



2020 California Legislative Update: New Challenges for Employers

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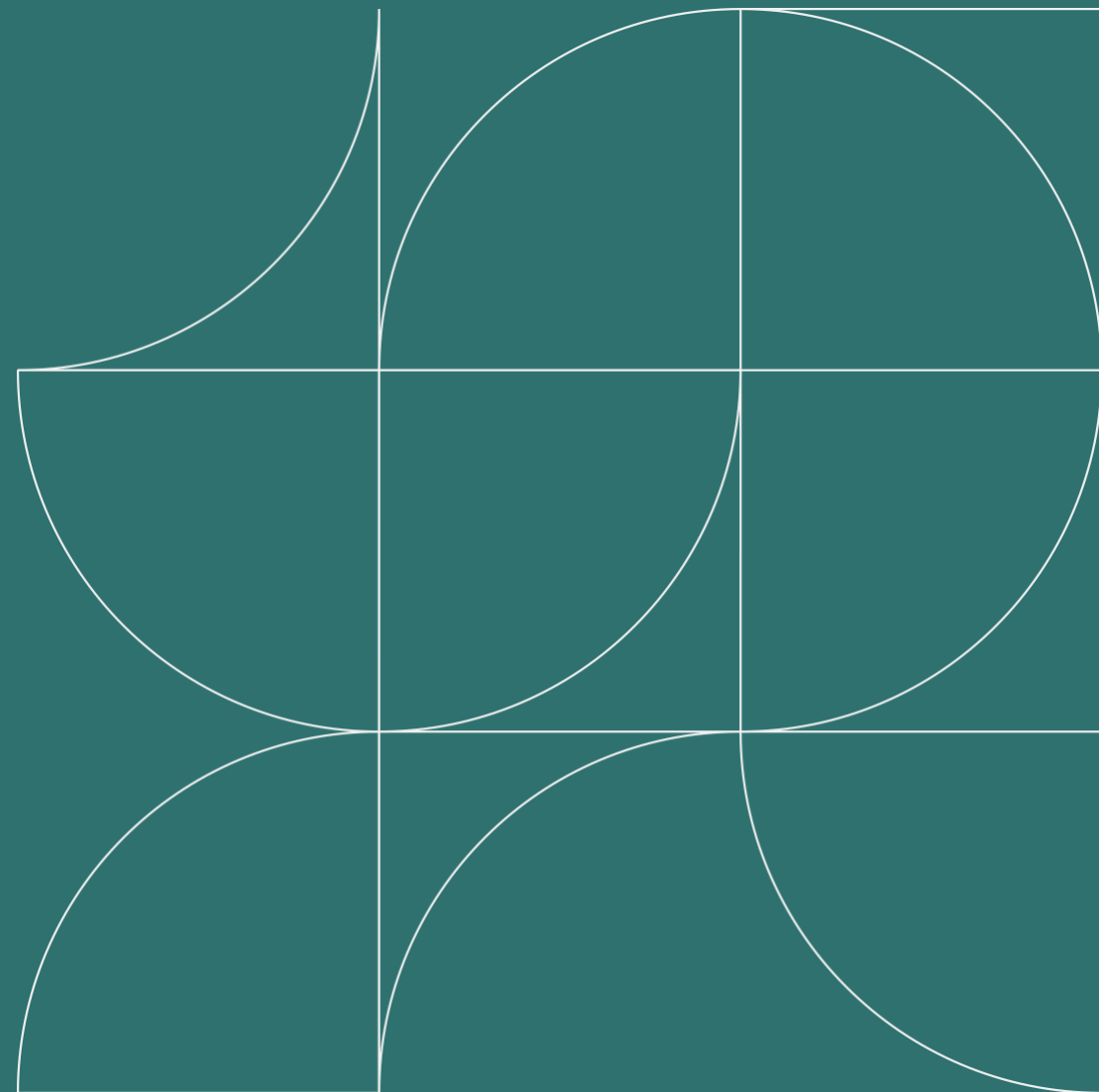
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Sick Pay Issues



AB 1867

Supplemental Paid Sick Leave & Small Employer Family Leave Mediation

- Designed to fill gaps between leave available under FFCRA (over 500 employees).
- Codifies Food Sector Worker Leave.
- Requires, no later than September 19, 2020, up to 80 hours of COVID-19 supplemental paid sick leave for non-food sector covered workers unable to work for three covered reasons.
- Available leave for non-food sector workers must be provided on wage statement or separate writing.
- Posting requirement.
- Offsets possible under specific circumstances.
- Small employer family leave mediation pilot program.
- **Effective Immediately Upon Signing by Governor:** September 9, 2020 (sunsets 12/31/20 or upon expiration of FFCRA)

Local COVID-19 Paid Sick Leaves

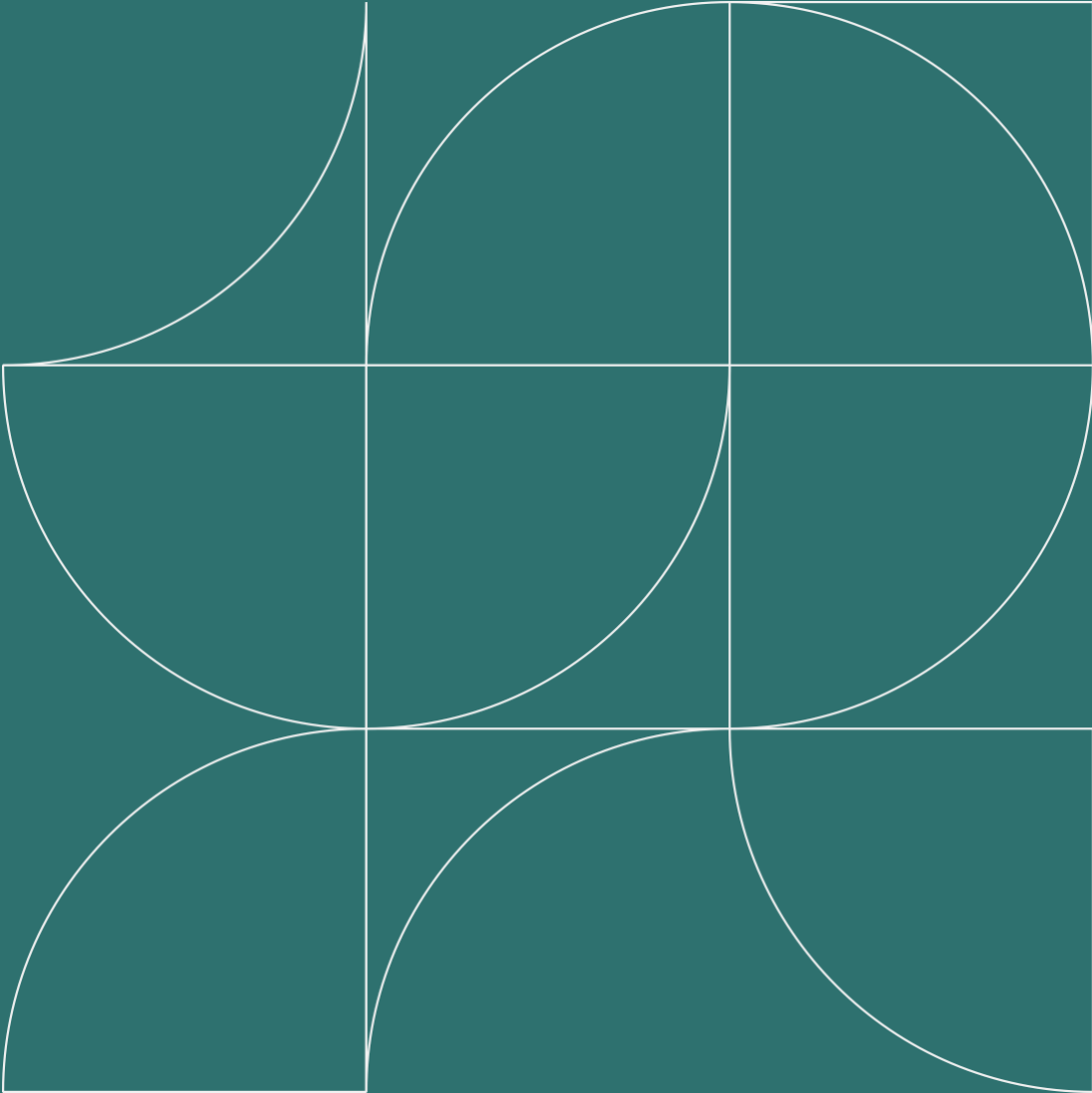
- Designed to fill gaps in FFCRA.
- Be careful of interplay with state leave.
- Covered reasons may be more expansive than state leave.
 - Emeryville
 - Long Beach
 - Los Angeles
(City and County)
 - Oakland
 - Sacramento
(City and County)
 - San Francisco
 - San Jose
 - San Mateo
 - Santa Rosa
 - Sonoma

AB 2017

Paid Sick Leave Designation

- Provides employees sole discretion to designate days taken as paid sick leave under Section 233 of the Labor Code.
- **Effective Date:** January 1, 2021

Cal/OSHA



AB 685

Cal/OSHA New Mandated COVID- 19 Reporting and Imminent Hazard Enforcement

Adds Labor Code § 6409.6

Amends Labor Code § 6432

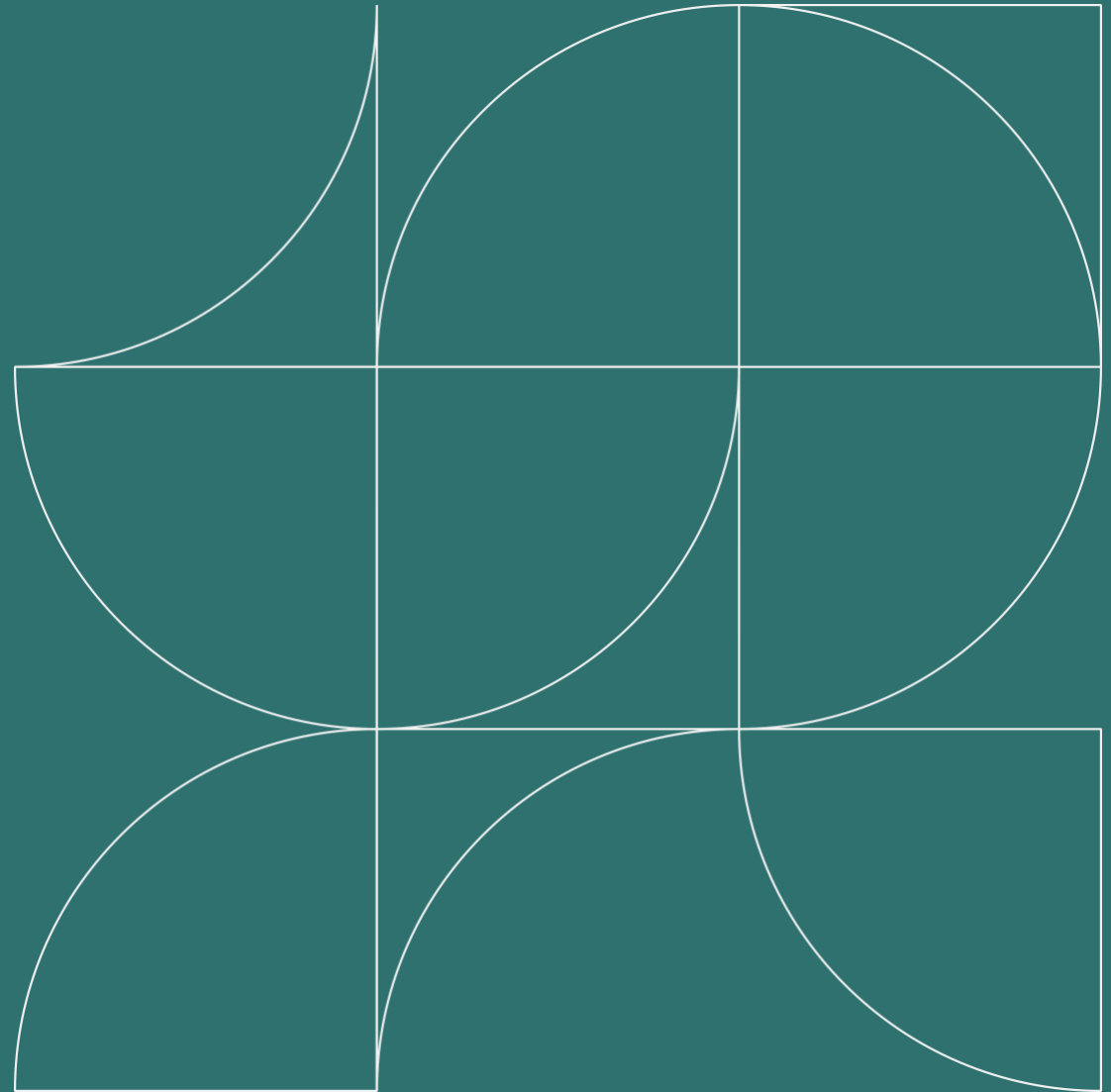
- Requires employers, within one business day of receiving notice of potential exposure to COVID-19 in the workplace, to:
 1. Provide written notice to all employees, the employers of subcontracted employees, and exclusive representatives who were on the premises at the same worksite,
 2. Provide all employees who may have been exposed and their exclusive representative with information regarding COVID-19-related benefits, including, but not limited to, workers' compensation, COVID-19-related leave, company sick leave, state-mandated leave, or supplemental sick leave, and
 3. Notify all employees, the employers of subcontracted employees, and the exclusive representative on the disinfection and safety plan the employer intends to implement.
- Within 48 hours, employers must notify the local public health department if they become aware of an “outbreak” at the workplace.
- Cal/OSHA can now shutdown a worksite without providing advanced notice or a chance to respond where the “imminent hazard” is COVID-19 related.
- **Effective Date:** January 1, 2021

AB 2043

OSHA: COVID-19 Awareness

- Requires Cal-OSHA to disseminate information on best practices for COVID-19 infection prevention in English and Spanish
- Information to include COVID-19 awareness and prevention measures, targeted at and to be easily understood by agricultural employees from a variety of ethnic and cultural backgrounds
- Division also tasked with compiling and reporting on its website findings related to any COVID-19 investigations of agricultural workplaces
- Provisions expire when the state of emergency has been terminated by the Governor or Legislature
- **Effective Immediately Upon Governor Signature:**
September 28, 2020

Workers' Compensation

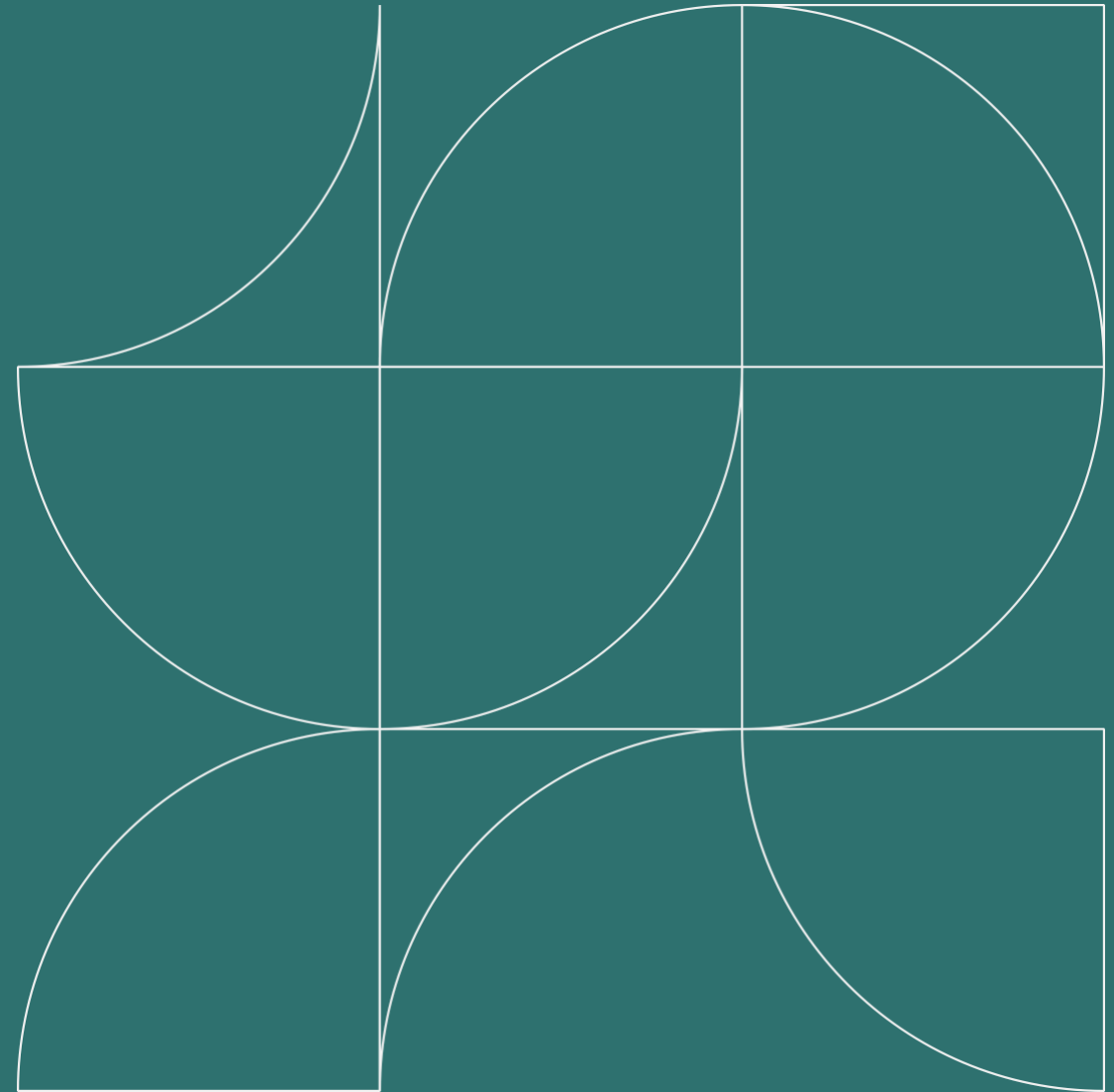


SB 1159

Workers' Compensation: COVID-19

- Codifies rebuttable presumption that an employee contracted COVID-19 in the workplace if they worked for the employer within 14 days of diagnosis (March 19, 2020 - July 5, 2020).
- From July 6, 2020 forward, creates a rebuttable presumption that an employee contracted COVID-19 in the workplace if the employee tests positive during an “outbreak.”
- Requires reporting to workers’ compensation claims administrators and has stiff fines for non-compliance.
- Retroactive reporting required from July 6, 2020 to September 17, 2020.
- **Effective Immediately Upon Governor Signature:**
September 17, 2020

Independent Contractors



AB 2257

Sweeping Changes to AB 5 Independent Contractor Law

Repeals Labor Code § 2750.3

*Adds Labor Code
§§ 2775-2787*

- Preserves the ABC Test for independent contractor classification and expands the universe of available exemptions from this test.
- Reminder: ABC Test comes from the California Supreme Court's 2018 decision *in Dynamex v. Superior Court*, and says a worker is a company's employee unless the company proves:
 - A. the worker is free from control and direction of the hirer in connection with performing the work, both under contract and in fact,
 - B. the worker performs work outside the usual course of the hiring entity's business, and
 - C. the worker customarily engages in an independently established trade, occupation, or business of the same nature as the work performed for the hirer
- ABC Test was codified in AB 5, which came into effect January 1, 2020 → AB 2257 substantially revises and clarifies AB 5.
- **Effective Immediately Upon Governor Signature:**
September 4, 2020

AB 2257

Sweeping Changes to AB 5 Independent Contractor Law (Continued)

Repeals Labor Code § 2750.3

*Adds Labor Code
§§ 2775-2787*

- Alters and adds to existing exemptions from ABC Test:
 - Business-to-business exemption expanded to apply where a public agency or quasi-public corporation contracts with a “bona fide” business.
 - Changes may also mean that the ABC Test applies to individual workers retained by the contractor, with respect to the relationship as to both the contractor and hiring entity.
- Single engagement business-to-business exemption.
- Referral agencies that refer outside businesses’ or individual’s services to their clients.
- Professional services, such as producers, appraisers, home inspectors, and removing content cap for journalists.
- Music industry workers involved in creating, marketing, promoting, or distributing materials, and creative performers.
- Miscellaneous exemptions, like umpires and manufactured housing salespersons.

AB 2257

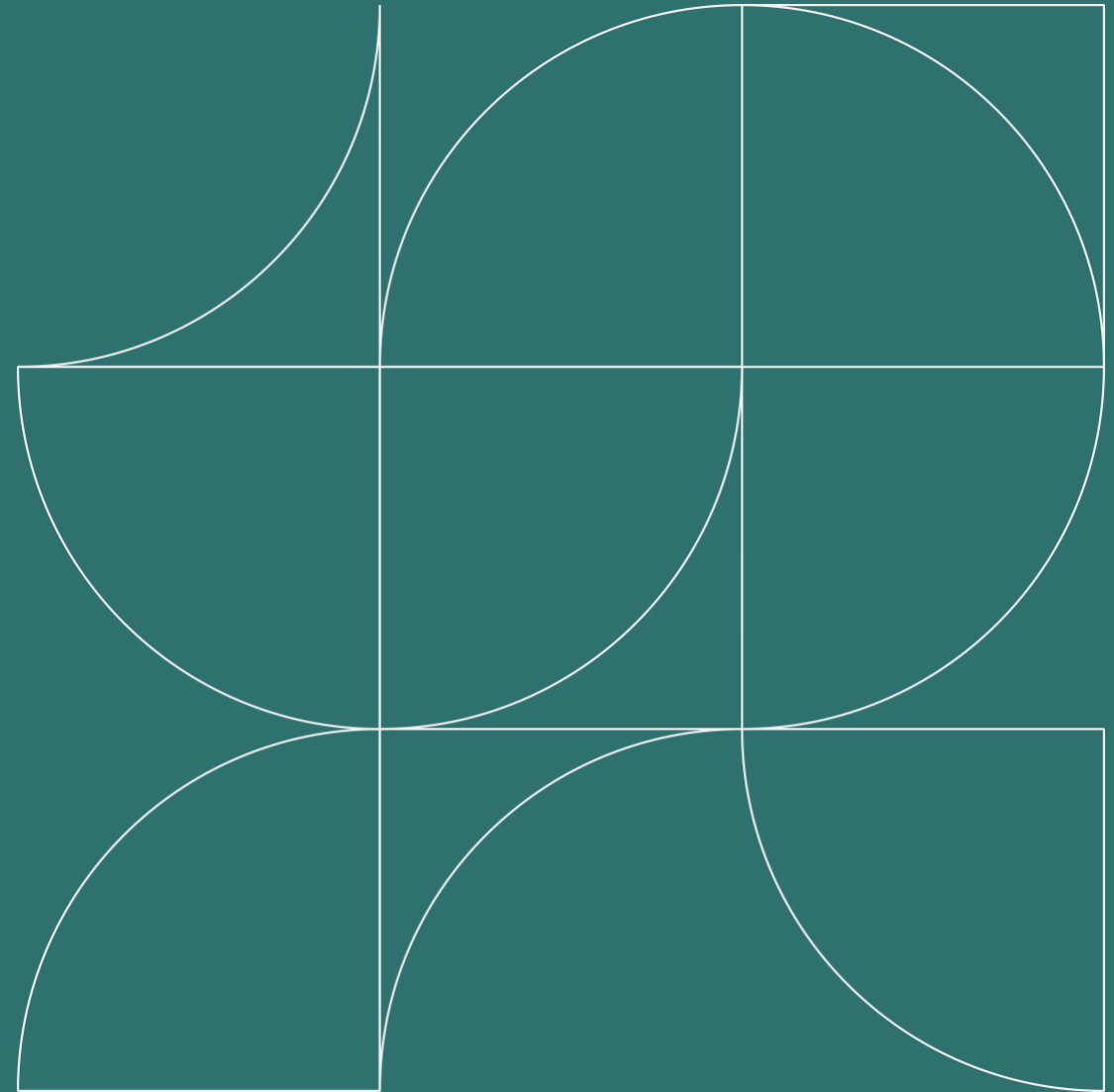
Sweeping Changes to AB 5 Independent Contractor Law (Continued)

Repeals Labor Code § 2750.3

*Adds Labor Code
§§ 2775-2787*

- Provides for broader governmental enforcement powers & allows district attorneys, in addition to the Attorney General and city attorneys, to file injunctive relief actions
- Who didn't make the exemption cut?
 - Gig economy companies
 - Franchising industry
 - Trucking industry
 - Motion picture and television industries
- **What's Next?**
 - Propositions and additional lobbying for exemptions

CFRA & Handbook Updates



SB 1383

CFRA Expansion

- Expands the California Family Rights Act to require businesses with as few as five employees to provide 12 weeks of mandatory family leave per year.
- Expands definition of child to include child of a domestic partner, and removes age limit/disability requirement.
- Eliminates previous carve out for certain highly paid/key employees.
- **Effective Date:** Largely January 1, 2021

SB 1383

CFRA Expansion (Continued)

- Expands family care and medical leave to include leave:
 1. To care for grandparents, grandchildren, siblings, domestic partners with a serious health condition (in addition to existing leave to care for a parent or spouse), and
 2. Because of a qualifying exigency related to covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the US Armed forces.
- **Handbook Implication:**
 - CFRA has a mandatory written policy requirement.
 - Employers should implement an updated CFRA/FMLA policy, and for those employers only now subject to CFRA, a new standalone CFRA only policy.

AB 3364

FEHA: Veteran or Military Status

- A Judiciary omnibus bill
- Clarifies in Sections 31-33 that the Fair Employment and Housing Act (FEHA) protects military or veteran status (as opposed to veteran and military status).
- **Handbook Implication:**
 - California regulations mandate a written harassment/EEO policy that includes all protected categories under FEHA. Employers should update their policies to reflect this change.
- **Effective Date:** January 1, 2021

AB 2992

Victims' Protected Time Off

- Amends Labor Code Sections 230 and 230.1
- Expands the prohibition on discrimination or retaliation against employees for taking time off who are victims of domestic violence, sexual assault, or stalking, to include other crimes or abuses “that caused physical injury or that caused mental injury and a threat of physical injury” and “a person whose immediate family member is deceased as the direct result of the crime.”
- Defines “crime” as “a crime or public offense as set forth in Section 13951 of the Government Code, and regardless of whether any person is arrested for, prosecuted for, or convicted of, committing the crime.”
- **Handbook Implication:**
 - Although no handbook policy requirement, those with policies should expand to include this protection.
 - Various California and local jurisdiction sick time policies should be reviewed and updated consistent with new language in Labor Code section 230.1.
- **Effective Date:** January 1, 2021

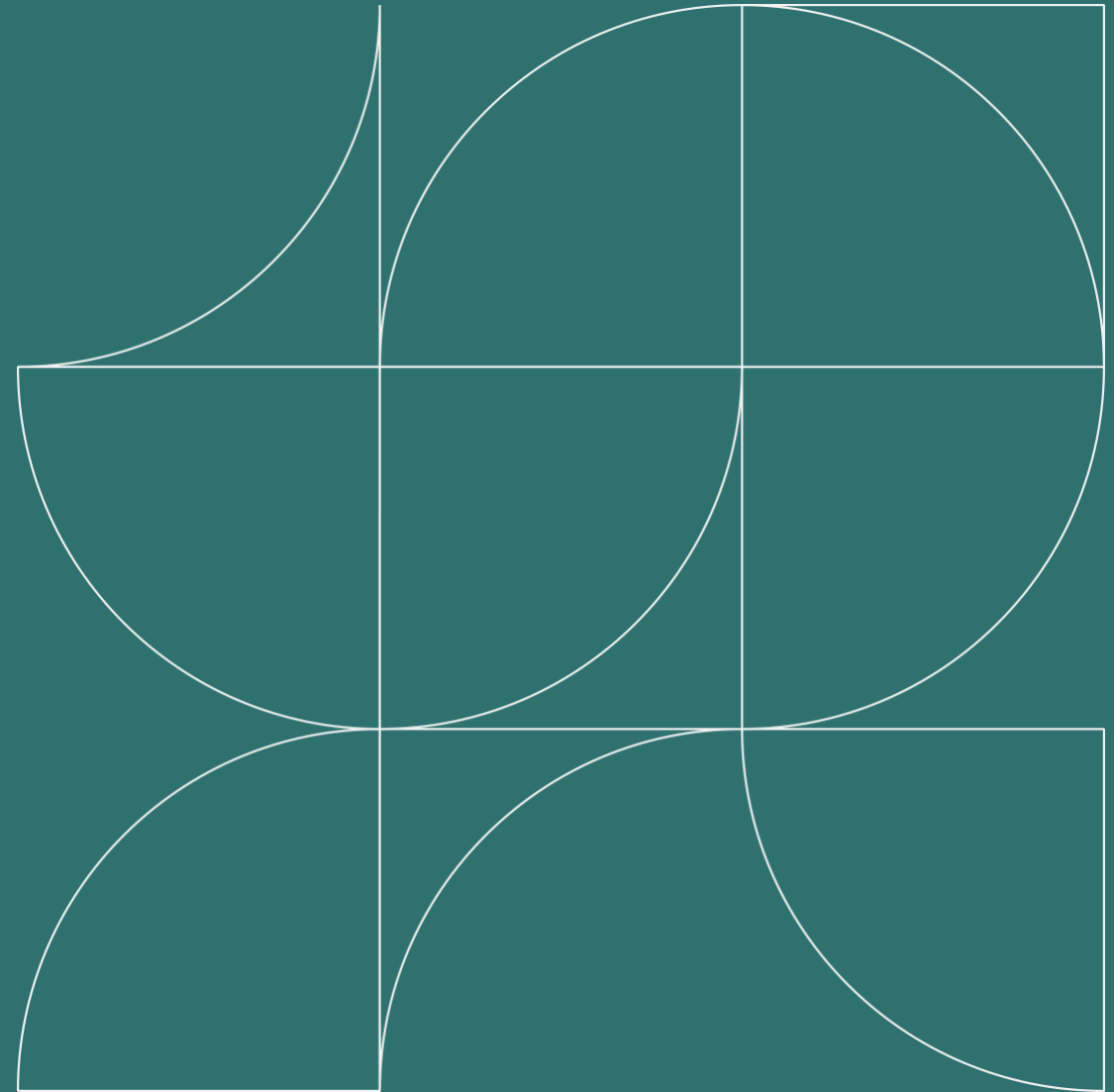
AB 2399

Paid Family Leave: Military Members & Care Recipients

- Defines “military member” for—and revises definitions of “care recipient,” “care provider,” and “family care leave” in—the family temporary disability insurance program (paid family leave).
- These definitions would apply for purposes of the employee’s “qualifying exigency” to covered active duty or call to covered active duty for members of the military.
- **Handbook Implication:**
 - Although no handbook policy requirement, those with policies should expand to reflect this definition change.
- **Effective Date:** January 1, 2021

CLE CODE

Pay Reporting & Board Membership



SB 973

Employers: Annual Report: Pay Data

- Applies to private employers with 100 or more employees.
- On or before March 31, 2021, and each year after, employers must file a pay data report to the DFEH that states the number of employees by race, ethnicity, and sex.
- Must include previous year W-2 earnings and hours worked for all employees.
- Categories:
 - Officials and managers
 - Professionals
 - Technicians
 - Sales workers
 - Craft workers
 - Administrative support workers
 - Operatives
 - Laborers and helpers
 - Service workers

SB 973

Employers: Annual Report: Pay Data (Continued)

- Report must be submitted in a searchable and sortable format.
- Requires the DFEH to make the reports available to the Department of Labor Standards Enforcement (DLSE) upon request and to maintain the pay data reports for at least 10 years.
- Authorizes the DFEH to seek an order requiring non-reporting employers to comply.
- Critics complain that SB 973 will require California companies to report potentially incomplete or misleading pay data that the companies' adversaries could use to falsely claim wage disparities.
- **Effective Date:** January 1, 2021

AB 979

Board of Director Diversity: Underrepresented Communities

- By the end of 2021, requires publicly held corporations headquartered in California to include at least one person from an underrepresented community on their boards.
- By the end of 2022:

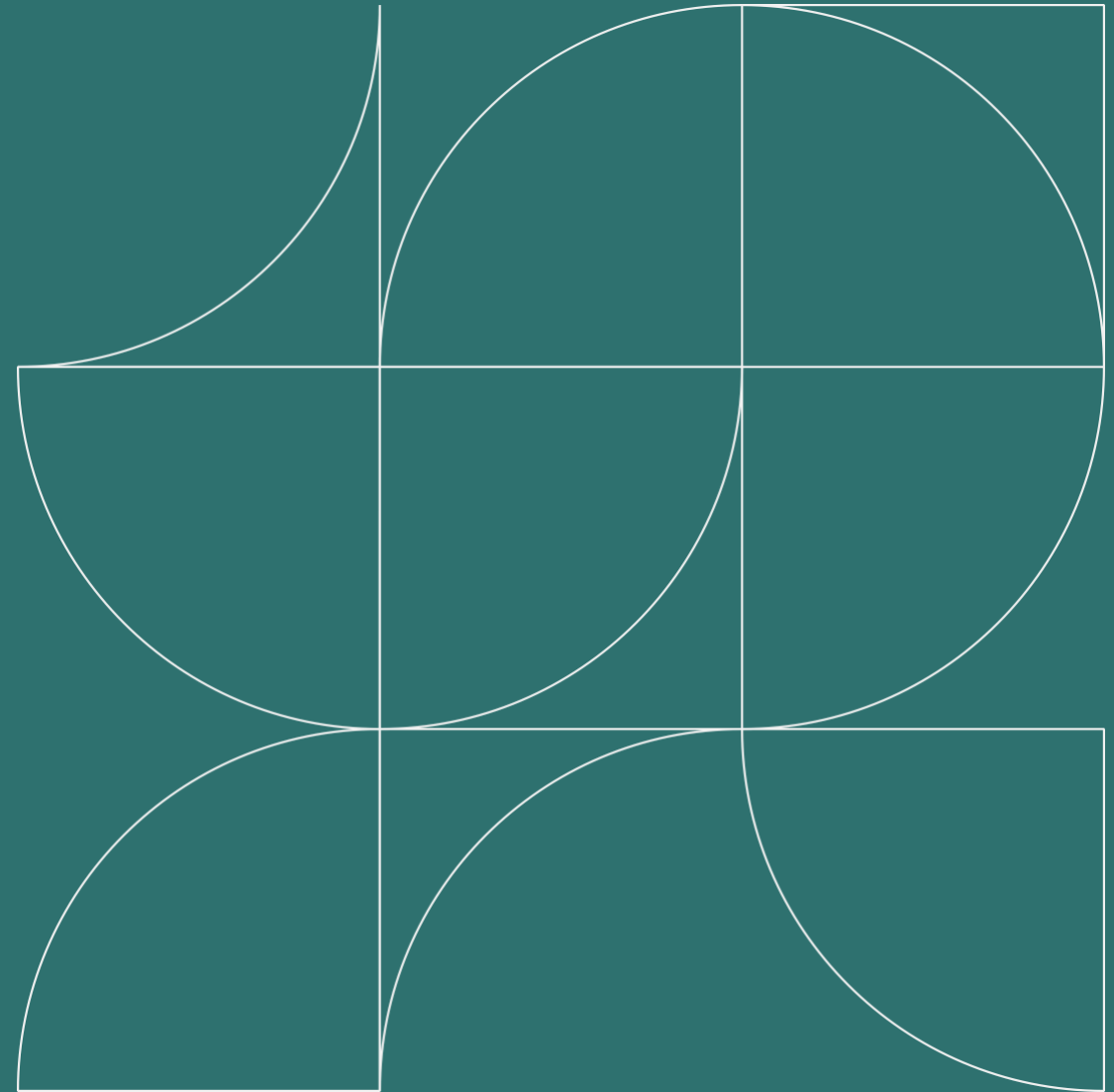
Number of Directors	Required Minimum from Underrepresented Community
9 +	Three
5 - 8	Two
1 - 4	One

AB 979

Board of Director Diversity: Underrepresented Communities (Continued)

- Underrepresented Communities defined as individuals who self-identify as:
 - Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or
 - Gay, lesbian, bisexual, or transgender.
 - Fines for violations: \$100,000 for the violation and \$300,000 for subsequent violations.
- **Effective Date:** January 1, 2021

Other New Legislation



AB 2143

Settlement Agreements: No-hire Provisions

- Existing law, Section 1002.5 of the Code of Civil Procedure, prohibits no-hire provisions in settlement agreements unless the employer has determined in good faith that the aggrieved person engaged in sexual harassment or sexual assault.
- AB 2143:
 - Revises 1002.5 to require that the employee has filed the claim in good faith for the prohibition to apply, and that the employer has documented the determination of sexual assault or sexual harassment before the aggrieved person filed the claim.
 - Expands the exceptions to the no-hire provision prohibition to include a determination that the aggrieved person engaged in any criminal conduct, in addition to the existing sexual harassment and sexual assault exceptions.
- **Effective Date:** January 1, 2021

AB 1947

DLSE Complaints Statute of Limitations

- Amends Section 98.7 of the Labor Code to extend the deadline for filing Labor Commissioner complaints from six months to one year after a violation.
- Amends Section 1102.5 of the Labor Code to authorize courts to award reasonable attorneys' fees to plaintiffs who bring a successful Section 1102.5 whistleblower action.
- Governor Newsom vetoed similar legislation last year.
- **Effective Date:** January 1, 2021

AB 3075

Wages: Enforcement

- New additional information regarding outstanding DLSE final judgments must be reported.
- Makes a successor to any judgment debtor liable for any wages, damages, and penalties owed to any of the judgment debtor's former workforce pursuant to a final judgment.
- Sets forth certain criteria to establish successorship.
- By amendment to Labor Code Section 1205, authorizes local jurisdictions to enforce state labor standards requirements with respect to imposition of minimum penalties for failure to comply with wage-related statutes, as set forth in Labor Code Section 1206.
- **Effective Date:** January 1, 2021

AB 3070

Juries: Eliminating Bias in Peremptory Challenges

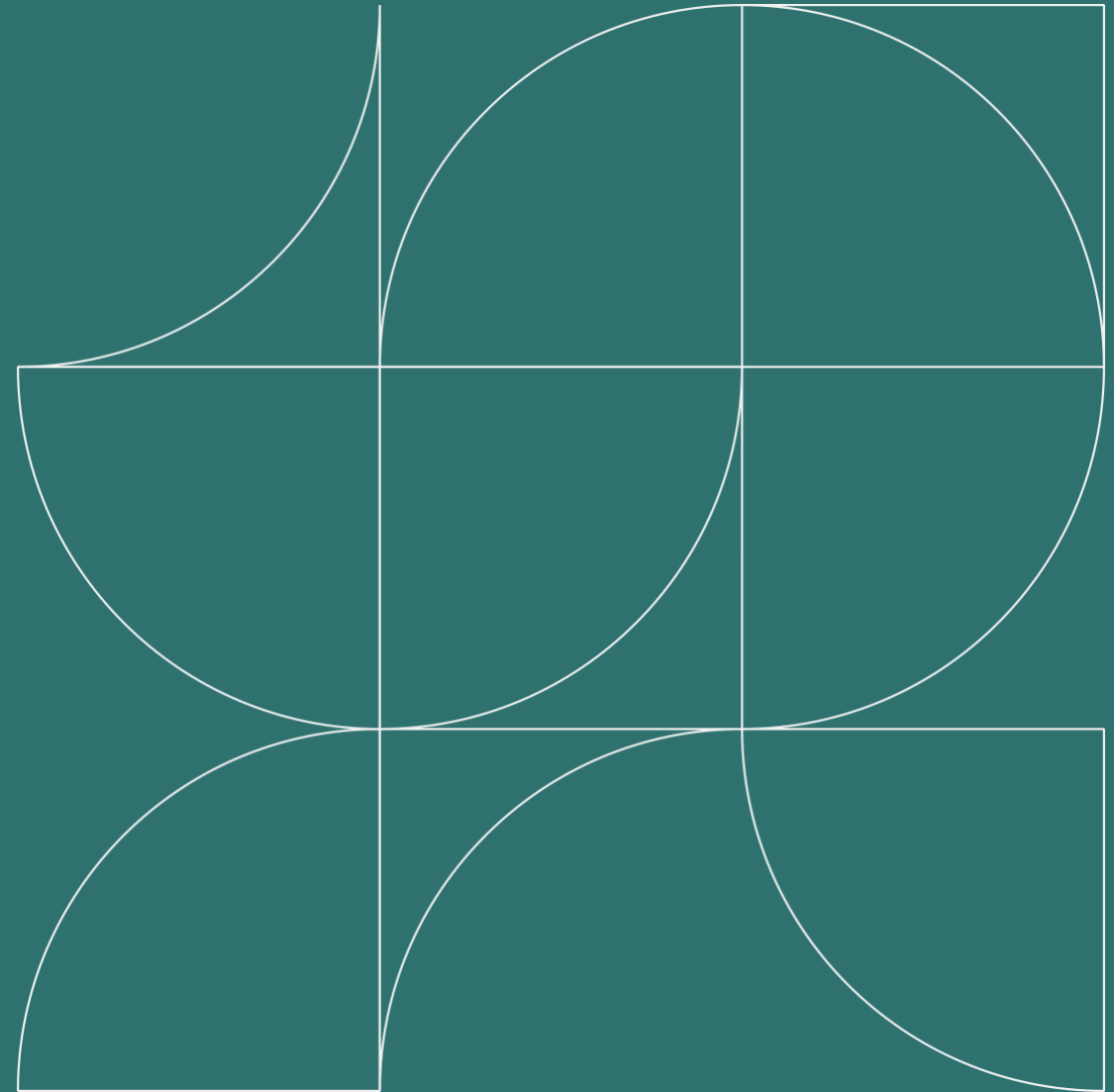
- Prohibits use of a peremptory challenge to remove a prospective juror on the basis of the prospective juror's race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups.
- Establishes a presumption that certain reasons for excluding jurors are improper proxies for racial or gender discrimination.
- Requires courts to evaluate reasons given for a peremptory challenge and, if the court grants an objection to a preemptory strike of a prospective juror, the court may take certain actions, including, but not limited to, starting a new jury selection, declaring a mistrial at the request of the objecting party, seating the challenged juror, or providing another remedy as the court deems appropriate.
- **Effective Date:** January 1, 2022 for criminal cases; will apply to civil cases in 2026.

AB 1963

Mandated Reporters: Human Resource Employees

- Amends Section 11165.7 of the Penal Code.
- Expands the list of mandated reporters to include human resource employees of a business of five or more employees that employs minors, as well as adults.
- Effects employees whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace.
- Requires those employers to provide mandated reporters with training on identification and reporting of child abuse and neglect.
- **Effective Date:** January 1, 2021

Industry-Specific Legislation



AB 3175

Entertainment Industry

*Amends Labor Code
§ 1700.52*

Age-Eligible Minors Sexual Harassment Training Law

- Requires that a parent or legal guardian accompany age-eligible (14-17 years old) minors during employer-provided sexual harassment training made available online by the DFEH.
- Requires certification by the parent or legal guardian to the Labor Commissioner that the training has been completed.
- **Effective Immediately Upon Signing by Governor:**
September 25, 2020

AB 1512

Security Officers: Rest Periods

*Amends Labor Code
§ 226.7*

- Effective only until January 1, 2027
- Authorizes registered private patrol operator employers to require certain registered security officer employees:
 - To remain on the premises during rest periods
 - To remain on call during rest periods
 - To carry and monitor a communication device during rest periods
- Employees must be permitted to restart a rest period ASAP if interrupted
- One hour penalty pay at employee's regular base rate applicable if rest period missed entirely
- NOTE: Only applies to security officers covered by CBA's that also meet certain minimum conditions
- **Effective Immediately Upon Signing by Governor: September 30, 2020 (Does not apply to cases filed before January 1, 2021.)**

AB 2479

Certain Petroleum Workers: Rest Periods

*Amends Labor Code
§ 226.75*

- Extends current break exemption until January 1, 2026
- Petroleum industry employers allowed to require employees who hold safety-sensitive positions at petroleum facilities:
 - To carry and monitor communication devices and respond to emergencies while on rest breaks
 - To remain on the employer's premises to monitor the premises and respond to emergencies while on rest breaks
- Employees must be permitted to restart a rest period promptly after interruption has passed.
- One hour penalty pay at employee's regular rate applicable if rest period missed entirely.
- NOTE: Only applies to petroleum industry employees covered by CBA's that also meet certain minimum conditions.
- **Effective Immediately Upon Signing by Governor: September 30, 2020 (Does not apply to existing cases.)**

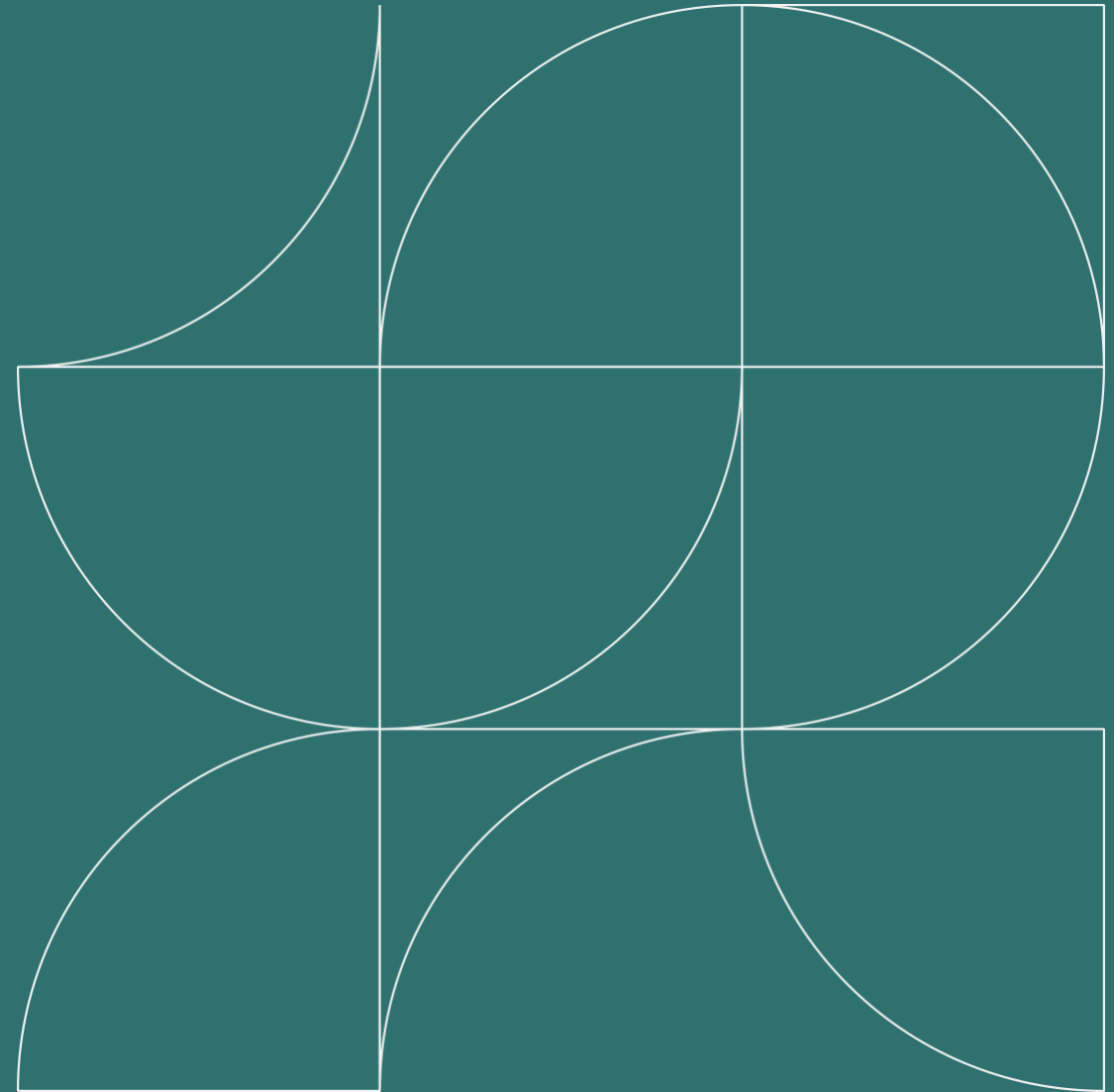
AB 2588

Direct Patient Care Employees: Educational Programs and Training Costs

Adds Labor Code § 2802.1

- Applies only to employees and applicants in direct patient care settings in general acute hospitals
- Requires employers to reimburse employees for the costs of any employer-provided or employer-required educational program or training
 - Includes, but is not limited to: residencies, orientations, or competency validations
 - Does NOT include: requirements for a license, registration, or certification necessary to legally practice in a specific employee classification to provide direct patient care; or education or training that is voluntarily undertaken by the employee or applicant solely at their discretion
- Prohibits employment contracts requiring training costs be paid back if an employee leaves
- Effective January 1, 2021 (but applies retroactively as "clarification" of existing law)

Vetoed Bills



AB 3216

Unemployment: Emergency Rehire of Laid Off Employees

Would Have:

- Required certain (hotel, private club, event center, airport hospitality operation, airport service provider) employers to offer employees who were laid off due to a state of emergency job positions that become available and for which the laid-off employees are qualified.
- Offers would have been based upon a preference system and in accordance with certain timelines and procedures.
- Required successor employers to give hiring preference to these employees.
- Governor Newsom encouraged the legislature to “consider other approaches to ensure workers are not left behind.”

SB 1102

Labor Commissioner: Required Disclosures

Would Have:

- Required that the notice employers must provide at the start of employment contain information regarding the existence of either a federal or state emergency or disaster declaration issued within 30 days prior to the employee's first day of employment that may affect health and safety during the employee's employment. (Amendment to Section 2810.5 of the Labor Code.)
- Added new disclosure requirements with respect to H-2A farmworkers who are brought into California for work in agriculture on a temporary basis.
 - Aimed at foreign agricultural workers; patterned after existing CA law that requires employers to provide basic wage and hour information to all employees at the time of hire. (Sections 2810.6 and 2810.65 to the Labor Code.)
 - *Instead*, the Governor directed the LWDA to develop and maintain a template contemplated in the bill to make available to H2-A employers.

Cal-Peculiarities Resources



- **Request Seyfarth's 2020 Cal-Peculiarities eBook**
 - <https://connect.seyfarth.com/34/64/landing-pages/2020-cal-pecs---rsvp-blank.asp>
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Thank You!