



NEW EMPLOYMENT LAW UPDATES

The deadline for passing new laws expired last week, and as usual, the Legislature and Governor have significantly added to the burden carried by employers in California. Outlined below are the new laws most likely to affect our clients. We have not included every new employment law but, instead, highlight some industry-specific laws as a reminder that you should always check for any industry-specific laws that may impact your organization.

These new laws will become effective on January 1, 2021 unless otherwise noted.

For a full copy of the new laws covered here, simply click on the bill number. Let us know if you have specific questions about the new laws or how they affect your organization.

Expansion of California Family Rights Act

SB 1383

- Existing law, the California Family Rights Act (“CFRA”), requires employers with 50 or more employees to provide employees with up to 12 workweeks of unpaid protected medical and family care leave. To be eligible, employees must have worked for the employer for a year and have worked at least 1,250 hours in the 12 months preceding the requested leave. They must also work at a worksite within 75 miles of 50 or more other employees. The complex law contains many other regulatory requirements.
- CFRA currently provides an eligible employee with leave to care for the serious health condition of a parent, spouse, or child.
- CFRA currently provides that if an employer employs both parents of a child, the employer can choose to only grant both parents a combined total of 12 workweeks of unpaid protected leave to care and bond with a new child.
- CFRA currently provides that an employer need not give protected leave to a salaried employee who is among the highest paid 10 percent of the employees who are employed within 75 miles of the employee’s worksite.

- This bill expands the scope of CFRA to include all employers with five (5) or more employees.
- The bill expands CFRA by eliminating the requirement that an eligible employee work at a worksite within 75 miles of 50 or more other employees.
- The bill expands CFRA by changing the definition of a “child” to include the child of a domestic partner and any person to whom an employee stands in loco parentis.
- The bill expands CFRA to include leave to care for a parent-in-law, grandparent, grandchild, sibling, or domestic partner with a serious health condition.
- The bill expands CFRA by specifying that if an employer employs both parents of a child, the employer must grant each parent 12 workweeks of unpaid protected leave to care and bond with the new child.
- The bill expands CFRA to provide up to 12 workweeks of unpaid protected leave for a qualifying exigency related to the military service of an employee’s spouse, domestic partner, child, or parent.
- The bill expands CFRA by eliminating the exception for salaried employees who are among the highest paid 10 percent of employees.

COVID-19 Related Illnesses and Deaths Covered by Workers’ Compensation

SB 1159

- Existing law establishes a workers’ compensation system to compensate employees for injuries sustained in the course of employment.
- This bill adds COVID-19 related illnesses and deaths as injuries covered by workers’ compensation. An “injury” exists if an employee tested positive for or was diagnosed with COVID-19 within 14 days after performing services at the employee’s place of employment (including the employee’s residence) and the services were performed between March 19, 2020 and July 5, 2020. Employees with an “injury” are eligible to receive full hospital, surgical, medical treatment, disability indemnity, and death benefits.
- The bill contains specific certification requirements in order for an employee to be entitled to temporary disability benefits.
- The bill also creates a “disputable presumption” that any COVID-19 related illness or death arose in the course of employment and is compensable through workers’ compensation.
- The bill requires an employee to exhaust any available COVID-19 paid sick leave benefits before seeking workers’ compensation benefits for a COVID-19 related illness or death.

Power to Shut Down Business Operations Due to COVID-19 Outbreak; Employer Notice Requirements

AB 685

- Existing law requires the Division of Occupational Safety and Health (“DOSH”) to prohibit entry onto a worksite, or use of a piece of equipment, when that worksite or piece of equipment constitutes an imminent hazard to employees.
- This bill authorizes DOSH, until January 1, 2023, to prohibit entry onto a worksite, or the performance of an operation, when that worksite or performance exposes workers to the risk of COVID-19 infection when in the agency’s opinion the situation constitutes an imminent hazard to employees.

- The bill also provides that if an employer receives notice of potential COVID-19 exposure at a worksite, the employer must provide specified notifications to its employees, any exclusive representative of the employees, and the employers of subcontracted employees at the site, within one business day. The employer is also required to provide them the disinfection and safety plan that the employer plans to implement and complete.
- The bill also requires employers who receive notice that the number of cases at a worksite meets the definition of a COVID-19 “outbreak” as defined by the State Department of Public Health to provide specific information to the local public health agency within 48 hours, and to then continue providing notices to the local health department of any subsequent laboratory-confirmed cases.

Changes to Law Prohibiting Settlement Agreements with “No Rehire” Clauses

AB 2143

- Existing law prohibits settlement agreements between employees and employers from containing provisions that prohibit the employee from seeking re-employment with the employer in the future. Existing law includes an exception to this prohibition that permits settlement agreements to include “no rehire” provisions if the employer has a good faith belief that the employee engaged in sexual harassment or sexual assault.
- This bill adds a new exception that permits settlement agreements to include “no rehire” provisions if the employer has a good faith belief that the employee engaged in criminal misconduct.
- The bill also adds the requirement that the employer must document its good faith belief of sexual harassment, sexual assault or criminal conduct before the employee files the claim being settled.

Mandatory Mediation for CFRA Claims Against Small Employers

AB 1867

- This bill has three distinctive parts. This first part concerns California Family Rights Act (“CFRA”) claims made against small employers.
- This bill prohibits an employee from filing a CFRA claim against a small employer in civil court until after the parties attend mediation conducted by the California Department of Fair Employment and Housing, if mediation is requested by the employer.
- This bill defines a “small employer” as employers with 5 to 19 employees.
- The bill was passed as an urgency statute and took effect on September 9, 2020.
- The new law will expire on January 1, 2024.

Mandatory Hand Washing Periods

AB 1867

- This bill has three distinctive parts. This second part concerns new mandatory handwashing periods.
- Existing law requires food employees to keep their hands and the exposed portions of their arms clean.

- This bill requires a food employee working in any food facility to be permitted to wash their hands every 30 minutes, and additionally as needed.
- The bill was passed as an urgency statute and took effect on September 9, 2020.

Expansion of COVID-19 Paid Sick Leave Benefits – Employers with 500+ Employees

AB 1867

- This bill has three distinctive parts. This third part concerns COVID-19 supplemental paid sick leave benefits.
- Existing California Paid Sick Leave law mandates employers to provide paid sick leave to an employee who works in California for the same employer for 30 or more days within a year.
- Existing federal law entitles additional paid sick leave to certain types of employees affected by COVID-19 working for employers who have fewer than 500 employees.
- This bill entitles additional paid sick leave to “food sector workers” and certain health care and emergency responder employees who are affected by COVID-19 and who work for employers with 500 or more employees.
- The bill broadly defines “food sector workers” to include those workers employed in agriculture, food processing industries, retail food establishments and food delivery.
- The bill specifies that certain health care and emergency response employees are covered workers if they work for an employer that excluded the employees from participating in federal COVID-19 paid sick leave benefits.
- The bill provides that a covered worker can take COVID-19 supplemental paid sick leave for the following reasons:
 1. The worker is subject to a quarantine order related to COVID-19 prohibiting them from working;
 2. A health care provider advises the worker to quarantine themselves due to concerns related to COVID-19; or
 3. The employer prohibits the worker from working for reasons related to COVID-19.
- The bill provides that full-time covered workers are entitled to 80 hours of COVID-19 supplemental paid sick leave.
- The bill provides that part-time covered workers are entitled to approximately the same number of hours of COVID-19 supplemental paid sick leave as they work during a two-week period.
- The bill provides that covered workers using their COVID-19 supplemental paid sick leave are entitled to compensation at the worker’s regular rate of pay up to a maximum of \$511 per day and an aggregate maximum of \$5,110.
- The bill specifies that the COVID-19 supplemental paid sick leave is in addition to the paid sick leave provided by the California Paid Sick Leave law.
- The bill prohibits an employer from requiring a worker to take other forms of paid or unpaid leave (including vacation leave) prior to taking COVID-19 supplemental paid sick leave.
- The bill was passed as an urgency statute and took effect on September 9, 2020.

- The new law expires on December 31, 2020, or upon the expiration of the federal COVID-19 supplemental paid sick leave law, whichever is later.

Prohibition Against Charging an Employer's Unemployment Compensation Benefits Reserve Account for COVID-19 Related Separations

AB 103

- Existing law requires the Employment Development Department ("EDD") to maintain a separate reserve account for each employer, and to charge unemployment compensation benefits paid to an unemployed individual against the reserve account of that individual's employer.
- This bill prohibits unemployment compensation benefits paid to an unemployed individual from being charged against the reserve account of an employer unless the benefits are paid because the employer or an agent of the employer is at fault for failing to timely or adequately respond to requests from EDD for information.
- The bill was passed as an urgency statute and took effect on June 29, 2020.
- The bill will expire on January 1, 2021, unless federal law otherwise requires a further extension.

Expansion of Exemptions from "ABC" Independent Contractor Test

AB 2257

AB 323

- The existing "ABC" test assumes that a worker is an "employee" of the hiring entity rather than an "independent contractor" unless the hiring entity demonstrates that the worker is (A) free from the control and direction of the employer in connection with the performance of the work, (B) the person performs work that is outside the usual course of the employer's business, and (C) the person is customarily engaged in an independently established trade, occupation, or business.
- Existing law exempts certain occupations from the ABC test, including physicians, lawyers, engineers, accountants, licensed cosmetologists, travel agents, still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. These occupations are instead subject to the traditional (and more relaxed) test that does not include any assumptions and looks at a number of factors to determine if a worker is an "employee" or "independent contractor."
- Existing law also exempts certain occupations and referral agency, construction industry and business-to-business relationships.
- These bills revise the existing exceptions and add a number of new exceptions to the ABC test.
- The bills make changes to the "business-to-business contracting relationship exception from the ABC test. The bill provides that the business service provider may provide services to the customers of the contracting business so long as the business service provider regularly contracts with other businesses and its employers are solely providing the services under the name of the business service provider. The bill provides that the required written contract must include rates of pay, payment amount and the due date of payment. The bill specifies that the business service provider's separate business location may be the provider's residence. The bill eliminates the requirement that the business service provider actually contract with other businesses.

- The bills make changes to the “referral agency” exception from the ABC test. The bills add more detailed requirements for the exception and add consulting, wedding planning and services, youth sports coaching, caddying and interpreting services to the list of services that may fall under the exception. The bills provide specific definitions for “consulting,” “youth sports coaching” and “interpreting services.”
- The bills make changes to the “professional services” exception from the ABC test in two ways. First, they alter the qualifying requirements for still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists. Second, they include a number of new occupations that are not subject to the ABC test so long as specific requirements are met. The list now includes: videographers, photo editors, translators, copy editors, illustrators, content contributors, advisors, producers, narrators, cartographers, “master class” instructors for performing arts companies, appraisers, professional foresters, home inspectors, persons providing services at a “single engagement event,” recording artists, songwriters, lyricists, composers, proofers, recording artist managers, record producers and directors, musical engineers and mixers, recording artists, recording musicians, recording vocalists, independent radio promoters, film and television unit production crews, publicists, certain professions in the insurance industry, landscape architects, manufactured housing salespersons, persons engaged in international exchange visitor programs, and competition judges.
- The bills also create an exception from the ABC test for the relationship between a data aggregator and an individual providing feedback to the data aggregator.
- The bills were passed as urgency statutes and took full effect on September 30, 2020.

Prohibition Against Requiring Employees to Take Various Sick Leaves in a Particular Order

AB 2017

- Existing law entitles employees to various types of paid and unpaid sick leaves. These “sick” leaves can include leave for family care and leave for victims of domestic violence, sexual assault, and stalking.
- This bill prohibits employers from requiring employees to exhaust those various entitlements in a particular order. An employee is permitted to designate sick leave as any type of leave currently available to them.

Expansion of Time Off for Victims of Crime and Abuse

AB 2992

- Existing law requires employers to provide an employee who is a victim of domestic violence, sexual assault, or stalking with time off work to obtain legal help to ensure the health, safety, or welfare of the employee or the employee’s child.
- Existing law requires employers with 25 or more employees to provide an employee who is a victim of domestic violence, sexual assault, or stalking with time off work to obtain medical, psychological and shelter assistance.
- This bill expands the types of employees entitled to time off work to include any victim of crime or abuse.
- The bill provides that an employee is a “victim” when the employee is (1) a victim of stalking, domestic violence, sexual assault; (2) a victim of a crime that caused physical or mental injury or

the threat of physical injury; or (3) a person whose immediate family member is deceased as the direct result of a crime.

- The bill provides that an employee need only offer a signed, written statement by the employee, or any individual acting on the employee's behalf, to be entitled to the leave.

Mandated Reporters of Child Abuse or Neglect

AB 1963

- Existing law, the Child Abuse and Neglect Reporting Act, defines certain individuals as mandated reporters with the obligation to report whenever they, in their professional capacity or within the scope of their employment have knowledge of or observed a child whom the individual knows or reasonably suspects has been the victim of child abuse or neglect.
- This bill adds "human resource employees" who work for employers employing five or more employees and employing minors to the list of mandated reporters. "Human resource employees" are those employees designated by the employer to accept complaints of misconduct under the Fair Employment and Housing Act.
- The bill also specifies that any adult person whose duties require direct contact with and supervision of minors in the minors' work for a business subject to the Fair Employment and Housing Act shall be a mandated reporter of "sexual abuse." The term "sexual abuse" is defined under section 11165.1 of the Government Code with numerous and specific examples of sexually related conduct.
- The bill also requires employers of the human resource employees and adults with direct contact and supervision of minors to provide those employees with training on the employees' duties as mandated reporters. The training must include training on child abuse and neglect identification and the employees' reporting obligations. The training can be satisfied by completing the online training course offered by the Office of Child Abuse Prevention.

Criminal Background Checks – Applicant Residence Address

SB 905

- Existing law authorizes employers to request from the California Department of Justice records of all convictions or any arrest pending adjudication involving specified offenses of a person who applies for employment or volunteer work and the work involves supervisory or disciplinary power over a minor or any person under their care. Existing law requires a request for records to include the applicant's fingerprints and any other data specified by the department.
- This bill provides that the California Department of Justice shall not require the applicant's residential address as part of the criminal background check request.

Extension of Time Limits to File Labor Code Complaints

AB 1947

- This bill has two distinctive parts. This first part concerns employees filing claims with the Division of Labor Standards Enforcement ("DLSE").
- Existing law authorizes workers who believe that they have been discharged or otherwise discriminated against in violation of the California Labor Code to file a complaint with the DLSE

within six months after the occurrence of the violation.

- The bill extends the period of time in which such a complaint can be filed to one year.

New Award of Attorneys' Fees to Plaintiffs Who Prevail in Section 1102.5 Claims

AB 1947

- This bill has two distinctive parts. This second part concerns the award of attorneys' fees to employees who prevail in certain types of claims against their employers.
- Existing law prohibits an employer from preventing an employee from disclosing information to certain supervisors, governmental entities, and other persons, if the employee reasonably believes that the information discloses a violation of the law. Existing law further prohibits employers from retaliating against employees who disclose this information.
- Existing law also prohibits employers from retaliating against employees for refusing to participate in illegal conduct.
- Existing law permits employees to sue employers under Labor Code section 1102.5 for violating these prohibitions.
- The bill allows courts to award employees their reasonable attorneys' fees if they prevail in a Section 1102.5 lawsuit.

Business Entity Disclosures, Successor Employer Liability & Local Wage/Hour Law Enforcement

AB 3075

- Existing law requires businesses forming corporations, limited liability companies and other entity structures to file specific information with the Secretary of State under penalty of perjury.
- This bill requires business entities to file initially and annually thereafter a host of information that will be made publicly available. Included in the required information is a statement as to whether any corporate officer or director (or any LLC member or manager) has an outstanding final judgment for the violation of any provision in a Wage Order or in the Labor Code.
- The business disclosure portions of the bill shall become effective on January 1, 2022 or when California Business Connect is implemented by the Secretary of State, whichever occurs first.
- This bill also establishes that a successor to a judgment debtor shall be liable for the wages, damages and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment. Successorship exists where the employer (1) uses substantially the same facilities and workforce and offers substantially the same services; (2) has substantially the same owners or managers that control labor relations; (3) employs as a managing agent any person who directly controlled the wages, hours or working conditions of the judgment debtor's former workforce; or (4) operates a business in the same industry and the business has an owner, partner, officer or director who is an immediate family member of any owner, partner, officer or director of the judgment debtor.
- The bill specifies that this form of establishing successor liability does not limit other means of establishing successor liability that already exist under the law.
- The bill also clarifies that local jurisdictions may enforce not only the local wage and hour laws enacted by the jurisdiction; they may also enforce state labor standards.

Discrimination: Privately Funded Household Domestic Service Employees Who Refuse to Violate Safety Standards

AB 2658

- This bill has two distinctive parts. This first part concerns domestic service employees.
- Existing law prohibits an employee from being laid off or discharged or otherwise discriminated against for refusing to perform work in violation of prescribed safety standards. Existing law defines the term “employment” to exclude household domestic service employees.
- This bill expands the prohibition of retaliating against an employee for refusing to perform work in violation of prescribed safety standards to include household domestic service employees, except those publicly funded.

Prohibition Against Directing Employees to Ignore Evacuation Orders

AB 2658

- This bill has two distinctive parts. This second part concerns evacuation orders.
- This bill makes it a criminal misdemeanor for a person to willfully and knowingly direct an employee to remain in, or enter, an area closed by an authorized government official because of health or safety risks created by a calamity such as flood, fire, earthquake, accident or other disaster.

Definition of “Military Member” for Paid Family Leave

AB 2399

- The existing Paid Family Leave program provides wage replacement benefits to workers who take time off work to participate in a qualifying exigency related to the covered active duty or call to covered active duty of a military member. While this law was first passed in 2018, it is not scheduled to take effect until January 1, 2021.
- This bill specifically defines the term “military member” as a “child, spouse, domestic partner, or parent of the employee.”

EXAMPLES OF INDUSTRY-SPECIFIC LAWS

Rest Periods for Security Guards

AB 1512

- Existing law prohibits employers from requiring employees to work during a mandated meal, rest or recovery period. Existing law mandates that employers who fail to provide an employee a mandated meal, rest or recovery period must pay the employee one additional hour of pay at the employee’s base rate of compensation for each workday that the meal, rest or recovery period was not provided. Existing law contains some limited exemptions from these requirements.
- This bill creates a special rule for rest periods applicable to security officers registered pursuant to the Private Security Services Act who are employed pursuant to a collective bargaining agreement by a registered private patrol operator. The rule will expire on December 31, 2026.
- The bill provides that security officers may be required to remain on the premises, to remain on call

and to carry and monitor a communication device during rest periods. Security officers must be permitted to start a new rest period as soon as practicable if the officer's rest period is interrupted. The subsequent uninterrupted rest period satisfies the employer's rest period obligation. An officer's rest period is "interpreted" any time the officer is called upon to perform active duties, but active duties do not include simply being on the premises, remaining on call and alert or monitoring a communication device.

- If a security officer is not permitted to take an uninterrupted rest period of at least 10 minutes for every 4 hours worked or major fraction thereof, the officer must be paid one additional hour of pay at the employee's regular base hourly rate of compensation.
- The bill was passed as an urgency measure and took effect on September 30, 2020, but the special rule it creates does not apply to claims or lawsuits filed before January 1, 2021.

COVID-19 Information Campaign – Agricultural Employees

AB 2043

- Existing law gives the Division of Occupational Safety and Health (DOSH) the power to conduct investigations and enforce workplace safety laws and regulations.
- This bill directs DOSH to disseminate information to agricultural employees on the best practices for preventing COVID-19 infection. The information is to be available in both English and Spanish and published on the agency's website.
- The bill also directs DOSH to work collaboratively with community organizations, employee unions and employers to conduct a statewide outreach campaign targeted at agricultural employees. The campaign is to include information on prevention and information on COVID-related benefits to which the employees may be entitled, including paid sick leave and workers' compensation. The campaign shall include, but not be limited to, radio announcements and workplace signs.
- While the bill does not specifically require employers to do anything, it can be presumed that employers may be required to cooperate with DOSH at least to some degree in providing access to employees and the workplace.
- The bill also requires DOSH to compile and report on its website information about investigations related to COVID-19 prevention practices or COVID-19 illnesses or injuries at an agricultural workplace.

Personal Protective Equipment for Hospital Workers

AB 2537

- Existing law requires employers to provide a safe work environment and, in some cases, to provide specific safety equipment.
- This bill requires public and private general acute care hospitals to provide employees who give direct patient care and employees that directly support patient care with the personal protective equipment necessary to comply with the existing safe workplace regulations. The hospital employers must also ensure that employees actually use the protective equipment provided.
- The bill also requires general acute care hospitals to stockpile at least a three-month supply of specific personal protective equipment and provide the Department of Industrial Relations with specific reporting on the consumption of that equipment.

Employer-Paid Training for Hospital Workers

AB 2588

- Existing law requires employers to reimburse employees for necessary expenses incurred by an employee in the course and scope of employment.
- This bill requires general acute care hospital employers to provide applicants and employees in direct patient care positions with reimbursement for training related to the position. The reimbursement requirement does not apply to requirements for a license, registration, or certification or for training voluntarily undertaken by the applicant or employee.

Exempt Status for Certain College Professors

AB 736

- Existing law provides for the payment of overtime wages and sets various working condition requirements for employees unless the employees fall under one or more of the exemptions contained in the applicable California Wage Order.
- This bill provides that an employee who provides instruction for a course or laboratory at an independent institution of higher education can be classified as an “exempt” professional employee if they meet certain requirements, including earning a certain minimum compensation. If an employee meets these requirements, the employer is exempt from having to pay that employee overtime wages, providing rest periods, and providing other legally imposed requirements.
- The bill defines an “independent institution of higher education” as a nonpublic, higher education institution that grants undergraduate degrees, graduate degrees, or both; are formed as nonprofit corporations in the State of California; and are accredited by an agency recognized by the United States Department of Education.
- The bill provides that to satisfy the minimum compensation requirement, the employer must generally pay the employee twice the current minimum wage – or approximately \$2,253.33 per month when paid on a monthly basis; or approximately \$117 per classroom hour when paid on a per course/per laboratory basis. The bill also provides for annual increases of these minimums.
- The bill was passed an urgency statute and took effect on September 9, 2020.

Please let us know if we can support you and we will be your partner in navigating through the changes.

Sincerely,

Holden Law Group