Avalanche Alert: Top 10 California Employment Bills To Watch as Legislative Session Wraps Up

Insights
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California employers will want to sit down, grab a cup of coffee, and prepare themselves for the avalanche on new employment laws that may soon be coming their way. The state Legislature just completed its work for 2023 in a frenzy of last-minute activity and deal-cutting, wrapping up a session for the record books. State lawmakers considered over 2,700 bills – the most in almost two decades – including some high-profile workplace-related proposals. Governor Newsom now has until October 14 to sign or veto bills that sit on his desk, meaning we will know within the next month which will be enacted into law. While there are dozens of employment-related bills awaiting his action, which are the top 10 you should track? Read on and (as they say) weep.

Note: Except as otherwise noted, new laws will go into effect January 1, 2024. We will provide a full analysis of each law that becomes finalized in separate Insights to be published, so make sure you are signed up for the Fisher Phillips Insight System to ensure you receive the latest.

1. Expansion of Paid Sick Leave – 5 Days or 40 Hours

Current state law requires employers to provide three days or 24 hours of paid sick leave to employees (although several local ordinances have requirements that go beyond state law).

Senate Bill 616 would increase this obligation to five days or 40 hours of paid sick leave. Employers would be able to limit usage to five days or 40 hours per year and to cap accrual at 10 days or 80 hours.

It's all but certain that Governor Newsom will sign this bill into law. But it could have been worse! Until recently amended, SB 616 would have increased paid sick leave to seven days or 56 hours. The employer community attempted to negotiate some changes to the law that would have mitigated some of the burden of increased leave (such as a documentation requirement for longer leaves) but those efforts were unsuccessful.

2. New Discrimination Protection for "Family Caregiver" Status

After several unsuccessful attempts, legislation that would add "family caregiver status" to the list of protected categories under the Fair Employment and Housing Act (FEHA) is finally headed to the

Governor's desk.

Assembly Bill 524 defines "family caregiver status" to mean being a person who provides "direct care" to a spouse, child, parent, sibling, grandparent, grandchild, domestic partner or (for existing employees) a CFRA "designated person."

A potential compliance challenge for California employers is that the bill does not define "direct care." Therefore, there is some uncertainty as to whether the "care" must be medical or emotional in nature, or whether it needs to be ongoing in nature.

AB 524 also states that is does not create any new obligation for an employer to provide "special accommodations" because of family caregiver status (including with respect to absenteeism, benefits, leave, scheduling or work performance).

3. Last Minute "Deal" on Fast Food Workers

One of the more high-profile pieces of legislation is a last-minute compromise deal on fast food workers that enacts a $20 minimum wage for covered workers in exchange for withdrawal of a pending referendum on landmark legislation enacted last year (AB 257) to establish a powerful Fast Food Council.

Assembly Bill 1228 represents a compromise between Governor Newsom, labor unions and some fast food industry participants, and would apply to fast food restaurants (and their employees) that are part of a national food chain of more than 60 establishments.

Among other things, AB 1228 would:

- Establish a minimum wage for covered fast food workers of $20 effective April 1, 2024 (with possible annual increases thereafter).
- Preempt local ordinances that purport to require a specific minimum wage for fast food workers.
- Establish a new (and watered-down) version of the Fast Food Council, with the main change being that (other than the minimum wage) any proposed work standards would need to be promulgated by the respective state agency, such as the Labor Commissioner.
- Drop a previous proposal to make fast food franchisors joint liable for violations of their franchisees.
- Require industry groups to drop their referendum to repeal AB 257 (currently qualified for the November 2024 ballot).

Governor Newsom is virtually certain to sign this legislation as the bill represents a compromise negotiated by his office and key stakeholders. Read much more about AB 1228 and what covered fast food restaurants need to do to prepare in our recent Insight. **[Editor's Note: Governor Newsom signed this bill on September 28.]**

4. Minimum Wage Increase for Health Care Workers

Another last-minute compromise deal between labor and employers addresses a long-standing effort to mandate a specific minimum wage for health care workers. This has been the subject of statewide ballot measure discussions and several local ordinances (particularly in Southern California) over the last few years.

Senate Bill 525 represents a compromise between labor groups and the California Hospital Association and other health care employers.

In essence, SB 525 would enact a series of minimum wage requirements that vary by type of healthcare employer. In exchange, local health care worker minimum wage ordinances would be overridden. In addition, media reports indicate that as part of this compromise labor groups have agreed to a moratorium on legislation and/or ballot measures aimed at dialysis clinics (which have been a frequent target of expensive ballot measures over the last several years).

The minimum wage requirements would consist of the following:

- Large health systems with more than 10,000 workers and dialysis clinics would pay $23 an hour in 2024, $24 in 2025, and $25 in 2026.
- Hospitals with a "high governmental payor mix" (Medi-Cal and Medicare patients) and rural independent hospitals would pay $18 in 2024 (which would gradually increase to $25 by 2033).
- Community clinics would pay $21 in 2024, $22 in 2026, and $25 in 2027.
- Other covered health care employers would pay $21 in 2024, $23 in 2026, and $25 in 2028.

However, the reach of SB 525 might be broader than one might think. The bill defines a "covered health care employee" to include more than those that provide patient care. It also includes (among others) janitors, housekeeping staff, groundskeepers, guards, clerical workers, administrative employees, food service workers, medical billing personnel, and laundry workers.

This bill also seems very likely to be signed into law as it represents a legislative compromise between key stakeholder that involved negotiations convened by the Governor's office.

5. Mass Layoff Notifications

Assembly Bill 1356 is aimed primarily at highly publicized layoffs in the high tech industry, but it would make changes to the state version of the WARN Act that apply to all covered employers regardless of industry.

California's current WARN Act requires covered employers to provide 60 days advance notice before a mass layoff or plant closure. AB 1356 would make several significant changes to the state law:

- Increases the required notice from 60 days to 75 days.

- Expands the definition of "covered establishment" to include a group of locations (including any facilities located in the state) rather than a single location.
- Requires notice to be also provided to "labor contractor" employees who have performed work at the covered employer for at least six months of the preceding 12 months and for at least 60 hours.

With much media attention focused on mass layoffs (particularly) in the high tech industry, there is a strong probability that the Governor signs this bill.

6. Return-to-Work Notice Obligations

As California employers continue to manage whether and how employees return to in-person work following the COVID-19 pandemic, Senate Bill 731 would impose some specific notice requirement before returning workers from remote work.

Specifically, SB 731 makes it unlawful for an employer to require an employee working from home to return to work in person without providing at least 30 days' advance notice. The notice must be in writing and sent by mail or email. It must contain specific text (contained in the legislation) advising the employee that they have the right to ask their employer about potentially working remotely as a reasonable accommodation if they have a disability.

Proponents of SB 731 argue that the bill is intended to provide enough time to facilitate the "interactive process" regarding remote work as a potential reasonable accommodation before remote workers are required to return to in-person work.

7. New Prohibition on "Caste" Discrimination

Senate Bill 403 would make California the first state to specifically ban employment discrimination on the basis of "caste."

SB 403 would add "caste" to the definition of "ancestry" (which is already a protected category) under FEHA.

The bill defines to mean an individual's perceived position in a system of social stratification on the basis of inherited status. "A system of social stratification on the basis of inherited status" may include, but is not limited to, inability or restricted ability to alter inherited status, socially enforced restrictions on marriage, private and public segregation, and discrimination, and social exclusion on the basis of perceived status.

Read more details about this bill in our recent Insight.

8. Workplace Violence Prevention

Another hot-button (and tragic) issue has been a proposal to mandate that California employers adopt a workplace violence prevention program.

Cal/OSHA adopted a health care workplace violence prevention standard over a decade ago and has been working on a "general industry" standard for the past several years that would apply to employers across all industries.

Senate Bill 553 would require covered employers to adopt a workplace violence prevention program by July 1, 2024 and would impose certain recordkeeping and training requirements on employers. The Cal/OSHA Standards Board is directed to adopt a standard conforming to this requirement (and potentially additional requirements) by the end of 2026.

Controversial language that purported to prohibit employers from allowing most employees to confront shoplifters was amended out of the bill before it was sent to the Governor.

9. Unemployment Benefits for Striking Workers

In light of the significant labor activity and strikes occurring in Hollywood and elsewhere throughout the state, labor groups have resurrected a legislative proposal they last tried (unsuccessfully) in 2019 – to allow striking employees to receive unemployment insurance benefits.

Senate Bill 799 would provide than an employee would be eligible to receive unemployment after the first two weeks of a trade dispute.

Last time this was tried, the bill fell two votes short of passing the legislature, but this time it made it to the Governor's desk. It is interesting to note that back in 2019 (before COVID-19) when this was last attempted, the state's unemployment fund had a $3 billion surplus. Currently, the state has an $18 billion deficit. If SB 799 is signed, all employers (even those without striking workers) may pay higher taxes until that enormous deficit is paid down.

Moreover, there is a policy argument that unemployment benefits are intended for workers who are ready and willing to work and who are unemployed through no fault of their own – not for employees that have chosen (through their union) to go out on strike.

While it is still an open question as to whether Governor Newsom will sign this bill, there will be enormous pressure on him from labor groups to do so in light of recent strike activity in the state.

10. New Leave for "Reproductive Loss"

Following on the heels of last year's enactment of a bereavement leave statute in California, Senate Bill 848 would similarly provide for up to five days of leave for a "reproductive loss event." SB 848 would apply to private employers with five or more employees or public employers of any size and would apply to employees that have worked for the employer for at least 30 days.

The bill would define a "reproductive loss event" to mean a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction (as further defined in the bill).

Like bereavement leave, reproductive loss leave may be unpaid, except that an employee may use any accrued leave that is available to them. An employer is not obligated to provide a total of more than 20 days in a 12-month period to an employee who experiences more than one reproductive loss event.

Conclusion

We will continue to monitor each of these bills to see if they are approved by Governor Newsom or whether they are vetoed, and will provide further analysis and compliance assistance for any of these bills are enacted. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. In the meantime, for more information about this legislation feel free to contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our California offices.

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