LCW 2022

LEGISLATIVE ROUNDUP

The Legislative Roundup is a compilation of bills, presented by subject, which were signed into law and have an impact on the employment and employment related issues of our clients. Unless the bills were considered urgency legislation (which means they went into effect the day they were signed into law), or as otherwise noted, bills are going into effect on January 1, 2023. Urgency legislation will be identified as such.

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

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COVID-19

AB 152 – Extends COVID-19 Supplemental Paid Sick Leave Through December 31, 2022; Establishes Relief Grant Program For Small Businesses And Nonprofits.

On September 30, 2022, Governor Gavin Newsom signed AB 152 into law. The bill amends the Labor Code, making several important changes to how COVID-19 Supplemental Paid Sick Leave (SPSL) is administered, and also sets up a grant relief fund for small non-profits and other businesses with between 26-49 employees. The bill was designated as urgency legislation and therefore took effect immediately.

AB 152 makes two significant changes to SPSL. First, it extends the existing statutory leave rights. Prior to AB 152, statutory SPSL rights would have expired on September 30, 2022. AB 152 extends that expiration date to December 31, 2022. Importantly, the amendment does not provide employees with any additional SPSL, but merely extends the period during which employees who have not exhausted their SPSL may use such leave. As a result, employers should continue to allow employees who have not exhausted their SPSL entitlements to use such leave for any qualifying reasons until the end of the year.

Second, AB 152 provides more authority for employers to require retesting before an employee returns to work. Where an employee is on leave after testing positive for COVID-19, prior law authorized employers to require a follow-up COVID-19 test on or after the fifth day following the initial positive test in order to expedite an end to the employee's isolation and their return to work. Under AB 152, if that follow-up test is also positive, employers may require the employee to retest within a period of no less than 24 hours. The bill also provides that if an employee refuses to submit to follow-up testing, or refuses to provide documentation of the results from such tests, the employer may lawfully deny the employee SPSL.

(AB 152 adds Sections 12100.96 through 12100.985 to the Government Code, amends Sections 248.6 and 248.7 of the Labor Code, and amends various provisions of the Revenue and Taxation Code.)

AB 1751 – Extends Workers' Compensation Benefits For Illness Or Death Resulting From COVID-19 Until January 1, 2024.

Current law, enacted during the COVID-19 pandemic, sets out several specific provisions governing workers' compensation claims and state disability benefits relating to employees who contract COVID-19. It creates a rebuttable presumption for purposes of California's workers' compensation system that a peace officer, firefighter, specified frontline employees, and certain health care employees who contract COVID-19 were infected with the virus via a workplace exposure. It also establishes a similar presumption for employees who contract COVID-19 after an outbreak at their worksite. Both of these presumptions extend 14 days after the last day of employment with a particular employer.

Under current law, these presumptions are scheduled to sunset automatically on January 1, 2023. AB 1751 extends this expiration date to January 1, 2024. The bill also extends the public safety presumption to several categories of state-employed firefighters not covered by the original statute.

(AB 1751 amends Sections 3212.86, 3212.87, and 3212.88 of the Labor Code.)

AB 2693 – Extends And Revises Cal/OSHA Requirements Regarding COVID-19 Exposures In The Workplace.

Under current law, the Division of Occupational Safety and Health (Cal/OSHA) has authority to prohibit any operation or process at a workplace, or prohibit entry to the workplace, if there exists a risk of exposure to COVID-19 that constitutes an imminent hazard to employees. Existing law also requires the employer to post a notice of the prohibition at a conspicuous location; violating the prohibition or removing the notice is a crime. This COVID-specific law is currently set to expire on January 1, 2023; AB 2693 extends those provisions until January 1, 2024.

Existing law also imposes specific obligations on employers regarding reporting and notices of COVID-19 exposures and outbreaks. AB 2693 amends those requirements.

First, current law requires employers to provide a specified notice to the local public health agency in its jurisdiction if the number of reported workplace cases of COVID-19 amount to an "outbreak." Current law also requires the Department of Public Health to publicize workplace industry information received from local public health departments on its website. AB 2693 deletes those provisions.

Second, current law requires an employer who receives notice of a potential exposure on its worksite to provide all employees who were on the premises with written notice that they may have been exposed to COVID-19. Under AB 2693, employers are only

required to post a prominently-displayed notice in each worksite or on an electronic employee portal stating (a) the dates on which an employee or subcontractor with a confirmed case of COVID-19 was on the premises, (b) the location of the exposure, including the department, floor, building, or other area, and (c) contact information for employees to receive information regarding COVID-19 related benefits. The notice must be posted within one business day, must remain posted for no less than 15 calendar days, and must be in English and the language understood by the majority of employees. Employers may, but are not required to, provide direct written notice to each employee instead.

Employers must also provide written notice to the exclusive labor representative, if any, of confirmed cases and employees who had close contact with those confirmed cases, within one business day.

(AB 2693 amends Sections 6325 and 6409.6 of the Labor Code.)

DISCRIMINATION, HARASSMENT & RETALIATION

AB 2188 – Prohibits Discrimination Based On Off-Duty Cannabis Use, With Exceptions.

AB 2188 amends the California Fair Employment and Housing Act to prohibit employers from discriminating against employees and applicants based on off-duty use of cannabis, while aiming to preserve employers' ability to maintain a drug-free workplace.

Beginning on January 1, 2024, AB 2188 makes it unlawful for an employer to discriminate against or otherwise penalize an employee or applicant based upon the person's use of cannabis off the job and away from the workplace, or based on an employer-required drug screening where the employee tested positive for non-psychoactive cannabis metabolites.

The bill does not prevent employers from acting on a scientifically valid pre-employment drug screening conducted through methods that *do not* screen for non-psychoactive cannabis metabolites. The bill also does not give employees a right to possess, use, or be impaired by cannabis on the job, nor does it affect the employer's right and obligation to maintain a drug- and alcohol-free workplace.

AB 2188 also specifically does not apply to employees in the building and construction trades, or to applicants and employees in positions that require a federal background investigation or security clearance. Moreover, to the extent AB 2188 conflicts with state or federal laws requiring drug testing for applicants or employees as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract, or laws regulating the manner of testing, those other laws take precedence.

These new provisions are subject to the same enforcement mechanisms through the California Civil Rights Department (formerly DFEH) as the FEHA's other employment discrimination provisions.

(AB 2188 adds Section 12954 to the Government Code.)

ELECTED OFFICIALS

SB 34 – Declares Void Any Contract Entered Into Because Of An Act Of Bribery.

Existing law makes it a crime for a public official to ask for, receive, or agree to receive a bribe. Current law also prohibits state or local officials from being financially interested in a contract; a violation of this law makes the contract voidable, but not automatically void. SB 34 declares that any contract entered into because of a violation of state or federal anti-bribery laws is void.

(SB 34 adds Section 6102 to the Public Contract Code.)

EMPLOYEE & WORKPLACE SAFETY

AB 2068 – Requires Cal/OSHA Postings In Non-English Languages.

Under current law, if the Division of Occupational Safety and Health (Cal/OSHA) makes a finding that an employer violated health and safety standards or regulations, Cal/OSHA can issue a citation, which the employer is required to post at or near each place where the violation occurred, or in a place readily seen by all employees. However, current law does not require the employer to post translations of these notices even if the majority of the worksite speaks a language other than English.

AB 2068 aims to close this language gap. It requires that any time a citation or special order or action is required to be posted, the employer must also post an employee notification prepared by Cal/OSHA in multiple languages. The bill requires Cal/OSHA to prepare these notifications in English and the top seven non-English languages used by limited-English-proficient adults in California, as determined by the US Census Bureau's American Community Census, as well as Punjabi (if not already included). The bill allows Cal/OSHA to enforce this posting requirement by citations and civil penalties.

(AB 2068 amends Sections 6318 and 6431 of the Labor Code.)

SB 1044 – Enacts Employee Protections Relating To Workplace Emergency Conditions.

Senate Bill 1044 adds a new chapter to the Labor Code entitled Workers' Rights in Emergencies. SB 1044 prevents employers from taking or threatening adverse action against any employee because the employee refused to report to or left a workplace or worksite within an area affected by an emergency condition because the employee has a reasonable belief that the workplace or worksite is unsafe. When feasible, employees must report the emergency condition to their employer prior to leaving or refusing to report for work. When prior notice is not feasible, employees are required to notify their employer of the emergency condition as soon as possible afterwards.

The bill defines an "emergency condition" as the existence of either "conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act" or "an order to evacuate a workplace, a worksite, a worker's home, or the school of a worker's child due to natural disaster or a criminal act." However, it specifically provides that an "emergency condition" does not include a health pandemic. "A reasonable belief that the workplace or worksite is unsafe" means that a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises.

Certain categories of employees are excluded from the right to leave or refuse to report to work, including the following:

- First responders.
- Disaster service workers, as defined by Section 3101 of the Government Code.
- Employees required by law to render aid or remain on the premises in case of an emergency.
- Transportation employees participating directly in emergency evacuations during an active evacuation.
- Employees whose primary duties include assisting members of the public to evacuate in case of an emergency.
- Employees of health care facilities who provide direct patient care or services supporting patient care operations, or who are otherwise required by law or policy to participate in emergency response or evacuation.

Notably for public agencies, Section 3101 defines "disaster service workers" as including all public employees. As such, the bill does not give public employees a right to leave work or refuse to report for work in an emergency condition; however, the public employee would still have a right under Labor Code 6311 to refuse to perform work that is unreasonably hazardous under Cal/OSHA standards.

Separately, SB 1044 prohibits employers from preventing any employee from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety during an emergency condition. The bill specifically states that this prohibition applies equally to public agencies.

SB 1044 does not apply when emergency conditions that pose an imminent and ongoing risk of harm to the workplace, the worksite, the worker, or the worker's home have ceased.

(SB 1044 adds Section 1139 to the Labor Code.)

SB 1131 – Enacts Confidentiality Protection Provisions For Public Employees And Contractors At Risk Of Violence Or Harassment From The Public.

In 1998, the Legislature established the "Safe at Home" program to allow victims of domestic violence to apply for a substitute address to be used in public records in order to prevent potential assailants from finding their work or home address. Subsequent legislation expanded this program to include victims of sexual assault and stalking, as well as reproductive

health care service providers, employees, volunteers, and patients. The program is administered by the Office of the Secretary of State, and includes provisions allowing individuals to seek confidential voter status and have their home address, phone number, and email address declared condifential.

SB 1131 extends this program in several ways. Most notably, the program will now cover any employees or contractors of public entities who face harassment, violence, or threats of violence from the public due because of their work for a public entity. As examples, the bill lists public health officers and public health workers, election workers, school board members, and code enforcement officers; however, the revised provisions are not limited to these positions.

The bill additionally provides that reproductive health care providers, employees, volunteers, and patients can seek protection based on harassment, rather than only acts or threats of violence.

The bill also contains specific provisions intended to protect county election officials. Where current law requires the elections official in each county to post, at least a week before an election, a list of polling places in each precinct and a list of precinct board members, SB 1131 requires only a list of the party affiliation of each precinct board member, and prohibits including the names of the individual precinct board members.

SB 1131 was designated as urgency legislation, and came into effect immediately upon the Governor's signature on September 26, 2022.

(SB 1311 amends Sections 2166.5, 12105.5, and 12108 of, and adds Section 2166.8 to, the Elections Code. It also amends Sections 6215 and 6215.2 of the Government Code.)

LABOR RELATIONS

AB 2556 – Extends Post-Impasse Period Before A Local Agency Can Impose Its Last, Best, And Final Offer; Allows Firefighter Unions To Charge Non-Union Members For Cost Of Individual Representation.

AB 2556 makes two changes to the Meyers-Milias-Brown Act (MMBA), which governs labor relations for local public agencies.

Under current law, if labor negotiations covered by the MMBA reach an impasse and both mediation and factfinding procedures have been completed, a public agency that has not adopted binding interest arbitration has the right to implement its last, best, and final offer after a public hearing, but no earlier than 10 days after the release of the factfinding report. AB 2556 moves this timeframe back by five days, requiring the agency to wait at least 15 days after the release of the factfinding report.

In addition, AB 2556 adds a provision specific to employees covered by the Firefighters Procedural Bill of Rights Act, i.e. firefighters. Where a firefighter who holds a conscientious objection or otherwise declines union membership requests that the recognized employee organization provide individual representation in a discipline, grievance, arbitration, or administrative hearing, AB 2556 allows the employee organization to charge the employee for the reasonable cost of the representation.

(AB 2256 amends Section 3505.7 of the Government Code and adds Section 3503.1 to the Government Code.)

SB 191 – Implements Temporary Alternative Union Access Provisions For New Employee Orientations; Permits Waiver By Mutual Agreement.

SB 191, a budget trailer bill, makes statutory changes to implement various provisions of the state budget relating to labor, workforce, and employment policy. Among numerous other changes, SB 191 makes two changes to the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which is one of the statutes under the jurisdiction of the Public Employment Relations Board (PERB), and applicable to all public employers. As a budget trailer bill, SB 191 took effect immediately upon the Governor's signature on June 30, 2022.

Under current law, the PEDD requires public employers to give a recognized exclusive labor representative access to its new employee orientations, with at least 10 days' advance notice in most cases, and with the details to be determined by mutual agreement. SB 191 adds a provision allowing that agreement to expressly waive or modify the statutory requirements.

SB 191 also adds temporary provisions to the PEDD for situations where new employee orientations may be affected by remote working or public health restrictions.

Where a public employer has not conducted an in-person new employee orientation within thirty days of a newly hired employee's start date, and the new employee is working in person, the exclusive representative has a right to schedule an in-person meeting at the worksite during working hours. During that meeting, the exclusive representative shall be permitted to communicate directly with newly hired employees in the applicable bargaining unit for up to 30 minutes. The newly hired employees must be allowed paid time off, relieved of other duties, for attending the meeting. On receiving a request from the exclusive representative, public employers must provide an appropriate on-site meeting space within seven calendar days. Employers may, but are not required to, provide more than 30 minutes of paid time to newly hired employees.

In cases where a local public health agency has issued an order limiting the size of gatherings, the exclusive representative has the right to schedule multiple meetings to ensure each newly hired employee can attend without exceeding the maximum allowable number of people. If the order prohibits all gatherings, the exclusive representative has the right to schedule the meeting (or meetings) once the order is lifted or modified to permit gatherings. The details of this alternative access is to be determined through mutual agreement.

These temporary provisions remain in effect only until June 30, 2025, and are automatically repealed on that date.

(SB 191 amends Section 3556 of the Government Code, as well as various other statutory provisions.)

SB 931 – Authorizes Civil Penalties For Public Employers Deterring Or Discouraging Union Membership.

Existing law prohibits public employers from deterring or discouraging employees or applicants for public employment from becoming or remaining members of an employee organization, from authorizing representation by an employee organization, or from authorizing dues or fees to an employee organization. In 2018, the Legislature enacted a statute codifying provisions to this effect, which are known as the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD). The PEDD applies to all public employers and – with some exceptions – is under the jurisdiction of the Public Employment Relations Board.

SB 931 authorizes an employee organization to bring a claim before PERB alleging that a public employer violated the PEDD. If PERB finds that the employer did violate the PEDD, the employer may be subject to a civil penalty of up to $1,000 per affected employee, up to $100,000 in total. The amount of the penalty is set by PERB, taking into account the severity of the violation, any prior history of violations by the employer, and the employer's annual budget.

In addition, the employer must pay attorney's fees and costs for a prevailing employee organization unless the claim was frivolous, unreasonable, or groundless, or the employee organization continued to litigate after the claim became so. And if PERB initiates compliance proceedings in superior court, or the employer seeks judicial review, and PERB prevails before the court, the employer must pay PERB's attorney's fees and costs as well.

(SB 931 adds Section 3551.5 to the Government Code.)

LEAVE RIGHTS

AB 1041 – Expands CFRA And Paid Sick Leave Law To Cover Leave Taken To Care For A Designated Person.

AB 1041 amends the California Family Rights Act (CFRA) and the Healthy Workplaces, Healthy Families Act of 2014, also known as the Paid Sick Leave Law, to permit eligible employees of covered employers to take leave to care for individuals who are not family members.

Leave Under CFRA to Care for a Designated Person

The CFRA makes it an unlawful employment practice for a private employer with 5 or more employees or any public employer to refuse to grant a request from an employee who meets specified requirements to take up to a total of 12 workweeks in any 12-month period for family care and medical leave. One of the qualifying reasons for an employee to take CFRA leave is for the employee to care for certain family members, including a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, who have a serious health condition.

AB 1041 expands the class of people for whom an employee may take leave to care for to now also include a "designated person." A designated person means any individual related by blood or whose

association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period.

Paid Sick Leave to Care for a Designated Person

California's Paid Sick Leave Law sets a statutory minimum amount of sick leave for most employees in California. Employees may use paid sick time for preventive care or the diagnosis, care, or treatment of an existing health condition of an employee or an employee's family member, which under current law means an employee's child, parent, spouse, registered domestic partner, grandparent, grandchild, and sibling.

AB 1041 expands the definition of the term "family member" to include a designated person, which means a person identified by the employee at the time the employee requests paid sick days. An employer may limit an employee to one designated person per 12-month period for paid sick days.

(AB 1041 amends Section 12945.2 of the Government Code, and amends Section 245.5 of the Labor Code.)

AB 1655 And AB 2596 – Designate Juneteenth (June 19), The Lunar New Year, And Genocide Remembrance Day, As State Holidays.

AB 1655 and AB 2596 together add three dates to the list of holidays officially recognized by the state of California.

AB 1655 adds June 19, known as "Juneteenth." AB 2596 adds the Lunar New Year and Genocide Remembrance Day. The Lunar New Year is defined as the date corresponding with the second new moon following the winter solstice, or the third new moon following the winter solstice should an intercalary month intervene. Genocide Remembrance Day is April 24.

These bills do not directly affect employers other than the state, unless an employer has existing policies or labor agreements that incorporate the list of state holidays by reference.

(AB 1655 amends Sections 37220, 45203, 79020, and 88203 of the Education Code, and amends Sections 6700, 19853, and 19853.1 of the Government Code.)

AB 1949 – Entitles Eligible Employees To Five Days Of Bereavement Leave Upon The Death Of A Family Member; Expands Small Employer Family Leave Mediation Pilot Program.

AB 1949 amends the California Fair Employment and Housing Act (FEHA) to create a statutory right for eligible employees to take up to five days of bereavement leave upon the death of a covered family member.

AB 1949 applies to all public agencies and all other employers with five or more employees. Employees are eligible for statutory bereavement leave if they have been employed for at least 30 days before the leave commences. Bereavement leave may be taken for the death of a family member, which means a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. To be covered by the law, the bereavement leave must be completed within 3 months of the date of death, but need not be taken consecutively.

The new statutory leave works in conjunction with any existing bereavement leave policies an employer may have. Employers that have no bereavement leave policy, or a policy that provides less than five days, must provide no less than five days of leave.

However, AB 1949 does not require employer to provide paid bereavement leave. Employers with existing bereavement leave policies that provide employees less than five days of paid bereavement leave, must continue to give employees the number of paid days employees are entitled to under the bereavement leave policies, but the rest of the five days may be unpaid. For employers that do not currently provide paid bereavement leave, all five days can be unpaid. In any event, employers must allow employees to use paid vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee during a period of unpaid bereavement leave.

Employers may require employees to provide documentation of the death of the family member within 30 days of the first day of the leave. Documentation includes, but is not limited to, a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency. AB 1949 obligates employers to maintain the confidentiality of any employee requesting bereavement, as well as the documentation the

employee provides, except to internal personnel or legal counsel, as necessary, or as required by law.

AB 1949 makes it an unlawful employment practice for an employer to refuse to hire, or to discharge, demote, fine, suspend, expel, or discriminate against, an individual because of either of the following:

1. An individual's exercise of the right to bereavement leave; or

2. An individual's giving information or testimony as to their own bereavement leave, or another person's bereavement leave, in an inquiry or proceeding related to the right to take bereavement leave.

AB 1949 also makes it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, an employee's right to take bereavement leave.

Bereavement leave under AB 1949 is separate and distinct from any right under the California Family Rights Act (CFRA).

AB 1949 does not apply to an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave equivalent to that required under AB 1949 and for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent above the state minimum wage.

AB 1949 also requires the Civil Rights Department (CRD) to expand the small employer family leave mediation pilot program ("Pilot Program") for alleged violations of specified family care and medical leave provisions, applicable to employers with between 5 and 19 employees, to include mediation for alleged violations of the new bereavement leave entitlement. The Pilot Program is only in effect until January 1, 2024, and as of that date is repealed.

(AB 1949 amends Sections 12945.21 and 19859.3 of, and adds Section 12945.7 to, the Government Code.)

OPEN MEETINGS & PUBLIC RECORDS

AB 2449 – Revises The Brown Act's Requirements For Public Meeting By Teleconference.

Prior to the COVID-19 pandemic, the Ralph M. Brown Act had strict requirements on the legislative bodies of local agencies meeting by teleconference. Among other restrictions, all teleconference locations had to be identified in the notice and agenda of the meeting, and each teleconference location had to be accessible to the public. In addition, at least a quorum of the legislative body had to be present within the boundaries of the local agency.

In March of 2020, the Governor issued an executive order temporarily waiving some of these restrictions. The Legislature followed up the Governor's executive order with AB 361, which provided a statutory exception, authorizing local agencies to use teleconferencing without complying with all of the Brown Act's restrictions in specified circumstances related to public health and safety emergencies. By the terms of AB 2449, this authorization will sunset and expire on January 1, 2024.

AB 2449 does not extend AB 361, which still sunsets January 1, 2024. Instead, the bill implements another temporary exception authorizing agencies to meet by teleconference without strict compliance with the traditional notice and physical access requirements. Notably, where AB 361 is based on an agency's need for teleconferencing, AB 2449's new framework is based on the circumstances of individual members of the legislative body.

Beginning January 1, 2023, the legislative body of a local agency can use teleconferencing without noticing each teleconference location or making it publicly accessible, provided at least a quorum of the body participates in person at a single physical location that is identified on the agenda, open to the public, and within the boundaries of the agency, and provided that other requirements regarding accessibility are met. However, an individual member of the legislative body may participate remotely only in one of two circumstances:

1. With "just cause", the member can participate remotely after giving notice as soon as possible. AB 2449 defines "just cause" as (a) a family childcare or caregiving need; (b) a contagious illness; (c) a need related to a physical or mental disability that is not otherwise accommodated; or

(d) travel while on official business. The bill also limits a member to participating remotely under this provision to two meetings per calendar year.

2. In "emergency circumstances," defined as a physical or family emergency that prevents the member from attending in person, the member can participate remotely by requesting approval to do so from the legislative body. The legislative body may take action on the request as soon as possible, including at the beginning of the meeting, even if there was not sufficient time to place the request formally on the agenda.

Under either circumstance, the member in question must give a general description of the circumstances relating to their need to appear remotely, but need not disclose any medical diagnosis, disability, or other confidential medical information.

In addition, AB 2449 provides that a member cannot participate solely by teleconference under the new teleconference framework for more than 3 consecutive months or more than 20 percent of the agency's regular meetings (more than two meetings if the agency meets fewer than 10 times per year).

Outside of the limited circumstances authorized by AB 2449 (and until January 2024, AB 361) public meetings can still occur via teleconference if the legislative body complies with the general (pre-pandemic) agenda, notice, and quorum requirements of the Brown Act.

The new statutory authorization expires by its own terms on January 1, 2026. At that point, absent further legislation, the Brown Act's teleconferencing provisions will revert to essentially the same language as before the pandemic.

(AB 2449 amends Sections 54953 and 54954.2 of the Government Code.)

AB 2647 – Changes Requirements For Posting Writings Distributed To A Local Agency Governing Board.

AB 2647 reforms the public disclosure requirements under the Brown Act in light of a recent Court of Appeal decision.

In 2007, the Legislature enacted SB 343. That bill required that any writing related to an agenda item for a regular open session meeting of a legislative body that is distributed to all or a majority of the body's member less than 72 hours before the meeting, must be made available for public inspection at a designated location at the time it is distributed to the members of the body. The agency must list the address of that location on the agenda for all meetings of the legislative body. SB 343 also authorized a local agency to additionally post the writing on the agency's website.

In 2021, the Third District Court of Appeal issued a decision in *Sierra Watch v. Placer County*, a case that involved a Board of Supervisor meeting in 2011 to consider a proposed real estate development plan. After the agenda for the meeting had been posted, the development agreement was amended to address concerns the Attorney General raised about compliance with the California Environmental Quality Act. The County clerk received updated documentation after normal business hours on the day before the meeting, and immediately placed copies of the documentation in the County clerk's office. That same evening the County clerk emailed the documents to Board members. The next day the Board met and approved the project. The Court of Appeal ultimately found that the County violated the requirements under SB 343, holding that because the County clerk's office was closed when the documents were placed there, the documents were not "available to the public" until the next day, meaning the documents were not made available at the same time they were circulated to the Board.

AB 2647 revises the Brown Act to clarify that the public disclosure requirement for writings distributed to the legislative body within 72 hours of the meeting is satisfied by posting the documents online at the time the documents are distributed, so long as physical copies are made available for public inspection at the beginning of the next regular business day at the designated public office.

(AB 2647 amends Section 54957.5 of the Government Code.)

SB 1100 – Clarifies The Authority Of Legislative Bodies To Remove Disruptive Individuals From Public Meetings.

Under current law, the Brown Act requires that all meetings of the legislative body of a local agency be open and public. In the event that an individual or a group willfully interrupt a meeting in a way that makes it unfeasible to maintain order, if the legislative body are unable to restore order by removing the disruptive individuals, the members of the legislative body can order the meeting room cleared and continue in session. In such cases, the legislative body can only consider matters appearing on the

agenda, and members of the press or media must be allowed to continue to attend, except for individuals participating in the disturbance. Current law allows, but does not require, the legislative body to readmit individuals not responsible for the disturbance. Current law allows each body to adopt reasonable regulations governing public address to the legislative body, but does not provide clear rules for when a legislative body can or cannot remove a disruptive individual short of clearing the room.

SB 1100 is intended to clarify the authority of local legislative bodies to remove disruptive individuals. The bill expressly states its intent to codify the authority and standards for governing public meetings set forth in the Ninth Circuit Court of Appeals' 2013 decision in *Acosta v. City of Costa Mesa*.

Specifically, the bill defines "disrupting" a meeting as engaging in behavior that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. This includes, but is not limited to, the use of force, true threats of force, or a failure to comply with reasonable and lawful regulations adopted by the legislative body. In those cases, the bill authorizes the presiding member of a legislative body, or their designee, to remove the disruptive individual or cause them to be removed. However, before removing the individual, the presiding member or their designee must warn the individual that their behavior is disrupting the meeting and that their failure to cease the behavior may result in removal.

(SB 1100 adds Section 54957.95 to the Government Code.)

PAY TRANSPARENCY

SB 1162 – Enacts Pay Transparency Requirements For Hiring Employers; Revises Pay Data Reporting Requirements For Private Employers.

Senate Bill 1162 (SB 116) imposes new obligations on employers, including sharing pay scale information in job postings and with current employees and revising private employers' pay data reporting requirements.

SB 1162 amends Labor Code Section 432.3 to require all public and private employers with 15 or more employees, to include a position's pay scale in any job posting the employer posts directly or through a third party. "Pay scale" means the salary or hourly wage range that the employer reasonably expects to pay for the position.

Current law requires an employer, upon reasonable request, to provide a position's pay scale to an applicant applying for employment. SB 1162 expands this to also require an employer to provide to an employee, on request, the pay scale for their current position.

SB 1162 further requires employers to maintain records of the job title and wage rate history for each employee for the entire duration of the employee's employment plus three years after the employee's employment ends. The records must be open to inspection by the Labor Commissioner. If an employer fails to keep these records and an employee brings a claim that the employer violated Labor Code Section 432.3, the employer's failure creates a rebuttable presumption in favor of the employee's claim.

Any claim filed by an employee, must be filed with the Labor Commissioner within one year after the date the applicant or employee learned of the violation. The Labor Commissioner has authority to investigate the claims. If the Labor Commissioner finds that the employer violated Labor Code Section 432.3, the Labor Commissioner may order the employer to pay a civil penalty of between $100 and $10,000 per violation. Employees may also bring a civil action for injunctive relief or other relief, as the court deems appropriate.

In addition, SB 1162 modifies existing pay data reporting obligations for private employers that are required to file an annual Employer Information Report (EEO-1) pursuant to federal law. This provision of the bill does not apply to public agencies, which are covered by different federal reporting requirements.

(SB 1162 amends Section 12999 of the Government Code, and amends Section 432.3 of the Labor Code.)

PUBLIC SAFETY

AB 485 – Requires Law Enforcement Agencies To Publish Monthly Hate Crime Statistics.

Under existing law, the Office of the Attorney General requires all law enforcement agencies in California to submit hate crime event reports to the Department of Justice, and requires the Department of Justice to make an annual public report with the information obtained from local law enforcement. AB 485 adds an

additional provision to this law, requiring each local law enforcement agency to post the information it is required to report to the DOJ to the agency's own website on a monthly basis.

(AB 485 amends Section 13023 of the Penal Code.)

AB 655 – Requires Law Enforcement Agencies To Investigate Peace Officer Involvement In Hate Groups Or Hate Speech; Makes Hate-Related Activity Automatic Grounds For Disqualification.

AB 655 makes several changes to the law aimed at screening out peace officers or peace officer candidates who are or have engaged in hate-related activities, including membership of a hate group, participation in a hate group activity, or advocacy of public expressions of hate. The bill defines a "hate group" as an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes. "Hate crimes" has the same meaning as in Penal Code Section 422.55, i.e. any criminal act committed at least in part because the victim's actual or perceived disability, gender, race, religion, or other protected characteristics.

First, the bill requires that any background investigation of a candidate for peace officer positions must assess whether the candidate is or has been engaged in hate-related activities. If the background check reveals the candidate engaged in such conduct within the past seven years and after the age of 18, the hiring agency must deny employment to the candidate. A candidate for a peace officer position is not ineligible for employment if the hate-related activity was at least seven years in the past and the candidate has is no longer engaged in such activity.

Second, AB 655 requires any law enforcement agency to investigate any complaint (whether internal or from the public) that alleges that a peace officer employed by that agency engaged in hate-related activities within the last seven years membership in a hate group, participation in any hate group activity, or advocacy of public expressions of hate. If the complaint is sustained, AB 655 would require the agency to terminate the peace officer.

The bill tasks the Department of Justice with issuing guidance for local agencies on how to investigate and adjudicate these complaints. The bill also makes an exception for activities that were part of an undercover assignment in the course of employment as a peace officer or bona fide academic or journalistic research.

Third, AB 655 provides that where a sustained finding is made by a public agency that a peace officer engaged in hate-related activity, any records related to that investigation or complaint are categorically not confidential and must be made available for public inspection under the Public Records Act, subject to limited redactions.

The requirements under AB 655 to automatically reject candidates or terminate current officers found to have engaged in hate-related activity are separate from the peace officer decertification process established by 2021's Senate Bill 2. However, the circumstances covered by AB 655 will in many cases overlap with the provision of Senate Bill 2 that makes "demonstrating bias" on the basis of a protected status grounds for decertification.

(AB 655 adds Sections 13680 through 13683 to the Penal Code.)

AB 1242 – Prohibits California Law Enforcement From Cooperating With Out-Of-State Criminal Proceedings Related To An Abortion That Is Lawful Under California Law.

AB 1242 is a legislative response to the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, where the Supreme Court overturned *Roe v. Wade* and held that the federal Constitution does not confer a right to abortion. The decision opened the door to state regulation of abortion. In many states – not including California – new or old laws now impose strict restrictions on abortions.

In California, abortion remains legal, and the bill was intended to protect those who may want or need to travel to California in order to obtain an abortion. AB 1242 declares that any law of another state that prohibits abortions that would be lawful under California law is against the public policy of California. Among other provisions, the bill prohibits law enforcement agencies and law enforcement officers in California from arresting any person for performing or obtaining an abortion in California that is lawful under California law, and prohibits California law enforcement from cooperating with or giving information to a person, agency, or department from another state regarding a lawful abortion performed in California. However, the law specifies that these provisions do not prohibit the investigation of any other criminal activity in this state merely because the activity involves the performance of an abortion.

(AB 1242 amends Sections 629.51, 629.52, 638.50, 638.52, 1269b, 1524, 1524.2, and 1551 of, and adds Sections 1546.5 and 13778.2 to, the Penal Code.)

AB 1406 – Prohibits A Law Enforcement Officer Who Carries A Taser Or Stun Gun From Carrying It On The Same Side Of The Body As The Officer's Primary Firearm.

Existing law places certain restrictions on the use of force by law enforcement agencies, and requires law enforcement agencies to maintain a policy on the use of force. AB 1406 continues the Legislature's recent trend of mandating specific provisions for such policies.

The bill requires that a law enforcement agency that authorizes peace officers to carry an electroshock device, such as a taser or stun gun, must prohibit officers from carrying that device on the same side of the officer's body where the officer's primary firearm is holstered.

(AB 1406 adds Section 13660 to the Penal Code.)

AB 1672 – Authorizes Certified Local Public Agencies To Use Open Water Lifeguards To Meet Minimum Lifeguard Staffing At Public Swimming Pools.

Current law requires public swimming pools that charge a direct fee for their use to provide a minimum staffing level of lifeguards, who must have current certification from an American Red Cross or YMCA lifeguard training program. However, due to the pandemic several public agencies have been faced with a shortage of qualified lifeguards, and some agencies have had to implement seasonal pool closures, reduced public pool opening hours, and similar solutions. AB 1672 is aimed at addressing this shortage by allowing public agencies to use trained open water lifeguards to staff public swimming pools.

Specifically, AB 1672 would authorize a local public agency pool operator to use open water lifeguards to provide lifeguard services at a public swimming pool if (a) the agency is unable to maintain minimum staffing levels with only certified pool lifeguards, (b) if the agency is certified by the United States Lifesaving Association as capable of administering an open water life guard training program, (c) if the open water lifeguards have received swimming pool-specific crossover training, and (d) if the agency's legislative body enacts a resolution finding that the use of open water lifeguards is needed to maintain regular operating hours at public swimming pools. The resolution may not cover a period longer than 12 months at a time.

(AB 1672 amend Sections 116028 and 116033 of the Health and Safety Code.)

AB 1682 – Expands Speed Limit Exemption For Lifeguard And Public Safety Water Vessels.

Existing California law establishes a speed limit of 5 miles per hour for all machine-propelled vessels operating within 100 feet of a swimmer or 200 feet of a beach, swimming float, diving platform, lifeline, or landing float. Existing law also provides an exemption for vessels engaged in direct law enforcement activities that are displaying traditional blue safety lights. A recent Court of Appeal decision arising from a personal injury case held that this exemption did not clearly apply to lifeguard vessels, and that the statutory framework was ambiguous. The California Supreme Court denied review, but four Justices invited the Legislature to clarify the ambiguity.

AB 1682 expands the statutory exemption to also include lifeguard water rescue vessels owned or operated by a public agency, or other public safety vessels displaying blue safety lights, if those vessels are engaged in public safety activities – such as traffic control, assisting disabled vessels, firefighter, providing medical assistance, search and rescue, or training – or if they are operating within the surf zone.

(AB 1682 amends Sections 650.1 and 655.2 of the Harbors and Navigation Code.)

AB 1909 And 2147 – Prohibits Peace Officers From Stopping A Pedestrian For A Traffic Infraction Unless There Is An Immediate Danger Of Collisions.

Existing law imposes various rules relating to when and where pedestrians can enter a roadway, a violation of which is a criminal infraction. AB 1909 and AB 2147 prohibit a peace officer from stopping a pedestrian for specified traffic infractions unless a reasonably careful person would realize there is an immediate danger of collision with a moving vehicle or other device moving exclusively by human power. Law enforcement agencies should ensure that these legal changes are incorporated into administrative policies and communicated to the agency's peace officers.

(AB 1909 and AB 2147 amend various sections of Division 11 of the Vehicle Code.)

AB 2130 – Requires Training On Human Trafficking For Newly-Licensed EMTs And Paramedics.

Under current state law, the California Emergency Medical Services Authority (EMSA) sets minimum standards for the training and scope of practice for emergency medical technicians (EMTs) and paramedics. AB 2130 requires that, beginning July 1, 2024, EMSA must require all newly-licensed EMTs and paramedics to complete at least 20 minutes of training on issues relating to human trafficking. The bill does not require existing EMTs and paramedics to undergo this training, but it would apply to an EMT who seeks to become a licensed paramedic, or an EMT-I who seeks certification as an EMT-II.

An earlier version of the bill specifically imposed the same requirement on paramedics seeking to renew their license and there are indications that dropping the requirement for training on renewals may have been a drafting error, so this bill could be the target of clean-up legislation in 2023 before it goes into effect.

(AB 2130 amends Sections 1797.170, 1797.171, and 1797.172 of the Health and Safety Code.)

AB 2229 – Reinstates Requirement That Peace Officers Be Screened For Bias; Expands Peace Officer Education Requirements.

Under prior law, Government Code Section 1031 requires an individual seeking or holding employment as a peace officer to be evaluated by a physician, surgeon, and psychiatrist or psychologist, and to be found free from any physical, emotional, or mental condition that might adversely affect their exercise of the powers of a peace officer. In 2020, the Legislature added a provision that this evaluation must also screen for bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation. In 2021, a bill amending an unrelated part of Section 1031 inadvertently removed the bias provision. AB 2229 puts it back in.

In addition, AB 2229 makes a small revision to the minimum education requirement for peace officers. Currently, the law requires peace officers to have graduated high school, to have passed an approved high school equivalency exam, or to hold a two-year, four-year, or advanced degree from an accredited college or university. Current law provides various criteria for recognition of an accrediting organization or association. AB 2229 adds to this list any accrediting organization holding full membership in Cognia.

AB 2229 was designated as urgency legislation, and took effect immediately upon the Governor's signature on September 30, 2022.

(AB 2229 amends Section 1031 of the Government Code.)

AB 2644 – Imposes Restrictions On Custodial Interrogation Of Minors.

Under existing law, a peace officer can take a minor into temporary custody when the officer has reasonable cause to believe that the minor has committed a crime or violated an order of the juvenile court. AB 2644 enacts two changes to the procedural protections afforded to minors taken into custody.

First, whenever a minor is taken into custody, the bill requires that the county's public defender or other indigent defense provider be notified. This notice must take place immediately after a minor in custody is taken before a probation officer or other placer of confinement, and in no event later than 2 hours after the minor was taken into custody.

In addition, effective January 1, 2024, the bill prohibits law enforcement officers from employing threats, physical harm, deception, or psychologically manipulative interrogation tactics, during a custodial interrogation of a minor. The bill defines "psychologically manipulative interrogation tactics" as including interrogation practices that rely on a presumption of guilt or deceit, making promises of leniency, or employed a "forced choice" strategy. The bill contains a limited exception for questioning that an officer believes necessary to obtain information about an imminent threat to life or property.

(AB 2644 amends Section 627 of, and adds Section 625.7 to, the Welfare and Institutions Code.)

AB 2661 – Extends Scholarships To Dependents Of Tribal Firefighters Killed Or Disabled On Duty.

Current law provides that where certain public safety employees, including peace officers and firefighters employed by a city, county, special district, or other political subdivision of the state is killed or totally disabled, their dependents are eligible for a state-sponsored scholarship, if they can demonstrate a financial need. The amount of these scholarships is equal to the amount provided for a Cal Grant scholarship. AB 2661 extends the statutory scholarship benefit to dependents of dependent of a firefighter employed by a tribal fire department who is killed or totally disabled in the performance of duty.

(AB 2661 amends Section 4709 of the Labor Code.)

AB 2761 – Imposes Additional Reporting Requirements For In-Custody Deaths.

Under existing law, Government Code section 12525, any time a person dies while in the custody of a law enforcement agency or a state or local correctional facility, the law enforcement agency or the agency in charge of the correctional facility must make a report to the Attorney General. The report must be made within 10 days of the death and must include all facts in the agency's possession regarding the death. Existing law also categorically defines these reports as public records open to public inspection.

AB 2761 enacts new and more specific requirements for reporting in-custody deaths. The bill requires that when a person in custody dies, the agency with jurisdiction over the state or local correctional facility that had custodial responsibility over the person must post all of the following on its website:

- The full name of the agency with custodial responsibility.
- The county where the death occurred.
- The facility, and location within that facility, where the death occurred.
- The race, gender, and age of the decedent.
- The date on which the death occurred.
- The custodial status of the decedent (e.g. whether they were awaiting arraignment, awaiting trial, or incarcerated).
- The manner and means of death.

The information must generally be posted within 10 days of the date of death. However, if the agency has been unable to notify the next of kin first, the bill gives the agency an additional 10 days to do so before the information must be posted publicly. If any of the posted information changes, for example if more information comes to light about the cause of death, the agency must update the posting within 30 days.

As written, AB 2761 clearly applies to the death of an individual who is in the custody of a state or local correctional facility. However, it is currently unclear whether it would apply to the death of a person who is in the custody of a peace officer or law enforcement agency but not in the custody of a correctional facility.

(AB 2761 adds Section 10008 to the Penal Code.)

AB 2773 – Imposes Procedural Requirements For Police Stops.

AB 2773 imposes a new restriction on peace officers making a traffic stop or pedestrian stop, effective January 1, 2024. Before engaging in questioning related to a criminal investigation or traffic violation, the officer must state the reason for the stop. The officer must also document the reason for the stop on any citation or police report resulting from the stop.

These requirements do not apply where the officer reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, such as in cases of terrorism or kidnaping.

AB 2773 also revises the annual report that law enforcement agencies must make to the Attorney General regarding stops conducted by that agency's peace officers. Effective January 1, 2024, the annual report must include, for each stop, the reason given to the person stopped at the time of the stop. Finally, the bill requires the Department of Motor Vehicles to include information about these new requirements in the California Driver's Handbook.

As with other bills imposing restrictions and requirements on police officer procedure, law enforcement agencies should ensure these changes are communicated to peace officers and incorporated in administrative policies.

(AB 2774 amends Section 12525.5 of the Government Code, amends Section 1656.3 of the Vehicle Code, and adds Section 2806.5 to the Vehicle Code.)

SB 960 – Removes Citizenship Requirement For Peace Officers.

Under current law, in order for a person to serve as a peace officer in the State of California, they must be either a citizen of the United States or a permanent resident who is eligible for and has applied for citizenship. SB 960 repeals this requirement as well as a related provision extending it to the California Highway Patrol.

Instead, the bill simply requires that an individual be legally authorized to work in the United States under federal law. The bill expressly states that it shall be

interpreted and applied consistent with federal law and regulations, and that the change in law does not permit an employer to override or bypass work authorization requirements under federal law.

(SB 960 amends Section 1031 of the Government Code, and repeals Section 1031.5 of the Government Code and Section 2267 of the Vehicle Code.)

RETIREMENT, BENEFITS & DISABILITY

AB 551 – Extends Current Disability Retirement Presumptions Regarding COVID-19 For Members Of Various Public Employee Retirement Systems Until January 1, 2024.

In 2021, AB 845 created a temporary rule requiring California's public retirement systems to presume that a disability retirement arose out of employment, making the member eligible for industrial disability benefits, if the retirement was based at least in part on a COVID-19 related illness, if certain criteria are met. Specifically, the presumption applies to (1) firefighters, public safety officers, certain healthcare workers, and equivalent classifications, and (2) members in other job classifications who test positive during a COVID-19 outbreak at the member's workplace.

This presumption was originally set to sunset automatically on January 1, 2023. AB 551 extends the statutory presumption until January 1, 2024.

(AB 551 amends section 7523.2 of the Government Code.)

AB 1722 – Repeals Sunset Date For Alternative Calculation Of CalPERS Safety Members' Industrial Disability Retirement Benefits.

Under current law, safety members of the California Public Employees' Retirement System (CalPERS) who retire on or after January 1, 2013, due to a job-related (industrial) injury or illness, receive a disability retirement benefit equal to the highest of three possible calculations:

1. Half the safety member's final compensation plus an annuity purchased from the member's contributions;

2. The safety member's service retirement allowance, if the member qualifies for service retirement; or

3. An actuarially reduced service retirement allowance for safety members younger than 50 years, based on age and years of service.

This law was originally set to expire and sunset automatically on January 1, 2023, which would have eliminated the third formula. In many cases, this would have resulted in significantly reduced benefits for safety members who retire due to disability before age 50. AB 1722 deletes the sunset date, extending the alternative calculations indefinitely.

(AB 1722 amends Section 21400 of the Government Code.)

AB 1854 – Deletes Sunset Date On Electronic Submission Of Unemployment Insurance Work-Sharing Plan Applications.

The Employment Development Department (EDD) administers an Unemployment Insurance Work Sharing program available to employers who are facing an economic downturn, as a temporary alternative to traditional 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.

In 2020, responding to the economic uncertainty caused by the COVID-19 pandemic, and recognizing that the EDD program was not frequently used due to the burdensome application process, the Legislature enacted a temporary law to streamline the application process. That bill required the EDD to set up an online application portal and to automatically treat any work-sharing plan application submitted by eligible employers as approved for one year unless the employer requested a shorter plan. Originally, the streamlined process was limited to applications submitted between September 15, 2020, and September 1, 2023, and the statute itself would expire January 1, 2024.

AB 1854 removes the time limitation and sunset date, meaning the new streamlined process is now operative indefinitely. The bill also requires the EDD to accept electronic signatures on all work sharing plan application documents.

(AB 1854 amends section 1279.7 of the Unemployment Insurance Code.)

AB 1971 – Expands Retirement Benefits For Certain County And District Employees.

AB 1971 enacts several changes to the County Employees Retirement Law of 1937 ('37 Act), which governs independent county-run retirement systems. These changes generally expand the retirement benefits available to members of '37 Act systems.

Currently, a member who returns to active service after an uncompensated leave of absence due to illness or parental leave can receive retroactive service credit for the period of the absence upon the payment of the contributions they would have paid but for the absence (plus interest). AB 1971 expands these provisions to allow service credit for a period of absence due to the serious illness of a family member if the leave would be eligible for coverage under the under the federal Family Medical Leave Act (FMLA) or California Family Rights Act. The bill would also authorize the governing board of a '37 Act system to grant similar retroactive service credit to members who were subject to a temporary or mandatory furlough, subject to receipt of additional employer or member contributions as the board deems necessary.

The '37 Act generally prohibits a member retired from service from being paid for service rendered to a participating agency of the same retirement system while also receiving retirement benefits. AB 1971 authorizes a retired annuitant to serve on a board or commission for a participating agency without reinstatement or loss of benefits, so long as the appointment is part-time on a non-salaried basis, and does not result in the retiree acquiring additional benefits, service credit, or retirement rights. The bill would allow the retiree to receive any per diem that is authorized to all members of the board or commission.

The '37 Act currently allows a member who has previously filed for disability retirement to later file for service retirement, and allows the retirement system's governing board to make appropriate adjustments to the member's service retirement allowance retroactive to the effective date of the disability retirement. In cases, the member also has the option to change the type of optional or unmodified allowance that they elected at the time the service retirement was granted. AB 1971 grants similar authority in cases where a member who is already retired for service subsequently files an application for disability retirement. In these cases, the bill again allows the board to adjust the service retirement allowance retroactive to the date of the disability retirement, and similarly allows the member to change their optional or unmodified allowance.

(AB 1971 amend Sections 31646, 31725.7, and 31760 of, and adds Sections 31646.2 and 31680.16 to the Government Code.)

SB 1002 – Extends The Scope Of Workers' Compensation Benefits To Include Services By A Licensed Clinical Social Worker.

Under existing law, California's workers' compensation system requires employers, usually through insurance, to provide requires an employer to provide medical, surgical, chiropractic, acupuncture, and hospital treatment reasonably required to treat injuries or illness an employee incurs in the course of their employment.

SB 1002 expands the meaning of medical treatment for workers' compensation purposes as including services provided by a licensed clinical social worker (LCSW). It thus includes LCSW services as treatment an employer is reasonably required to provide, and would authorize an employer to provide an employee with access to an LCSW, as defined, acting within the scope of their practice. The bill also authorizes medical provider networks to add LCSWs to a physician providers listing. However, it authorizes an LCSW to treat or evaluate an injured worker only upon referral from a physician, and prohibits an LCSW from making a determination of whether an employee is disabled.

(SB 1002 amends Sections 3209.5, 4600, 4600.3, and 4616 of, and adds Section 3209.11 to the Labor Code.)

WAGES, HOURS & WORKING CONDITIONS

AB 2206 – Revises Calculation For Parking Cash-Out Requirement For Employers In Air Quality Nonattainment Areas Who Provide Parking Subsidies.

Under current law, the California Health & Safety Code requires that the State Air Resources Board classify each air basin according to its pollution level. Current law also requires that employers that are located within an air basin designated as a nonattainment area, that have 50 or more employees, and that provide a parking subsidy to employees must also offer a those employees parking "cash-out program" under which the employer offers to provide an equivalent cash allowance to employees who decline the parking subsidy. Failing to meet

this requirement may subject an employer to civil penalties imposed by the State Air Resources Board or by a local agency. An employer who leased employee parking prior to January 1, 1993, is exempt from the cash-out requirement until the expiration of that lease, unless the lease permits the employer to reduce the number of leased parking spaces without penalty.

AB 2206 implements a technical change to how the minimum value of a parking cash-out is calculated. Under current law, the value of a parking subsidy is defined as the difference between the out-of-pocket amount paid by an employer on a regular basis in order to secure the availability of an employee parking space not owned by the employer and the price, if any, charged to an employee for use of that space. However, the Legislature found that this formula is difficult to apply for employers whose real estate lease is bundled with rented parking. Under AB 2206 therefore, the amount is instead calculated as the difference between the price, if any, charged to the employee and the market rate cost of parking (or $350, whichever is less). If the employer cannot established the market rate cost of parking, the rate shall be the monthly price of the lowest priced transit serving within one-quarter mile of the site or fifty dollars ($50) per month, whichever is higher. The employer is required to maintain evidence of their effort to establish the market rate cost of parking for at least four years.

In addition, AB 2206 requires employers to notify employees of the right to receive the cash equivalent instead, and to keep records of those communications.

(AB 2206 amends Section 43845 of the Health and Safety Code.)

SB 1334 – Extends ICW Wage Order Provisions On Meal And Rest Periods To Public Sector Hospital Employees.

Under existing law, the Department of Industrial Relations enforces California's wage and hour laws through a series of "wage orders" originally issued by the now-defunded Industrial Welfare Commission. In the private sector, those wage orders generally set minimum standards for meal periods and rest periods:

- One unpaid 30-minute meal period on shifts over 5 hours and a second unpaid 30-minute meal period on shifts over 10 hours, as provided by Labor Code Section 512.
- For a workshift less than six hours, the first meal period can be waived by mutual agreement between the employer and employee; the second can be waived by mutual agreement if the work shift is less than twelve hours.
- For health care employees who work a shift longer than eight hours, either meal period can be waived by mutual written agreement between the employer and employee, provided that the employee can revoke the agreement with one days' notice.
- For every four hours worked (or major fraction thereof) the employee must be provided at least 10 minutes paid rest time; but no rest time is required for a work day of less than three and one half hours.
- If an employer fails to provide a meal or rest period, the employer must pay as a penalty an additional hour of pay.
- Employees must be relieved of all duty during a meal period, except in limited circumstances and by written agreement.

However, with some exceptions, the wage orders specifically do not apply these break time requirements to public agencies. Thus, for most public employers there is no specific requirement to provide meal periods or rest periods except as agreed through collective bargaining.

SB 1334 extends the existing meal and rest period rights and remedies available in the private sector to public sector hospital employees. Specifically, the bill applies to employees who provide direct patient care, or who support direct patient care, in a general acute care hospital, clinic, or public health setting operated by the State of California, the Regents of the University of California, counties, municipalities, or any other political subdivision of the state.

The requirements under SB 1334 do not apply to employees who are covered by a valid collective bargaining agreement that provides for meal and rest periods and that includes, as a penalty for failing to provide those breaks, a monetary penalty at least equivalent to those provided under the bill.

(SB 1344 adds Section 512.1 to the Labor Code.)

BUSINESS & FACILITIES

SB 1340 – Extension Of Property Tax Exemption For The Construction Or Addition Of Any Active Solar Energy System.

Existing property tax law excludes the construction or addition of any active solar energy system from the definition of "newly constructed" for the purposes of appraising the value of real property. This exclusion was set to expire after the 2023-2024 fiscal year.

Senate Bill 1340 extends the property tax exemption for the construction or addition of any active solar energy system. SB 1340 extends the exclusion construction or addition of any active solar energy system from the definition of "newly constructed" for the purposes of appraising the value of real property through the end of the 2025-2026 fiscal year. This exclusion remains in effect only until there is a subsequent change in ownership, but an active solar energy system that qualifies for the exclusion before January 1, 2027, will continue to receive the exclusion until there is a subsequent change in ownership.

(SB 1340 amends Section 73 of the Revenue and Taxation Code.)

SB 1226 - Joint Powers Agreements Created For Zero-Emission Transportation Systems Or Facilities May Include A Private, Non-Profit Mutual Benefit Corporation.

Senate Bill 1226 authorizes a private, nonprofit mutual benefit corporation formed for the purposes of providing services to zero-emission transportation systems or facilities to join a joint powers authority or enter into a joint powers agreement with one or more public agencies. The purpose of the joint power authority or agreement must be to facilitate the development, construction, and operation of zero-emission transportation systems or facilities that lower greenhouse gases, reduce vehicle congestion and vehicle miles traveled, and improve public transit connections. A joint powers authority formed under SB 1226 is prohibited from incurring debt.

The participating public agency or agencies must determine the composition of the board of directors. The private, nonprofit mutual benefit corporation's representation on the board of directors cannot exceed 50%.

SB 1226 will remain in effect until January 1, 2032.

(SB 1226 adds and repeals Section 6538.5 of the Government Code.)

SB 991 – Authorization For Local Agencies To Utilize A Progressive Design-Build Process When Contracting for the Production, Storage, Supply, Treatment, or Distribution Of Any Water From Any Source.

Senate Bill 991 adds an additional chapter to the Public Contract Code that authorizes any city, county, city and county, or special district authorized by law to provide for the production, storage, supply, treatment, or distribution of any water from any source, to procure progressive design-build contracts and use the progressive design-build contracting process for up to 15 public works projects in excess of $5,000,000 for each project. SB 991 outlines the procurement process that the local agency must follow for the projects and the requirements to announce the award. SB 991 also sets forth certain requirements for the entities that will provide the licensed contracting, architectural, and engineering services for the contracts, including that they make certain verifications under penalty of perjury.

SB 991 also requires any local agency that utilizes this progressive design-build process to submit a report to the Legislature regarding the process, including, among other items, a description of the projects awarded no later than January 1, 2028,

SB 991 will remain in effect until January 1, 2029.

(SB 991 adds and repeals Chapter 4.1 (commencing with Section 22170) of Part 3 of Division 2 of the Public Contract Code.)

SB 852 – Local Agencies Are Authorized To Create Climate Resilience Districts To Address Climate Change Effects And Impacts.

Senate Bill 852 creates the Climate Resilience Districts Act which authorizes local agencies to create climate resilience districts to address climate change effects and impacts. The districts must be formed for the purpose of raising and allocating funding for and the operating expenses of projects designed and implemented to address climate change mitigation, adaptation, or resilience. The climate resilience districts are limited to funding projects that address sea level rise, extreme heat, extreme cold, the risk of wildfire, drought, and the risk of flooding.

The climate resilience districts are required to follow specified project priorities, specified requirements for each project, and require those performing the work to use a skilled and trained workforce.

SB 852 deems climate resilience districts an enhanced infrastructure financing district and requires each climate resilience district to comply with existing law concerning enhanced infrastructure financing districts. This would also require participating local entities to adopt resolutions allocating tax revenues to the climate resilience district that comply with existing law.

SB 852 also grants the climate resilience districts certain powers related to financing such as, levying a benefit assessment, special tax, property-related fee, or other service charge or fee consistent with the requirements of the California Constitution. SB 853 requires climate resilience districts to prepare and review specified plans and budgets on an annual basis, to prepare an annual expenditure plan, an operating budget, and capital improvement budget, and would require this material to be adopted by the governing body of the district and subject to review and revision at least annually.

SB 852 deems the Sonoma County Regional Climate Protection Authority a climate resilience district and grants this district the authority and powers available to such a district. However, Sonoma County Regional Climate Protection Authority may not use any tax increment revenue unless it complies with the requirements for receiving and using tax increment revenue applicable to a new climate resilience district.

(SB 852 adds Division 6 (commencing with Section 62300) to Title 6 of the Government Code.)

AB 2953 – Local Agencies Must Utilize Technologies And Techniques To Reduce Greenhouse Gas Emission When Maintaining And Rehabilitating Streets And Highways.

Assembly Bill 2953 requires local agencies that have jurisdiction over a street or highway, to the extent feasible and cost effective, to utilize advanced technologies and material recycling techniques that reduce the cost of maintaining and rehabilitating streets and highways and that exhibit reduced levels of greenhouse gas emissions through material choice and construction method, such as the use of recycled base and subbase materials, reclaimed asphalt pavement and reclaimed aggregate, fly ash, returned plastic concrete, and other materials in concrete as set forth the Department of Transportation Standard Plans. This requirement is not applicable to special districts or cities with a population equal to or less than 25,000 people or counties with a population equal to or less than 100,000 people based on the most recent census.

(AB 2953 add Section 42704.6 to the Public Resources Code.)

AB 1932 – Extension Of Counties' Ability To Use Construction Manager At-Risk Construction Contracts.

Assembly Bill 1932 extends the expiration date of Public Contracts Code section 21046, which was set to expire on January 1, 2023 to January 1, 2029. Upon approval from the governing body, counties (and public entities of which the members of the county board of supervisors make up the members of the governing body) can utilize construction manager at-risk construction contracts on projects in excess of $1,000,000 for the erection, construction, alteration, repair, or improvement of infrastructure, owned or leased by the county, subject to certain requirements set forth in the code.

(AB 1932 amends Section 20146 of the Public Contract Code).

AB 2173 – Payment Of Public Contracts.

Assembly Bill 2173 eliminates the existing sunset date in Sections 7201 and 10261 of the Public Contract Code, which were set expire automatically on January 1, 2023. The Public Code authorizes a public entity in a contract to retain proceeds from any payment not to exceed 5% of the price. A public entity may retain more than 5% on specific projects where the director of the applicable department has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention and the department or public entity includes both this finding and the actual retention amount in the bid documents.

(AB 2173 amends Sections 7201 and 10261 of the Public Contract Code.)

AB 1775 – Contract Requirements When Contracting For Live Events.

Assembly Bill 1775 requires entities entering into contracts with entertainment vendors for events held at certain public venues to require the entertainment vendor to make certain certifications in writing as part of the contract. A "public events venue" is defined as a state-operated fairground, county fairground, state park, California State University, University of California, or auxiliary organization-run facility that hosts live events. The vendor must certify that all employees and employees of its subcontractors involved in the setting up,

operation, or tearing down, have complied with specified training, certification, and workforce requirements, and have completed prescribed trainings of the United States Department of Labor's Occupational Safety and Health Administration. Failure to obtain these certifications will subject the entity to a citation and a civil penalty from the Division of Occupational Safety and Health.

(AB 1775 amends add Part 14 (commencing with Section 9250) to Division 5 of the Labor Code.)

AB 1851 – Expansion Of The Definition Of Public Works For The Prevailing Wage.

Assembly Bill 1851 expands the definition of the term public works as it relates to the payment of workers employed on public works projects. Existing law requires that workers employed on public works projects be paid not less than the general prevailing rate of per diem wages as determined by the Director of Industrial Relations.

AB 1851 expands the definition of the term public works as it relates to hauling to also include the on-hauling of materials used for paving, grading, and fill onto a public works site if the individual driver's work is integrated into the flow process of construction. Previously, only the hauling of refuse from a public works site to an outside disposal location was included in the definition of public works.

(AB 1851 amends Section 1720.3 of the Labor Code.)

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Public Safety Legislative Update

Tuesday, November 8
10:00 - 11:00am

Public Agency Legislative Update

Tuesday, December 6
10:00 - 11:00am