



Comprehensive Review of all California Workplace Law Bills Signed – and Rejected – by Governor Newsom

Insights
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California Governor Gavin Newsom recently completed final action on bills that were passed by the state legislature in 2021, and employers are once again faced with a raft of new compliance obligations thanks to several new laws that will soon take effect – or have already done so. The ongoing COVID-19 pandemic continued to have a significant impact on the legislative cycle this year, as much of the discussion continued to focus on pandemic-related policy issues. If there was any good news for employers, it was a procedural rule that limited legislators to 12 bills this year, which reduced the overall volume of measures that were acted upon in 2021. Nonetheless, Governor Newsom signed some significant labor and employment legislation with which California employers will need to comply. **Unless noted otherwise, the bills below will take effect on January 1, 2022.**

SB 331 – Settlement and Nondisparagement Agreements – This bill expands on recent legislation and prohibits the use of non-disclosure agreements (NDAs) to settle employment and housing-related legal claims involving unlawful harassment, discrimination, or related retaliation of any kind, with limited exceptions when requested by the complainant. This bill also prohibits employment severance agreements from including terms that prohibit the separated employee from discussing unlawful conduct at their former workplace, unless the separated employee agrees to those terms under specified conditions designed to safeguard the separated employee’s rights. Check out our further analysis of this legislation [here](#).

AB 701 – Warehouse Distribution Centers and Quotas – This legislation establishes first-in-the-nation regulation of production quotas in warehouse distribution centers. The broad scope of the bill will potentially apply to many employers across a wide range of industries. Learn more in our in-depth analysis [here](#).

AB 1003 – Criminal Liability for Intentional Unpaid Wages – This bill makes intentional “wage theft” by employers a form of grand theft and thus a felony on the state of California. Read more about this upping the ante for employers [here](#).

SB 606 – New Penalties for Workplace Safety Compliance – This legislation extends Cal/OSHA’s scope of enforcement and creates two new categories of violations – “enterprise-wide” violations and “egregious” violations. Take a look at our in-depth analysis of this new law [here](#).

SB 62 – Garment Manufacturing – This bill expands joint and several liability to any business in the garment industry supply chain for wage violations. The measure also prohibits the use of “piece-rate” compensation in the garment industry. Employers in other industries should be on the lookout for future efforts to prohibit piece-rate compensation in other industries.

SB 338 – Port Drayage Companies – This bill expands the list of violations that can cause port drayage companies to be placed on a DLSE list that extends joint liability for future violations.

SB 646 – PAGA Exemption for Unionized Janitorial Employers – Creates an exemption from PAGA for janitorial employees covered by a collective bargaining agreement that meets specified criteria. This legislation is similar to recent legislation creating a similar PAGA exemption for unionized employers in the construction industry.

AB 1033 – California Family Rights Act – This bill expands the definition of “family member” under CFRA to include parents-in law. The measure also modifies procedural aspects of a DFEH pilot program for mediating CFRA disputes that applies to small employers.

AB 73 – Agricultural Workers and Wildfire Smoke – This legislation expands the definition of essential workers to include agricultural workers for the purposes of accessing the personal protective equipment (PPE) for emergencies such as wildfires.

AB 654 – COVID-19 Exposure and Notification – This bill is a follow-up measure to AB 685 from last year and largely conforms language related to required COVID-19 exposure notifications to the Cal/OSHA Emergency Temporary Standard (ETS). Language requiring employers with outbreaks to be published by name was deleted from the bill.

AB 1023 – Public Works Contractors – This measure allows the Labor Commissioner to impose a penalty on a contractor or subcontractor on a public works project if they fail to furnish payroll records, as specified.

AB 1506 – Independent Contractors: Newspaper Distributors and Carriers – This bill extends an exemption from the ABC test (the draconian standard for determining whether a worker is an employee or independent contractor) for newspaper distributors and carriers to January 1, 2025.

AB 1561 – Independent Contractors – This bill extends the sunset on the exemption from the ABC test for employment status for licensed manicurists and subcontractors in the construction trucking industry. This measure also clarifies the exemption for the relationship between data aggregators and research subjects and for specified insurance industry occupations.

SB 321 – Workplace Safety and Household Domestic Service – This legislation requires Cal/OSHA to convene an advisory committee to provide voluntary guidance and make recommendations on policies the state may adopt to protect the health and safety of privately funded household domestic service employees.

SB 572 – Enforcement Liens – This bill provides the Labor Commissioner’s Bureau of Field Enforcement (BOFE) with the same authority to levy liens for citations that they currently have for wage claims filed by employee claimants.

SB 639 – Minimum Wages: Persons With Disabilities – This measure requires the development of a plan to phase out the use of the subminimum wage certificate program, which authorizes employers to pay less than minimum wage for employees with physical or mental disabilities, as defined, by January 1, 2025.

SB 657 – Electronic Documents – This bill provides that in instances where an employer is required to physically post information, an employer may also distribute that information to employees by email with the document or documents attached. An employer is still required to physically display the required posting.

SB 727 – Labor-Related Liabilities: Direct Contractors – This bill expands existing direct contractor liability to include liquidated damages and penalties in circumstances where the direct contractor fails to meet payroll monitoring and corrective action requirements, as specified.

SB 762 – Arbitration – This legislation is a follow-up measure to SB 707 from 2019, which provided certain sanctions and ramifications for parties that fail to pay an arbitration provider in a timely manner. This bill requires arbitration providers in consumer or employee arbitrations to send invoices, at specified times and setting forth amounts due and due dates, for costs and fees required to be paid by the business or employer who drafted the contract.

Vetoed Measures

Governor Newsom did not sign *every* labor and employment measure that made it to his desk this year. There were a number of bills that were vetoed, including some surprises. These include the following:

- **AB 616 – Card Check for Farmworkers** – This measure would have established “card check” recognition for agricultural employees under the Agricultural Labor Relations Act (ALRA).
- **AB 1074 – Worker Retention for Hotel Employers** – This bill would have required an employer who enters into a contract for hotel services to retain the employees of the prior contractor.
- **AB 123 - Paid Family Leave** – This bill would have increased the wage replacement rate for employees taking leave under California’s paid family leave (PFL) program.
- **SB 665 – Voluntary Veterans’ Preference** – This legislation would have authorized a private employer to establish a veteran’s preference employment policy, as specified.
- **SB 778 – Workers’ Compensation Risk Factors** – This measure would have prohibited the apportionment of permanent disability benefits on the basis of specified protected characteristics.

Next Steps for Employers

We will monitor developments related to these new laws and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions on how to comply with any of these new laws, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in any one of [our six California offices](#).

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