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## **Seyfarth Shaw LLP**

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# 2022 California Employment Legislative Update

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**Seyfarth Shaw LLP**

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# Agenda



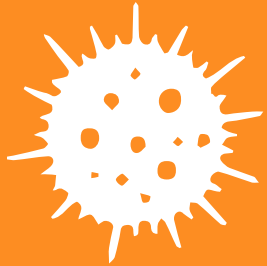
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# Leaves



# AB 152

## COVID-19 Supplemental Paid Sick Leave Extended

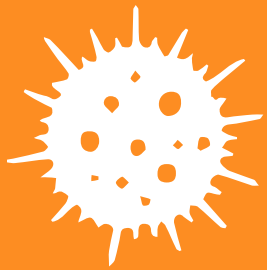


*Amends Sections 248.6 and  
248.7 of the Labor Code*

- **Effective IMMEDIATELY**
- Extends employees' ability to use existing supplemental paid sick leave ("SPSL") to December 31, 2022
- The qualifying reasons for leave remain the same
- Permits an employer to require an employee to submit to a second diagnostic test within no less than 24 hours, if their first return-to-work test on day 5 or later is still positive
- Employer may decline to continue to provide SPSL where the employee refuses a second test

# AB 2693

## COVID-19 Exposure Notifications and Cal/OSHA Rights



*Amends Sections 6325 and  
6409.6 of the Labor Code*

- Extends until January 1, 2024, COVID-19 exposure notification requirements from AB 685 (2020)
- Also extends Cal/OSHA's ability to shut down a worksite based on risk of imminent hazard of a risk of COVID-19 infection
- Allows employers to elect to post a notice of COVID-19 exposure in a prominent place, as opposed to doing individual notices
  - Notice must be posted within 1 business day, and stay up for at least 15 calendar days
  - Notice must state the date a worker was on the premises during the infection period, location of the exposure, etc.
  - Must keep log of all dates notices were posted for examination by Labor Commissioner
- **BUT NOTE:** Potential conflict with Cal/OSHA ETS requirements on written notice

# AB 1949

## Bereavement Leave



*Amends Sections 12945.21 and 19859.3 of, and adds Section 12945.7 to, the Government Code*

- Amends the California Family Rights Act (CFRA) to provide for up to five days of bereavement leave upon the death of a family member for employees working 30+ days
- Family Member: spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law
- Leave must be completed within three months of the date of death of the family member, does not need to be consecutive
- If the employer does not have a paid bereavement policy, the leave may be unpaid
  - Employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee
- Requests for documentation are permitted



# AB 1041

## Family Leave and Sick Leave Designated Persons



*Amends Section 12945.2 of the Government Code and Section 245.5 of the Labor Code*

- Amends CFRA and California’s Paid Sick Leave Law to include a “designated person” for whom an employee may take leave or days off
  - Designated person for CFRA: “any individual related by blood or whose association with the employee is the equivalent of a family relationship”
  - Designated person for PSL: Any person designated by the employee
- Employee may designate the person at the time taking of requesting leave or PSL
- Employer may limit an employee to one designated person per 12-month period
- Under CFRA, may require the employee to substitute any accrued vacation leave or PTO during leave, or any other paid or unpaid time off negotiated with the employer

# Pay Transparency



02

# SB 1162

## Pay Data Reporting



*Amends Section 12999 of the  
Government Code and Section  
432.3 of the Labor Code*

- Private employer that has 100 or more employees must submit a pay data report
- New deadline: Second Wednesday of May
- Report to include **median and mean hourly rate** for each combination of race, ethnicity, and sex within each job category
- Consolidated reports no longer required for multi-establishment employers
- Penalties
  - \$100 per employee for failure to file
  - \$200 per employee for subsequent failures to file

# SB 1162

## Pay Data Reporting



*Amends Section 12999 of the  
Government Code and Section  
432.3 of the Labor Code*

- Private employer that has 100 or more employees hired through labor contractors must submit a separate contractor pay data report
- Employer to disclose the ownership names of all labor contractors used to supply employees
- Labor contractor shall supply all necessary pay data to the private employer

# SB 1162

## Pay Scale Disclosures



*Amends Section 12999 of the  
Government Code and Section  
432.3 of the Labor Code*

- Employers with 15 or more employees must include pay scale in job posting
- All employers must:
  - Continue to provide pay scale to applicants upon reasonable request
  - Provide pay scale to employees for their current role upon request
- Provide third parties with pay scale information if engaged to announce, post, or publish a job posting

# SB 1162

## Record Retention



*Amends Section 12999 of the  
Government Code and Section  
432.3 of the Labor Code*

- Must maintain:
  - Job title
  - Wage rate history
- Maintain for duration of employment and 3+ years after employee terminates
- Records open for inspection by California Labor Commissioner
- Fines for record retention and pay scale disclosure violations:
  - At least **\$100 but no more than \$10,000**, per violation
  - Possible to avoid fine for first violation
  - Plaintiff may bring complaint with Labor Commissioner or file civil action

# The Workplace



03

# AB 2188

## Off-the-Job Cannabis Use Protection



*Adds Section 12954 to the  
Government Code.*

- Prohibits employment discrimination based on employees' and applicants' off-the-job cannabis use beginning January 1, 2024
- Permitted Actions:
  - Employers can maintain a drug-free policy and prohibit employees from possessing, being impaired by, or using cannabis while working;
  - Employers can administer performance-based impairment tests and terminate employees determined to be impaired at work; and
  - Employers' rights and obligations specified by federal law or regulation are not preempted.



# AB 2188

## Off-the-Job Cannabis Use Protection



*Adds Section 12954 to the  
Government Code.*

- The law does not apply to:
  - Employees in the building and construction trades
  - Applicants/employees to positions that require federal government background investigation or security clearance in accordance with federal regulations
  - Applicants/employees required to be tested for controlled substances under applicable law or as a condition for receipt of federal funding/benefits/contracts

# SB 1044

## Emergency Conditions - Prohibition on Adverse Employment Actions



*Adds Chapter 11 (commencing with Section 1139) to Part 3 of Division 2 of the Labor Code.*

- Prohibits employers, in the event of an emergency condition, from:
  - (1) taking/threatening adverse action against an employee for refusing to report to or leaving a workplace because they feel unsafe; or
  - (2) preventing an employee from accessing their mobile device for use for emergency purposes
- “Emergency condition” Defined:
  - Conditions of disaster or extreme peril to the safety of persons or property at the workplace caused by natural forces or a criminal act; or
  - An order to evacuate a workplace, a worker’s home, or the school of a worker’s child due to natural disaster or a criminal act

# SB 1044

## Emergency Conditions - Prohibition on Adverse Employment Actions



*Adds Chapter 11 (commencing with Section 1139) to Part 3 of Division 2 of the Labor Code.*

- Does not apply to a health pandemic
- Does apply to fires, active shooter situations, etc.
- Employees, when feasible, will be required to provide advance notice to their employer of the emergency condition
- Potential PAGA penalties

# Industry Specific Legislation



04

# AB 257

## FAST Recovery Act



*Amends Section 96 of, and adds Part 4.5.5 (commencing with Section 1470) to Division 2 of, the Labor Code.*

- Establishes a Fast Food Sector Council to:
  - Create a fast food workers' bill of rights; and
  - Establish minimum standards for fast food restaurant employees
- The “minimum standards” are intended to ensure and maintain employees' health, safety, and welfare, and to supply them with the proper cost of living
- Covered Employers:
  - establishments that are part of fast food chains with 100+ locations nationwide; and
  - primarily provide food and beverages for immediate consumption (1) to customers to order/select items and pay before eating, (2) with items prepared in advance; and (3) with limited/no table service
- Standards implemented by the Council will not supersede standards covered by a CBA

# SB 1334

## Public Sector Healthcare Employees Meal and Rest Periods

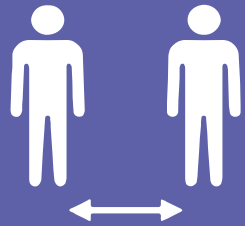


*Adds Section 512.1 to the  
Labor Code.*

- Entitles public sector healthcare employees to meal and rest breaks
- Meal and rest period provisions align with break provisions for employees of private employers
  - Including premium payments for missed or noncompliant breaks
- “Employer” defined as:
  - the state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California
- Does not apply to employees covered by a valid CBA that provides for meal and rest periods, and premium payments

# AB 676

## Franchisor Discrimination



*Amends multiple Business and Professions Code and Corporations Code provisions.*

- Prohibits a franchisor from failing or refusing to grant a franchise or financial assistance to a current franchisee or prospective franchisee based solely on:
  - Any characteristic protected by the Unruh Civil Rights Act of the prospective franchisee, or
  - The geographic area where the franchise is located, if any characteristic of the composition of the neighborhood or geographic area where it is to be located is protected by the Unruh Act
- The Unruh Civil Rights Act confers protected status based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status

# AB 2183

## Agricultural Labor Relations



*Adds Sections 1160.10 and 1162 to the Labor Code.*

- Creates an alternative to a polling place election
- Permits a labor organization to be certified as the exclusive bargaining rep of a bargaining unit through:
  - a labor peace election; or
  - non-labor peace election



# AB 1601

## Call Centers



*Amends Labor Code Sections 1400, 1406, and adds related Labor Code Articles.*

- Prohibits a call center employer from ordering a relocation unless notice is provided to the affected employees at least 60 days prior to the relocation
- “Relocation” defined as when an employer intends to move to a foreign country its:
  - Call center, or
  - 1+ facilities/operating units within a call center comprising at least 30% of the call center’s or operating unit’s total volume from the prior 12 months
- Notice Requirements:
  - Employers can provide a single notice,
  - that includes “This notice is for the relocation of a call center” at the top
- The EDD will compile and publish a list of employers operating a call center that provided notice, including elements required by the federal WARN Act

# Other Legislation



# AB 2777

## Sexual Assault Statute of Limitations



*Amends Section 340.16 of the  
Code of Civil Procedure.*

- Allows claims for damages from sexual assault otherwise barred by statute of limitations to be filed between January 1, 2023 and December 31, 2023 if the plaintiff alleges:
  - Sexually assaulted
  - One or more entities are responsible for damages from sexual assault
  - Entity attempted cover up of sexual assault
- Also revives related wrongful termination, sexual harassment claims

# AB 1632

## Restroom Access



*Adds Article 6 (commencing with Section 118700) is added to Chapter 2 of Part 15 of Division 104 of the Health and Safety Code.*

- Applies to businesses that (1) are open to the general public for the sale of goods and (2) have a toilet facility for employees
- Must allow any individual who is lawfully on the premises of a business to use the toilet facility during normal business hours if certain conditions are met
- Individual may produce a signed statement from doctor, nurse practitioner, or physician assistant
- Penalties: \$100 per violation

# AB 1788

## Sex Trafficking: Hotels



*Adds Section 52.65 to the Civil Code.*

- Hotel subject to civil penalties if:
  - A supervisory employee of the hotel knew of or acted with reckless disregard of sex trafficking activity within the hotel, and failed to inform law enforcement, the National Human Trafficking Hotline, or another appropriate victim service organization
  - Any employee of the hotel was acting within the scope of employment and knowingly benefited from participating in a venture that the employee knew, or acted in reckless disregard, of sex trafficking activity within the hotel
- Hotel = motel, or any other operator or management company that offers and accepts payment for rooms, sleeping accommodations, or board and lodging and retains the right of access to, and control of, a dwelling unit that is required to provide training and education regarding human trafficking awareness

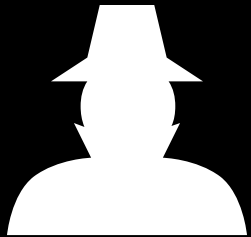
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# Failed Employment Bills



# SB 1262

## Background Checks : VETOED



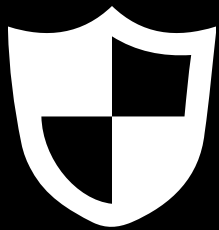
### WOULD HAVE:

- Changed superior court rules to allow publicly accessible electronic indexes of defendants in criminal cases to permit searches and filtering of results based on a defendant's driver's license number or date of birth
- Vetoed because while it would provide for a more convenient process for companies conducting commercial background checks, it would also allow any member of the public to easily access individuals' sensitive personal information online



# AB 1102

## California Privacy Rights Act



- Proposed (but not adopted) amendments to AB 1102 would have extended or made permanent exemptions under the CCPA applicable to personal information collected in HR and B2B contexts
- These exemptions will expire when the CPRA amends the CCPA on January 1, 2023
- CCPA-regulated businesses have until January 1, 2023 to come into compliance with the CCPA's requirements as applied to HR and B2B data
- Starting January 1, 2023, covered employees will have increased rights with respect to their personal data collection, correction, deletion, portability, and disclosure

# Failed Wage/Hour Bills

- AB 1761: Workplace Flexibility Act of 2022
  - Would have permitted a nonexempt employee to request an employee-selected flexible work schedule of workdays up to 10 hours per day within a 40-hour workweek, without the obligation to pay overtime compensation for hours over 8 in a workday
- AB 2932: 32 Hour Workweek
  - Instead of the current requirement that employers pay time and a half for any work above 40 hours
  - Would have required time and a half for work in excess of only 32 hours a week
  - Would have prohibited an employer from reducing an employee's overall previous compensation as a result of this reduced hourly workweek requirement

## Available Resources



- **Request Seyfarth's 2022 Cal-Peculiarities eBook**
  - <https://connect.seyfarth.com/34/64/landing-pages/2022-cal-pecs---rsvp-blank.asp>
- **Sign Up For Seyfarth's California Labor & Employment Mailing List**
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An abstract geometric design consisting of white lines on a dark blue background. It features a vertical line on the left, a horizontal line in the middle, and a vertical line on the right. A large white arc on the left side overlaps the horizontal line, and another large white arc on the right side overlaps the horizontal line, creating a central intersection point.

**Thank You**