

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, 2024. 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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DISCRIMINATION, RETALIATION, PROTECTED CONDUCT

SB 497 – Protected Conduct Presumption 90 Days.

This bill establishes a rebuttable presumption in favor of an employee's claim of Labor Code Section 1102.5 and 96(k) retaliation if an employer engages in an adverse action against the employee within 90 days of the employee's participation in a protected activity. The bill also expands the maximum civil penalty, from \$10,000 per violation, to \$10,000 per employee for each violation, for any employer, not just a corporation or limited liability company, found to have retaliated against a whistleblower.

Key takeaways:

- SB 497 creates a rebuttable presumption of retaliation if an employee is disciplined or discharged within 90 days of engaging in certain activity protected by the California Labor Code and California's Equal Pay Act.
- The presumption of retaliation makes it easier for an employee to establish a *prima facie* case of retaliation.
- The new law goes into effect on January 1, 2024.

(Amends Sections 98.6, 1102.5, and 1197.5 of the Labor Code.)

SB 700 – Employment Discrimination - Prior Cannabis Use.

Effective January 1, 2024, current law makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person because of the person's use of cannabis off the job and away from the workplace, except as specified.

This bill would make it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis. However, this prohibition does not preempt state or federal laws requiring an applicant to be tested for controlled substances, nor is an employer prohibited from asking about an

applicant's criminal history otherwise permitted by law.

As a reminder, in 2022, the California legislature passed Assembly Bill (AB) 2188, which makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based upon: (1) a person's use of cannabis off the job and away from the workplace, or (2) an employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. AB 2188 also takes effect on January 1, 2024.

(Amends Section 12954 of the Government Code.)

SB 848 – Leave For Reproductive Loss.

Current law provides for up to five days of bereavement leave for employees. This bill expands bereavement leave to include a reproductive loss event. It would also make it an unlawful employment practice for an employer to refuse to grant this leave. The bill requires that the leave is taken within three months of the event and pursuant to any existing leave policy of the employer. The bill provides that if an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. An employee may use leave balances available to the employee, including accrued and available paid sick leave, for the absences.

SB 848 acts as a subset of California's Bereavement Leave law and increases an employee's leave entitlements for a "reproductive loss event," which is defined as "the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction." Covered employers will be required to provide up to five days of leave for reproductive loss events.

(Amends section 12945.6 to the Government Code.)

LOCAL GOVERNMENT UPDATES

SB 329 – City Council Members Compensation.

Under existing law, city councils can enact ordinances to provide salaries to council members based on the population of the city. SB 329 increases the maximum amounts of salary that can be approved by city ordinance, based on the population of the city. The new salary limits are as follows:

- Up to \$950 per month for cities up to and including 35,000 in population.
- Up to \$1,275 per month for cities over 35,000 up to and including 50,000 in population.
- Up to \$1,600 per month for cities over 50,000 up to and including 75,000 in population.
- Up to \$1,900 per month for cities over 75,000 up to and including 150,000 in population.
- Up to \$2,550 per month for cities over 150,000 up to and including 250,000 in population.
- Up to \$3,200 per month for cities over 250,000 in population

The bill would authorize the salary of council members to be increased not exceeding the greater of either:

- 5% for each calendar year from the operative date of the last adjustment of the salary in effect
- An amount equal to inflation since January 1, 2024, not exceed 10%

Adoption of an ordinance to increase council member compensation in open session must occur during at least two regular meetings of the city council.

(Amends 36516 of the Government Code.)

EMPLOYEE ORGANIZATIONS / (UNION RIGHTS) UPDATES

AB 1484 – Temporary Employees.

This bill would require temporary employees (who have been hired to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization) to be automatically included in the same bargaining unit as the permanent employees. The bill would further require the public employer to promptly participate in collective bargaining to establish certain employment conditions for the newly added temporary employees if the parties' current memorandum of understanding does not address them, as specified. The bill would also require a public employer to, upon hire, provide each temporary employee with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions.

Key takeaways:

- A temporary employee is defined as: "temporary employee, casual employee, seasonal employee, periodic employee, extra-help employee, relief employee, limited-term employee, per diem employee, and any other employee who has not been hired for a permanent position."
- Upon request, temporary employees would be automatically included in the same bargaining unit as permanent employees.
- Upon request, parties would need to negotiate terms and conditions of employment) covering both permanent and temporary employees.
- Upon a temporary employee's hire, the public employer would be required to provide each temporary employee with a job description, wage rates, eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. Employers would need to produce this information to the exclusive representative within five (5) business days of hire.



- Also within five (5) business days of hire, employers would need to provide the exclusive representative with the temporary employee's anticipated end date and certain employee information pursuant to Government Code Section 3558.
- Temporary employees would become entitled to certain grievance procedure rights after 30 calendar days of employment to challenge disciplinary actions without cause.

(Amends Section 3507.7 to the Government Code.)

AB 96 - Union Right To Notice Of Autonomous Vehicle – Public Transit Only.

This bill requires a public transit employer, to provide written notice to the exclusive employee representative of the workforce affected by the autonomous transit vehicle technology of its determination to begin that procurement process. Notice must be provided at least 10 months before beginning a procurement process to acquire or deploy any autonomous transit vehicle technology for public transit services that would eliminate job functions or jobs of a workforce. The bill would vest PERB with jurisdiction to process unfair practice charges alleging violations of these provisions, but only as to transit district employers where PERB has jurisdiction to process unfair practice charges. The bill would authorize PERB to make additional emergency regulations, as specified.

(Amends Chapter 9.1 (commencing with Section 3125) to Division 4 of Title 1 of the Government Code.)

PUBLIC MEETINGS UPDATES

AB 557 – Brown Act – Teleconference When Imminent Risk To Health Or Safety.

This bill would revise the authority of a legislative body to hold a teleconference meeting under existing abbreviated teleconferencing procedures when a declared state of emergency is in effect. Specifically, the bill would extend indefinitely that authority in the circumstances under which the

legislative body either (1) meets for the purpose of determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or (2) has previously made that determination. The bill would also extend the period for a legislative body to make the above-described findings related to a continuing state of emergency to not later than 45 days after the first teleconferenced meeting, and every 45 days thereafter, in order to continue to meet under the abbreviated teleconferencing procedures.

(Amends and repeal Section 54953 of the Government Code.)

WAGE & HOUR LAW UPDATES

SB 616 – New California Paid Sick Leave Law.

Increases California Paid Sick Leave from the three days to up to five days. It also increases the cap that employers can place on paid sick days from six (6) to 10 days and 48 to 80 hours and increases the number of paid sick days an employee can roll over to the next year from three (3) to five (5) days. Further, it extends procedural and anti-retaliation provisions in existing Paid Sick Leave law to employees covered by a valid collective bargaining agreement that is exempt, if they meet specified criteria, from other provisions of the Paid Sick Leave law.

According to the new law:

- Employees are still required to be provided 24 hours (three days) of Paid Sick Leave time by the 120th day of employment.
- Employees are required to be provided an additional 16 hours of Paid Sick Leave by the 200th calendar day of employment (for a total of 40 hours).
- If employers use the accrual method, any remaining accrued Paid Sick Time must carry over to the next calendar year, year of employment, or 12-month period. Employers may limit this carry-over to 40 hours.

- Employers may limit the use of Sick Time to 40 hours (or five days) for each calendar year, year of employment, or 12-month period.

(Amends Sections 245.5, 246, and 246.5 of the Labor Code.)

AB 520 – Joint And Severable Liability For Unpaid Wages.

Current law authorizes the Labor Commissioner to investigate employee complaints and to provide for a hearing in any action to recover wages, penalties, and other demands for compensation. Under existing law, any individual or business entity is jointly and severally liable for unpaid wages, to the extent the amounts are for services performed under that contract, as provided, and except as specified. This bill would additionally provide that any public entity, defined as a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state, is similarly jointly and severally liable for any unpaid wages.

When two or more parties are jointly and severally liable for a tortious act, each party is independently liable for the full extent of the injuries stemming from the liability. Thus, if a plaintiff wins a money judgment against the parties collectively, the plaintiff may collect the full value of the judgment from any one of them. That party may then seek contribution from the other wrongdoers. This concept of choosing the defendant(s) from whom to collect damages is called the law of indivisible injury.

(Amends Section 238.5 of the Labor Code.)

AB 594 – Alternative Enforcement Of Labor Code.

This bill would authorize a public prosecutor to prosecute an action for a violation of specified provisions of the Labor Code or to enforce those provisions independently. The bill would require moneys recovered by public prosecutors under the Labor Code to be applied first to payments due to affected workers. The bill would also require all civil penalties recovered pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified.

(Amends Sections 218 and 226.8 of, to add Chapter 8 (commencing with Section 180) to Division 1 of, and to repeal Section 181 of, the Labor Code.)

PUBLIC SAFETY

SB 449 – SB 2 Clean Up.

Various clean up provisions to SB 2 including:

- Clarifies that an agency may provisionally employ a person for up to 24 months, pending certification by Commission on Peace Officer Standards and Training (POST), provided that person has received a proof of eligibility and has not been previously certified or denied certification or had their certification revoked.
- Redefines “certification” to mean any and all valid and unexpired certificates issued pursuant to existing law, including basic, intermediate, advanced, supervisory, management and executive certificates or any proof of eligibility issued by POST.
- Clarifies POST is not prohibited from considering a peace officer’s prior conduct and service record in determining whether suspension is appropriate for serious misconduct.
- Authorizes the Peace Officer Standards Accountability Division (POSAD) to redact any records introduced during the hearings of the Peace Officer Standards Accountability Advisory Board (Board) and the review by the POST.
- Authorizes POST to cancel the certificate or proof of eligibility of a peace officer if it determines that there was fraud or misrepresentation made by an applicant at any time during the application process.
- Provides that neither the Board nor POST are precluded from reviewing the un-redacted versions of these records in closed session and using them as the basis for any action taken.
- Provides that if POST determines that disclosure of information may jeopardize an



ongoing investigation, put a victim or witness at risk of any form of harm or injury, or may otherwise create a risk of any form of harm or injury that outweighs the interest in disclosure, POST may withhold that information from the peace officer that is the subject of the investigation until the risk of harm is ended or mitigated so that the interest in disclosure is no longer outweighed by the interest in nondisclosure.

- Requires information that POST releases to a law enforcement agency that has been withheld from the subject peace officer to be kept confidential by the receiving agency.
- States that the Legislature finds and declares that the limitation on the right of access to the meetings of public bodies or the writings of public officials and agencies imposed, as specified, furthers the need to protect sensitive, private, and confidential information, an ongoing investigation, and individuals from harm.

(Amends Sections 13510.1, 13510.8, 13510.85, and 13510.9 of the Penal Code.)

AB 443 - POST "Biased Conduct" Definition By 2026.

AB 443 requires the Commission on Peace Officer Standards and Training (POST) to establish a definition of biased conduct and to develop guidance for law enforcement agencies when screening applicant social media accounts for bias. The definition of bias must include: bias against a person's actual or perceived class or characteristic protected under the Unruh Civil Rights Act; and, that conduct is biased if a reasonable person with the same training and experience would look at the facts and conclude that the conduct resulted from bias due to membership in a specified class.

(Amends Section 13510.6 to the Penal Code.)

AB 449 – Hate Crime Policy By July 1, 2024.

This bill requires, rather than encourages, any state or local law enforcement agency to adopt a hate crime policy by July 1, 2024, and to report that policy to the Department of Justice for review.

(Amends Sections 422.87, 13023, and 13519.6 of the Penal Code.)

AB 621 - Workers Compensation Death Benefits.

Workers' compensation currently compensates employees for injuries sustained in the course of employment, which, in the case of the death of an employee, includes a death benefit. Existing law provides, however, that no benefits, except reasonable expenses of burial not exceeding \$1,000, shall be awarded under the workers' compensation laws on account of the death of an employee who is an active member of the Public Employees' Retirement System, unless the death benefits available under the Public Employees' Retirement Law are less than the workers' compensation death benefits. In that case, the surviving spouse and children of the employee are also entitled to the difference between the two death benefit amounts. Existing law exempts local safety members and patrol members, as defined, from this limitation. This bill would expand that exemption to include state safety members, peace officers, and firefighters for the Department of Forestry and Fire Protection and would apply the exemption for these employees retroactively to January 1, 2019, for injuries not previously claimed or resolved.

(Amends Section 4707 of the Labor Code.)

AB 994 - Social Media - Booking Photos.

Requires a police department or sheriff's office to remove a booking photo shared on the law enforcement agency's social media page within 14 days unless the subject of the image is a fugitive or an imminent threat to public safety, or continuing to share the image is otherwise justified by a legitimate law enforcement interest. However, this bill allows a police department or sheriff's office to use a person's other legal names or known aliases on social media when sharing a booking photo if an exigent circumstance exists that necessitates their use due to an urgent and legitimate law enforcement interest.

(Amends Section 13665 of the Penal Code.)

SB 623 - Workers Compensation - PTSD.

The workers' compensation system compensates an employee for injuries sustained in the course of employment. Existing law provides, until January 1, 2025, that, for certain state and local

firefighting personnel and peace officers, the term “injury” includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit and creates a disputable presumption that the injury arises out of and comes in the course of employment. Existing law requires the compensation awarded pursuant to this provision to include full hospital, surgical, medical treatment, disability indemnity, and death benefits.

This bill would instead repeal that provision on January 1, 2029, and would require the Commission on Health and Safety and Workers’ Compensation to submit reports to the Legislature analyzing the effectiveness of the presumption and a review of claims filed by specified types of employees, not included in the presumption, such as public safety dispatchers, as defined.

(Amends Section 3212.15 of the Labor Code.)

VARIOUS OTHER UPDATES

AB 1076 – Non-Compete Clauses.

AB 1076 codifies existing case law (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937), that non-compete clauses are void in an employment context unless an exception applies. This law clarifies that California’s invalidation of non-compete agreements is **not limited** to contracts where the person being restrained from engaging in a lawful profession, trade, or business is a party to the contract.

Further, the bill creates a notice requirement for employers to notify current and former employees whose contracts included an unlawful non-compete that they are void. The notice needs to be contained in a written individualized communication to the employee or former employee, and delivered to their last known address and email address. Failure to send these notices would be a violation of California Unfair Competition Law, which can carry civil penalties.

(Amends Section 16600 of, and to add Section 16600.1 to, the Business and Professions Code.)

AB 933 - Privileged Communications: Incident Of Sexual Assault, Harassment, Or Discrimination.

Existing law provides that libel is a false and unprivileged written publication that injures the reputation and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes certain publications and communications privileged and therefore protected from civil action, including complaints of sexual harassment by an employee, without malice, to an employer based on credible evidence and communications between the employer and interested persons regarding a complaint of sexual harassment.

This bill would include among those privileged communications a communication made by an individual, without malice, regarding an incident of sexual assault, harassment, or discrimination, as defined, and would specify the attorney’s fees and damages available to a prevailing defendant in any defamation action brought against that defendant for making that communication.

(Adds Section 47.1 to the Civil Code.)

SB 553 – Workplace Restraining Orders.

Effective January 1, 2025, SB 553 allows a collective bargaining representative of an employee, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace. The bill requires an employer or collective bargaining representative of an employee, before filing such a petition, to provide the employee who has suffered unlawful violence or a credible threat of violence from any individual an opportunity to decline to be named in the temporary restraining order. Under the bill, an employee’s request to not be named in the temporary restraining order would not prohibit an employer or collective bargaining representative from seeking a temporary restraining order on behalf of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.

(Amends, repeals, and adds to Section 527.8 of the Code of Civil Procedure, and amends Section 6401.7 of, and to add Section 6401.9 to, the Labor Code.)



AB 1020 – Presumption Of Work Related Injury / 1937 Act – Extended 60 Months Following Termination.

Existing law, the County Employees Retirement Law of 1937, prescribes the rights, benefits, and duties of members of the retirement systems established pursuant to its provisions. This bill would require the presumption that the member's heart trouble arose out of and in the course of employment to be extended following termination of service for a prescribed length of time not to exceed 60 months. This bill contains other related provisions and other existing laws.

(Amends Section 31720.5 of, to add Sections 31720.92, 31720.93, 31720.94, 31720.95, 31720.96, and 31720.97 to, and to add and repeal Section 31720.91 of, the Government Code.)

AB 1355 – Electronic Notice Of Income Tax Credit By Employers.

The Earned Income Tax Credit Information Act requires an employer to notify all employees that they may be eligible for specified income tax filing assistance programs and state and federal antipoverty tax credits, by handing specified documents directly to the employee or mailing the specified documents to the employee's last known address twice annually, as provided.

This bill, would authorize the employer to provide notification via email to an employee's email account instead of directly handing or mailing the document to the employee if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. The bill would prohibit the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials. This bill contains other related provisions and other existing laws.

(Amends, repeals, and adds Section 19853 of the Revenue and Taxation Code, and to amend, repeal, and add Section 1089 of the Unemployment Insurance Code.)

AB 1753 – Local Government Reorganization.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes of organization and reorganization for cities and districts. The act requires a petitioner or legislative body desiring to initiate proceedings for a change of organization or reorganization to submit an application to the executive officer of the principal county. The act specifies when an application is complete and acceptable for filing, and requires the executive officer to immediately issue a certificate of filing when an application is accepted for filing, as specified.

This bill would, prohibit the executive officer from accepting for filing an application for change or organization or reorganization and issuing a certificate of filing pursuant to the provisions described above, and would provide that an application is not deemed accepted for filing pursuant to the provisions described above, if an agreement for the exchange of property tax revenues has not been adopted pursuant to the provisions described above.

(Amends Sections 56658 and 56882 of the Government Code.)

SB 548 – Separation Of County And Trial Court CalPERS Contracts.

This bill would authorize a county and the trial court located within the county to elect to separate their joint PERS contract into individual contracts, if the county and the trial court make that election jointly and voluntarily.

(Amends Sections 7522.02, 20460.1, and 71624 of, and to add Sections 20471.2 and 20815.6 to, the Government Code.)



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