

# THE CALIFORNIA LEGISLATURE IS BACK IN TOWN – EMPLOYERS SHOULD MONITOR THESE 10 BILLS

Insights  
Feb 23, 2022

The last two years have been an interesting respite for California employers. The COVID-19 pandemic impacted the legislature – just like other businesses – which resulted in abbreviated legislative schedules, fewer bills overall, and employment measures that were focused primarily on pandemic-related issues. Will 2022 be different and see a return-to-normal when it comes to employment legislation in California? While that remains to be seen, the legislature is back in town and February 18 was the deadline to introduce new measures. Based on bill introductions, there are some significant workplace law proposals that extend well beyond COVID-19 issues. California employers should closely monitor these 10 bills.

## 1. Vaccine Mandate for Employers (AB 1993)

We aren't completely past the pandemic when it comes to proposed legislation. The most significant legislation dealing with COVID-19 is a **measure** that would require most private and public employers to require employees to be vaccinated. AB 1993 would impose a "hard" vaccine mandate (rather than a "vaccine or test" option), meaning all employees would need to be vaccinated by 2023 unless they had a valid medical or religious exemption.

Therefore, while the Biden administration vaccine mandate proposal was tied up in litigation and ultimately withdrawn, California employers may very well be looking at a vaccine mandate on the horizon. Definitely one to watch!

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## 2. FAST Recovery Act (AB 257)

Okay, [this measure](#) is not new. It was introduced last year but failed to garner enough votes on the Assembly floor. However, it was eligible to be taken up again in January. This time it passed the Assembly and is now pending in the Senate. Among other things, this bill would delegate (perhaps unlawfully?) authority to a new Fast Food Sector Council to establish sector-wide working standards for the fast food industry. The term “fast food” is defined broadly to potentially impact many restaurants well beyond what most of us would consider “fast food.”

This would be an unprecedented delegation of legislative authority and would mean this new Council would have the power to set wage and hour and health and safety standards for many restaurants in California, largely bypassing legislative deliberation and oversight. The bill also targets the franchise model and, among other things, makes franchisors jointly liable for employment claims filed against franchisees.

This is definitely a bill to watch for those in the restaurant industry, but employers in other industries should keep a close eye on this one as it could establish a precedent that could be extended to other industries in the future.

## 3. Employment Discrimination and Cannabis (AB 2188)

A big issue percolating in the background for a few years now (especially after cannabis was legalized for both recreational and medical use in California) is how such use interacts with employment discrimination law. We’ve seen a few proposals in recent years to prohibit employers from discrimination against employees for the lawful use of cannabis, but none of those proposals have made it very far in the legislature. This issue is back with [AB 2188](#) – a measure that would make it unlawful to discriminate against employees for the use of cannabis off the job and away from the workplace. The bill would not bar an employer from taking adverse action against an employee who is impaired while on the premises or during work hours.

This proposal raises many questions, so there is sure to be lively debate over this issue and potential safety concerns for employers. Will this be the year California enacts employment discrimination protections related to

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cannabis use? How will such legislation interact with federal law, which still treats cannabis as a prohibited substance? We'll monitor this situation closely.

#### **4. Pay Data Reporting/Listing of Pay Scale (SB 1162)**

Two years ago, California enacted legislation to require employers with 100 or more employees to report specified pay data on an annual basis. [SB 1162](#) would significantly amend the law to do the following:

- Require the pay data reports to be published on a public website ("public shaming").
- Impose significant new civil penalties (\$100 per employee, \$200 per employees for subsequent violations) against employers who fail to report required pay data.
- Require covered employers to also report pay data for employees hired through labor contractors.

In addition, SB 1162 would require to employers to provide the pay scale for a position to applicants by including such information in any job postings. Several states and local jurisdictions have adopted such a requirement in recent years.

#### **5. Bereavement Leave (AB 1949)**

Legislative proposals to mandate bereavement leave have been attempted several times in recent years without success. [AB 1949](#) is the latest effort in this regard. This bill would require employers to grant up to five days of bereavement leave for the death of a family member.

Unlike previous proposals, AB 1949 would be an amendment to the Government Code (rather than the Labor Code, which means that aggrieved workers could not file PAGA claims if they believe violations have occurred). Further, the five days of bereavement leave would be in addition to the 12 weeks of leave under the California Family Rights Act (CFRA). Bereavement leave would be unpaid, but an employee could utilize vacation, PTO, sick leave or other paid leave they have available. With these changes, it is much more likely that AB 1949 will pass the legislature and be enacted into law.

#### **6. "Familial Responsibilities" Discrimination (AB 2182)**

[AB 2182](#) would amend FEHA to add “familial responsibilities” as a protected classification. “Familial responsibilities” is defined as the obligations of an employee or applicant to provide care for a minor child or family member who relies on the employee for medical care or assistance with activities of daily living. This measure is similar to legislation (AB 1119) introduced last year by the same author. AB 1119 did not advance past the Assembly last year.

## 7. COVID-19 Exposure Notification (AB 2693)

Early on during the pandemic, California enacted legislation (AB 685) to require employers to provide specified written notices to employees and others in the event of a COVID-19 exposure in the workplace. These notification requirements were included as part of the Cal/OSHA Emergency Temporary Standard (ETS) as well. The statutory notification requirements were set to expire January 1, 2023. [AB 2693](#) would extend these notification obligations until January 1, 2025.

## 8. Will California Adopt a Four-Day Workweek? (AB 2932)

Several European countries have experimented with a four-day workweek in recent decades. Similar proposals have been entertained in Congress but have not gained any real traction, [although some private employers have introduced these offerings as a way to attract and retain talent](#). With the introduction of [AB 2932](#), California may enter this debate as well. AB 2932 is merely an “intent bill,” meaning it has not substantive provisions at this time. It merely declares the intent of the legislature to enact legislation that would adopt a four-day workweek.

Is this a shot in the dark? Or will the legislature seriously debate adopting a four-day workweek for California? What will that mean for overtime and a whole host of related issues? It’s too early yet to tell, but this proposal will be fascinating to watch.

## 9. Biometric Information (SB 1189)

SB 1189 prohibits a private entity from collecting or receiving biometric information unless they provide notice and receive consent from the individual. While that may seem innocuous, it probably sends shivers down the spine of any employer familiar with the Illinois Biometric

Privacy Act (BIPA). That legislation has given rise to a flood of class action lawsuits against employers and others related to “biometric timeclocks.” A virtual cottage industry has sprung up to sue employers in Illinois over this issue, which was likely never the original intent of the legislation. Employers and privacy professionals should watch this legislation closely. While it doesn’t seem possible that California’s litigation environment could get worse for California businesses, it very well might if SB 1189 passes.

## 10. CCPA Exemption for Employee and Business-to-Business Data

Most employers are aware that the California Consumer Privacy Act has a general exemption for data obtained in the employment context or in business-to-business exemptions. However, those exemptions are set to expire on January 1, 2023 – meaning (among other things) that employee data would be subject to the entire panoply of rights and responsibilities under the CCPA. Extending or making permanent those exemptions will be a big focus for the legislature this year. In fact, four different bills (AB 2871, AB 2981, SB 1388 and SB 1454) have been introduced to try to do so.

These bills are likely merely vehicles for further discussions with stakeholders about whether, and in what manner, to potentially extend those exemptions. The final outcome of these bills could look very different, but this is definitely an area to watch.

## Conclusion

The legislative proposals discussed above should make for a fascinating 2022. The real question will be will it be a return to business as usual for the legislature or will COVID-19 rear its ugly head again to limit the amount of employment legislation coming out of Sacramento?

The legislature has until August 31 to pass measures, and Governor Newsom has until September 30 to sign or veto bills.

We will monitor developments related to these legislative proposals 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](#).