsecondary educations must provide training to all employees on the identification of sexual harassment.

SB 493 does not require a postsecondary educational institutions to provide separate grievance procedures for student sexual harassment complaints. The institution may use student disciplinary procedures or other separate procedures. The procedures must comply with the requirements of SB 493.

A violation of the requirements of Section 493 is subject to a civil action.

If, after SB 493 becomes operative on **January 1, 2022,** any provision of 493 that conflicts with federal law shall be rendered inoperative for the duration of the conflict and without affecting the remainder of the provisions.

Any case law interpreting procedural requirements or due process when adjudicating complaints of sexual or gender-based violence has not retroactive effect. Any case law that conflicts with SB 493 is superseded upon the operative date of the statute.

Because this law does not go into effect until January 1, 2022, postsecondary educational institutions have time to ensure their policies and procedures meet the requirements of SB 493. Some of the requirements of SB 493 are beyond the jurisdiction of the Title IX Regulations, so will likely require revision to their non-Title IX policies and procedures.

(SB 493 adds Sections 66262.5 and 66281.8 to the Education Code.)

BUSINESS AND FACILITIES

AB 76 – Education Finance Apportionments.

- The General Fund revenues allocated to school districts including community college districts for the 2019-2020 fiscal year is $1,850,377,000.
- In the 2019-2020 fiscal year, $406,664,000 must be allocated from the General Fund to the State School Fund. $391,441,000 of this amount must be deemed General Fund Revenue appropriated for school districts and community college districts for the 2018-2019 fiscal year. $15,223,000 must be applied to the outstanding balance of the minimum funding obligation to school districts and community college districts for the 2013-2014 fiscal year.
- The monthly payment schedule for community college districts for fiscal year 2019-2020 was adjusted to defer $300,000,000 for the month of June to July and $30,128,000 for the month of May to July.
- For expenditure during the 2020–21 fiscal year, $330,128,000 is appropriated from the General Fund to the Board of Governors of the California Community Colleges for apportionments to community college districts.
- $4,445,777,000 is allocated to the Board of Governors of the California Community Colleges under Proposition 98. The Controller must transfer these funds to the State School Fund during the 2019-2020 Fiscal Year. The schedule is listed below:

Schedule:

1.	Apportionments	3,041,174,000
2.	Apprenticeship	43,693,000
3.	Apprenticeship Training	35,749,000
4.	Student Equity and Achievement Program	475,220,000
5.	Student Financial Aid Administration	76,007,000
6.	Disabled Students	124,288,000
7.	Student Services for CalWORKs Recipients	46,941,000
8.	Foster Care Education Program	5,654,000
9.	Institutional Effectiveness.	27,500,000
10.	Academic Senate for the Community Colleges.	1,685,000
11.	Equal Employment Opportunity	2,767,000
12.	Part-Time Faculty Health Insurance	490,000
13.	Part-Time Faculty Compensation	24,907,000
14.	Part-Time Faculty Office Hours	12,172,000
15.	Integrated Technology	41,890,000
16.	Economic Development	264,207,000
17.	Transfer Education and Articulation	779,000
18.	Extended Opportunity Programs and Services	132,691,000
19.	Fund for Student Success	47,940,000
20.	Campus Childcare Tax Bailout	3,645,000
21.	Nursing Program Support	13,378,000
22.	Expand the Delivery of Courses through Technology	23,000,000

This bill also provides that the Office of the Chancellor of the California Community Colleges must annually report on the racial or ethnic and gender composition of faculty, and efforts to assist campuses in providing equal employment opportunity in faculty recruitment and hiring practice.

(AB 76 amends Section 14041.5 of the Education Code adds Sections 41207.48, 84321.61,to the Education Code, and amends Section 2.00 of the Budget Act of 2019.)

AB 376 – Expands Protections For Student Loan Borrowers With Respect To Student Loan Services By Creating The Student Loan Borrower Bill Of Rights.

AB 376 only applies to student loan servicers as defined below. While not directly applicable to public postsecondary educational institutions, postsecondary students have new rights pursuant to this new legislation. AB 376 amends the existing California Student Loan Servicing Act (SLSA), which was enacted

in 2016 and requires student loan services to obtain a license and to comply with routine oversight from the Department of Business Oversight (DBO). AB 376 seeks to build on the SLSA by enacting a student loan borrower bill of rights, setting certain minimum standards for student loan servicing and providing additional protections for borrowers.

AB 376 defines a "student loan servicer" as any person engaged in the business of servicing student loans. "Servicing" is defined as (1) "receiving any scheduled periodic payments from a [student loan] borrower or any notification that a borrower made a scheduled periodic payment" and "applying payments to the borrower's account pursuant to the terms of the student loan or the contract governing the servicing;" (2) during a period when payments are not due, "maintaining account records for the student loan" and "communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note;" or (3) "interacting with a borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on their student loan or facilitating the activities described" in (1) or (2). Excluded from the definition of "student loan servicer" are debt collectors collecting on defaulted loans, federally chartered credit unions, and guaranty agencies engaged in default aversion pursuant to an agreement with the federal government.

Students may have questions about how these new standards will affect them when they go into repayment on their student loans.

Below is a brief summary of just some of the new requirements that servicers must comply with:

- Post, process, and credit borrower payments within specified timeframes;
- Apply overpayments consistent with the "best financial interest" of the borrower (for example, by allocating overpayments to loans with the highest interest rate);
- Apply partial payments to minimize late fees and negative credit reporting;
- Discontinue the use of "minimum late fees," which are not assessed as a percentage of the amount past due;
- Maintain records, timely process paperwork, and diligently oversee any third-party service providers that a provider may contract with to engage in any aspect of the servicing;
- Provide specialized training for customer service personnel who advise military borrowers, borrowers in public service, borrowers with disabilities, and older borrowers; and
- Not engage in unfair, deceptive, or abusive acts or practices in connection with the servicing of a student loan, a long list of examples of which are included in AB 376 (e.g., misapplying payments or misrepresenting the amount owed).

Another very significant aspect of AB 376 is that it creates a private right of action by a consumer against the student loan servicer for failing to comply with AB 376 or other applicable federal laws relating to student loan servicing. A borrower may seek, through such an action, actual and punitive damages, injunctive relief, restitution, attorney's fees and other relief, including treble damages in certain circumstances. However to maintain an action for damages or injunctive relief, a consumer must first comply with certain notice provisions that provide an opportunity to the servicer to cure the violations of law at issue.

Finally, AB 376 also establishes a Student Loan Ombudsman within the DBO who, starting on July 1, 2021, will be responsible for receiving complaints and referring them to appropriate unit within the DBO or outside agencies for investigation. For example, the Ombudsman will refer complaints regarding private postsecondary educational institutions licensed by the Bureau for Private Postsecondary Education to the Bureau for Private Postsecondary Education's Office of Student Assistance and Relief.

(AB 376 adds Sections 1788.100, 1788.101, 1788.102, 1788.103, 1788.104, and 1788.105 to the Civil Code, amends Sections 28104, 28112, 28130, and 28140 of the Financial Code, and repeals Sections 28134 and 28136 of the Financial Code.)

AB 713 – Creates A New Healthcare Related Exemption From The California Consumer Privacy Act.

In 2018, California lawmakers passed the California Consumer Privacy Act (CCPA), giving California residents a number of consumer privacy rights, including the right to find out what personally identifying information for-profit companies are collecting about them, to opt out of having such information collected, and to have that information deleted.

The CCPA *only applies to for-profit companies* doing business in California that: (a) have annual gross revenues in excess of $25 million; *or* (b) receive or disclose the personal information of 50,000 or more

Californians; *or* (c) derive 50 percent or more of their annual revenues from selling California residents' personal information.

Although public agencies, including school districts, county offices of education, charter schools, community college districts, the California State Universities, or the University of California are not required to comply with the CCPA when contracting with covered companies, public educational institutions should ensure that the obligations and risks of the CCPA rest squarely with the for-profit company. Specifically, where a public educational institution contracts with a for-profit company and that company will be collecting information relating to the public educational institution, make sure to include contract provisions that require the for-profit company to comply with all applicable privacy laws, including the CCPA.

We also recommend tracking changes in this area of law, to help in understanding what may be expected of vendors. For example, AB 713 creates a new healthcare-related exemption from certain requirements in the CCPA out of concerns that the CCPA was adversely impacting health care research and operations. Under the new exemption, information is not subject to the CCPA if it meets both of the following requirements in Civil Code Section 1798.146(4):

1. The information is deidentified in accordance with the deidentification requirements in the Privacy Rule promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as set forth in 45 C.F.R. § 164.514; and

2. The information is "derived from patient information that was originally collected, created, transmitted, or maintained by an entity regulated by" HIPAA, California's Confidentiality of Medical Information Act (CMIA), or the Federal Policy for the Protection of Human Subjects, often referred to as the Common Rule.

This new deidentification exemption is in addition to, and separate from, the CCPA's current language which also excludes from its scope certain deidentified information, though the definition for deidentification is different in the CCPA than it is in the HIPPA. Thus, AB 713 now provides an alternative basis to argue that patient information that has been deidentified for HIPAA purposes is also exempt from the CCPA.

The new deidentification exemption is subject to conditions. For example, AB 713 prohibits reidentification, except for specific purposes such as treatment or billing purposes. The bill also requires that contracts for the sale or license of deidentified patient information include specific provisions prohibiting the purchaser or recipient from reidentifying the information and limiting redisclosure of the information to third parties.

AB 713 also highlights that public educational institutions need to keep an eye on developments in privacy laws, as this is a continually changing area of law. For example, AB 713 was passed as urgency legislation (which allowed it to go into effect immediately upon the Governor's signature) in response to concerns about Proposition 24, an initiative on this November's ballot. If passed, Proposition 24 will create the California Privacy Rights and Enforcement Act (CPREA) to replace the CCPA. Supporters of the proposition say that the CPREA will give consumers even more control over their personal data and make it harder for the Legislature to change privacy laws. Accordingly, AB 713 was preemptively passed in an attempt to preserve exemptions for medical information, just in case Proposition 24 affects the CCPA's pre-existing exemptions for deidentified information.

All of this potential change highlights that public agencies need to be on high alert for amendments, changes and modifications to the CCPA and other California privacy laws, to ensure that they or their vendors are in compliance with this continually evolving area of the law.

(AB 713 amends Section 1793.130 of the Civil Code and adds Sections 1798.146 and 1798.148 to the Civil Code.)

AB 1281 – Extends Exemption, From January 1, 2021 To January 1, 2022, For Information Relating To Employees And Business-To-Business Communications From Provisions Of The California Consumer Privacy Act.

In 2018, California lawmakers passed the California Consumer Privacy Act (CCPA), giving California residents a number of consumer privacy rights, including the right to find out what personally identifying information for-profit companies are collecting about them, to opt out of having such information collected, and to have that information deleted.

The CCPA only applies to for-profit companies doing business in California, that: (a) have annual gross revenues in excess of $25 million; or (b) receive or disclose the personal information of 50,000 or more Californians; or (c) derive 50 percent or more of their annual revenues from selling California residents' personal information.

Although not covered by the law, public agencies, including school districts, county offices of education, charter schools, community college districts, the California State Universities, or the University of California that contract with a for-profit company who will be collecting information relating to their operations, should make sure to include contract provisions that require for-profit companies to comply with all applicable privacy laws, including the CCPA. We also recommend tracking changes in this area of law, to help in understanding what may be expected of vendors and what expectations employees, families, and community members may have with respect to their privacy, as this is a rapidly and constantly changing area of law.

For example, the CCPA includes an exemption from its provisions for information collected by a business about a natural person in the course of the person acting as a job applicant, employee, owner, director, officer, medical staff member, or contractor of a business. Also exempted is personal information reflecting a written or verbal communication or a transaction between the business and a natural person who is acting as an employee, owner, director, officer, or contractor of a company, partnership, sole proprietorship, nonprofit, or government agency, and whose communications or transaction with the business occur solely within the context of the business conducting due diligence regarding, or providing or receiving a product or service to or from that company, partnership, sole proprietorship, nonprofit, or government agency.

These exemptions were set to sunset on January 1, 2021. However, in November, the voters will vote on Proposition 24, which, if enacted, would amend the CCPA by, among other things, extending these sunsets by two years, to give stakeholders additional time to assess whether certain business transactions should be exempted and how to protect employee privacy. Contingent on that Proposition *not* passing in November, AB 1281 extends the exemptions by an additional year to January 1, 2022, to give stakeholders more time to assess these issues, regardless of the outcome of Proposition 24.

(AB 1281 amends Section 1798.145 of the Civil Code.)

AB 1981 – Extends LAUSD Best Value Procurement Method.

Existing law established a pilot program authorizing the Los Angeles Unified School District to use, before December 31, 2020, a best value procurement method for bid evaluation and selection for public projects that exceed $1,000,000. This bill extended the pilot program authorization for projects before December 31, 2025, based on the Legislature's finding that the best value procurement method has provided the benefits of more qualified contractors applying and an open dialogue on project approach, based on the Legislature's finding that the best value procurement method has provided the benefits of more qualified contractors applying and an open dialogue on project approach.

(AB 1981 amends Sections 20119, 20119.1, 20119.2, 20119.3, 20119.5, and 20119.7 of the Public Contract Code.)

AB 2231 – Defines "De Minimis" For The Purposes Of Determining When A Public Subsidy Provides To A Private Development Projects Is So "De Minimis" As To Not Subject The Development To Prevailing Wage Requirements.

Current law requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" projects. The prevailing wage is higher than the minimum wage and varies by region and craft. Current law also includes various exceptions to the prevailing rate requirement, including when the state or a political subdivision reimburses a private developer or subsidizes the costs of a private development, so long as the reimbursement or subsidy is "*de minimis* in the context of the project." (Labor Code Section 1720) Current law, however, does not include a definition for "*de minimis*," though the Department of Industrial Relations has a policy of designating any subsidy or reimbursement in excess of 2% of the total project costs more than *de minimis*, making the project a public works subject to the prevailing wage requirements.

AB 2231 fills this gap in the law by providing a definition for "*de minimis*." AB 2231 states that a "public subsidy is *de minimis* if it is both less than six hundred thousand dollars ($600,000) and less than 2 percent of the total project cost." A public subsidy is also *de minimis* if the project "consists entirely of single-family dwellings" and the subsidy "is less than 2 percent of the total project cost."

AB 2231's new definition does not apply to a project that was advertised for bid, or a contract that is awarded, before July 1, 2021.

(AB 2231 amends Section 1720 of the Labor Code.)

AB 2311 – Requires Public Entities To Provide Notice To Contractors When Public Works Project Requires The Use Of A Skilled And Trained Workforce.

Certain public works projects require that a public entity obtain an enforceable commitment from a bidder, contractor, or other entity that it will use a skilled and trained workforce. Public agencies can also require that a bidder, contractor, or other entity use a skilled and trained workforce to complete a contract or project.

AB 2311 is intended to address a problem of contractors not having advanced notice of when a skilled and trained workforce is required for a project. AB 2311 now requires a public entity to include in all bid documents and construction contracts, a notice that the project is subject to the skilled and trained workforce requirements. AB 2311 further provides that the failure of a public entity to provide such a notice does not excuse the public entity or the bidder, contractor, or other entity from the obligation to use a skilled or trained workforce to complete the project, if such a requirement is imposed by statute or regulation.

(AB 2311 amends Section 2600 of the Public Contracts Code and adds Section 2600.5 to the Public Contracts Code.)

AB 2765 – Expands The Definition Of "Public Works," For The Purposes Of Payment Of The Prevailing Wage, To Include Work On Charter Schools That Is Paid For From A Conduit Revenue Bond.

Current law requires that at least prevailing wages be paid to all workers employed on a "public works" projects. The prevailing wage is higher than the minimum wage and varies by region and craft. AB 2765 expands the definition of "public works," for the purposes of payment of the prevailing wage, to include work on charter schools, paid for using proceeds from a conduit revenue bond. For this purpose, "public works" is expanded to also mean "any construction, alteration, demolition, installation, or repair work done under private contract on a project for a charter school, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds, as defined in Section 5870 of the Government Code, issued on or after January 1, 2021, by a public agency."

According to the authors of the bill, conduit financing is a mechanism of borrowing whereby a conduit issuer, typically a governmental agency, acts as a bridge between investors and the borrower. Where a government agency acts as the bridge, the project is effectively subsidized by public funds and, therefore, qualifies as a "public works" for this purpose.

(AB 2765 adds Section 1720.8 to the Labor Code.)

SB 820 – Education Budget Bill (Urgency Bill Effective Immediately On September 18, 2020).

Prohibits Participating Party from Declaring Bankruptcy if Bonds are Issued to Fund Several Financings of Working Capital for Several Participating Parties

The California School Finance Authority issues revenue bonds to finance projects or working capital for a single or several participating parties, including a school district, county office of education, charter school, or community college district that undertakes the financing or refinancing of a project or working capital. SB 820 prohibits participating parties from declaring bankruptcy if bonds issued for purposes of borrowing to fund several financings of working capital for several participating parties under a single resolution remain outstanding.

Sale or Lease of Surplus Real Property by School Districts for Property Not Previously Operated, or Not Constructed as a School

The Education Code requires a school district to appoint a district advisory committee to advise the board regarding the sale, lease, or rental of any excess real property. Under SB 820 governing boards of school districts need not appoint an advisory committee when:

- They seek the sale or lease of surplus real property; and
- The district did not previously operate the real property in question, or the real property was not constructed as, an early childhood education facility or as school for elementary and secondary education.

This exemption applies only until **January 1, 2024.**

Reduction in Allocations for Reducing Outstanding Balance of Constitutional Minimum

Current law appropriates $282,237,000 from the General Fund in the 2019-2020 fiscal year for allocation to school districts and community college districts for the purpose of reducing the outstanding balance of the Constitutional minimum financial obligation. Existing law allocates $149,059,000 of that amount to the San Francisco Unified School District and San Francisco County Office of Education. SB 820 reduces the overall amount for these purposes to $266,306,000 and the

amount for the San Francisco Unified School District and San Francisco County Office of Education to $133,128,000.

Changes Apportionment Calculation for Local Educational Agencies that Meet Specified Requirements Based on Enrollment Growth

Previously, the Legislature waived apportionment calculations for a local educational agency and related calculations for the 2020-2021 fiscal year to be based on the local educational agency's average daily attendance in the 2019-2020 school year. SB 820 makes local educational agencies that meet specified requirements eligible for an apportionment calculation for the 2020-2021 fiscal year based on growth in the local educational agency's actual enrollment in the 2020-2021 fiscal year. School districts, county offices of education, and charter schools with growth in overall pupil enrollment from the 2019-2020 level to its projected 2020-2021 level are eligible. If a local educational agency does not document or project enrollment growth in its most recent 2020–21 budget, or in its adopted 2019–20 second interim report, it may use overall pupil average daily attendance growth from its actual 2019–2020 level to its projected 2020–2021 level, as documented in its most recent 2020–2021 budget, or in its adopted 2019–20 second interim report to establish eligibility for the apportionment calculation.

Requires Superintendent of Public Instruction to Update the Template for the Local Control Funding Formula Budget Overview

Previously, the Legislature waived the requirement for governing boards of school districts, county boards of education, and charter schools to prepare a local control and accountability plan (LCAP) for the 2020-2021 school year. In lieu of the LCAP, these entities must adopt a learning continuity and attendance plan. Existing law also requires governing boards of school districts, county boards of education, and charter schools to develop a summary document known as the local control funding formula budget overview for parents by July 1, of each year. SB 820 requires the Superintendent of Public Instruction to update the template and instructions for the local control funding formula budget overview for parents by September 15, 2020 to reflect realignment with the learning continuity and attendance plan.

Requires State Superintendent of Public Instruction to Update the Template for the Annual Update to the Local Control and Accountability Plan

The Education Code requires the State Superintendent of Public Instruction to adopt templates for purposes of the local control and accountability plans (LCAP) and annual updates. Existing law requires school districts, county offices of education, and charter schools to include the information reported in their learning continuity and attendance plans as part of the annual update to the local control accountability plan for the 2021-2022 school year.

Under SB 820, for purposes of the annual update to the LCAP for the 2021–22 school year required by the Education Code, a school district, county office of education, or charter school must include the actions and expenditures included in the learning continuity and attendance plan adopted pursuant the Education Code and the local control and accountability plan adopted for the 2019–20 school year.

SB 820 also requires the Superintendent of Public Instruction, in consultation with the executive director of the State Board of Education, to revise the template for the annual update to the local control and accountability plan before January 31, 2021, to reflect the inclusion of the learning continuity and attendance plan in the 2021–22 annual update.

Changes Definition of Instructional Materials to Include Hardware

Previous law provided for the adoption and selection of instructional materials for use in elementary and secondary schools, including technology-based materials. The definition of technology-based materials included software programs, video disks, compact disks, and databases, but did not include the equipment required to utilize those materials (*e.g.*, computers, laptops, or tablets). Existing law prohibited school districts from replacing computers or related equipment in an existing computer lab or establish a new computer lab under these provisions.
SB 820 deleted the sections regarding electronic equipment from the definition of technology-based materials and the prohibitions on replacing equipment or establishing a new computer law. Technology-based materials now include the electronic equipment required to make use of other materials, including laptop computers and devices that provide internet access. This will assist public educational institutions in providing technology required for distance education.

Allows University of California to Use Funds from Reduction of Annual Debt Service Costs to Mitigate Impacts to Programs and Ensure Continued Employment of Employees

Existing law requires the University of California to reduce annual debt service costs by refunding, defeasing, or retiring general obligation bonds or State Public Works lease revenue bonds if it is able to and to use the savings to reduce the existing unfunded liability of the University of California retirement plan. SB 820 allows the University of California to reduce annual debt service costs by the same manner in fiscal years 2020-2021 and 2020-2022 and use the savings to:

- Mitigate the impacts to programs and services that predominately support underrepresented student access to, and success, at the university; and
- Provide for continued employment of employees without resorting to involuntary layoffs, furloughs.

These provisions apply only during the 2020-2021 and 2021-2022 fiscal years. SB 820 makes these provisions inoperable on July 1, 2023 and repeals them on January 1, 2024.

Allows Purchase of Laptop Computers with Lottery Funds

Proposition 20, requires that 50 percent of any increase in revenues generated by lottery games for the benefit of public education be allocated to school districts and community college districts for the purpose of instructional materials. SB 820 authorizes instructional materials to include, but not be limited to, laptop computers and devices that provide access for use by pupils, students, teachers, and faculty as learning resources.

Extends Date for University of California Adoption of Procedures for Handling Native American Human Remains and Cultural Items

Currently, the Regents of the University of California must adopt and implement certain policies and procedures relating to the culturally appropriate treatment of, and the identification and disposition of, certain Native American human remains and cultural items as a condition of using state funds to handle those items. Previous law required the adoption of the policies and procedures by January 1, 2020. SB 820 extends the date by which the Regents must conditionally adopt the policies to January 1, 2021.

Repeals Law Allocating $3,500,000 to the San Francisco Unified School District for Professional Development

Previous law required the Superintendent of Public Instruction to annually allocate $3,500,000 to the San Francisco Unified School District for purposes of supporting professional development and leadership training for education professionals. SB 820 repealed that provision.

Waives Requirements for After School Education and Safety Program

Existing law establishes the After School Education and Safety (ASES) Program under which participating public schools receive grants to operate before and after school programs serving students in grades 1 through 9. Existing law also establishes the 21st Century High School After School Safety and Enrichment for Teens (ASSETs) Program to create incentives for establishing after school enrichment programs to provide academic support and safe, constructive alternatives for high school pupils and to support college and career readiness. SB 820 authorized the State Department of Education to waive certain ASES transportation funding provisions and the requirement that an after school program pursuant to the High School ASSESTs program operate for a minimum of 15 hours per week.

Because it is a bill providing for the appropriations related to the budget bill, SB 820 became effective immediately when the Governor signed it on September 18, 2020.

(SB 820 amends Sections 313.3, 8209, 14041.8, 17199.4, 17391, 17463.7, 37700, 41024, 41207.47, 43501, 43502, 43503, 43504, 43505, 43509, 48412, 51461, 52065, 52074, 56836.07, 56836.148, 56836.24, 60010, 69996.3, 71000, and 92495 of, adds Sections 1241, 17199.15, 43502.5, 43506.5, and 92411 to, adds and repeals Section 92496.1 of, the Education Code, amends Sections 14900, 14901, 14902, 14903, 14904, 14905, 14906, 14910, and 14911 of, to adds Section 8880.4.1 to, and repeals Section 14905.1 of, the Government Code, amends Sections 8025, 102426, and 102430 of, and adds Section 8024 to, the Health and Safety Code, repeals Section 48 of Chapter 29 of the Statutes of 2016, to amend Sections 1, 2, 3, 4, 5, 6, 7, and 8 of Chapter 3 of the Statutes of 2020, and amends Sections 95, 97, 110, 111, 112, 116, 117, 118, and 119 of Chapter 24 of the Statutes of 2020, relating to education finance.)

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Title IX Compliance for Community College Districts

After a decade of changing guidance, the U.S. Department of Education issued new Title IX regulations in May 2020. These new regulations came into effect on August 14, 2020 and Districts are expected to comply with and train employees. If this seems like a daunting task, don't fret! LCW has you covered. We are offering compliance training, guidance on completing required forms, a Q&A session, and sample forms to ensure your District is compliant.

Our experience assisting educational institutions with Title IX manners includes the following:

- **Policies and Procedures:** We assist our clients in creating and updating their anti-harassment, discrimination and disciplinary, policies, including the publication and distribution. We also assist our clients in implementation operating procedures.
- **Compliance:** We have assisted our clients in auditing their policies and procedures to ensure compliance with changes in the law. We also work with and address issues pertaining to Title IX Coordinators, complaint and investigation procedures, third party complaints, and privacy concerns.
- **Grievance Procedures:** We help clients create written grievance procedures, including reporting policies and protocols.
- **Investigations:** We assist clients in investigations of alleged Title IX violations, including fact-finding.
- **Discipline:** We assist clients with disciplinary procedures, and in implementing discipline against employees and students.
- **OCR:** We assist clients in addressing complaints and inquiries from the Department of Education, Office of Civil Rights. **Litigation:** We are statewide experts in the defense of actions brought by students alleging school-related violations, including harassment and discrimination and have a robust writ practice.
- **Training:** As a leading provider of client education, we regularly provide Title IX training, for individual institutions through our customized training program as well as through group webinars and seminars.

Visit our website for more information: https://www.lcwlegal.com/lcw-title-ix-training-program

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