



2023 California Employment Legislative Update

Kristina Launey
Coby Turner
Catherine Feldman

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Speakers



Kristina Launey

Partner – Sacramento
Seyfarth Shaw LLP
(916) 498-7034
KLauney@seyfarth.com



Coby Turner

Partner – Sacramento
Seyfarth Shaw LLP
(916) 498-7001
CTurner@seyfarth.com



Catherine Feldman

Associate – Los Angeles
Seyfarth Shaw LLP
(310) 201-1540
CFeldman@seyfarth.com

Agenda

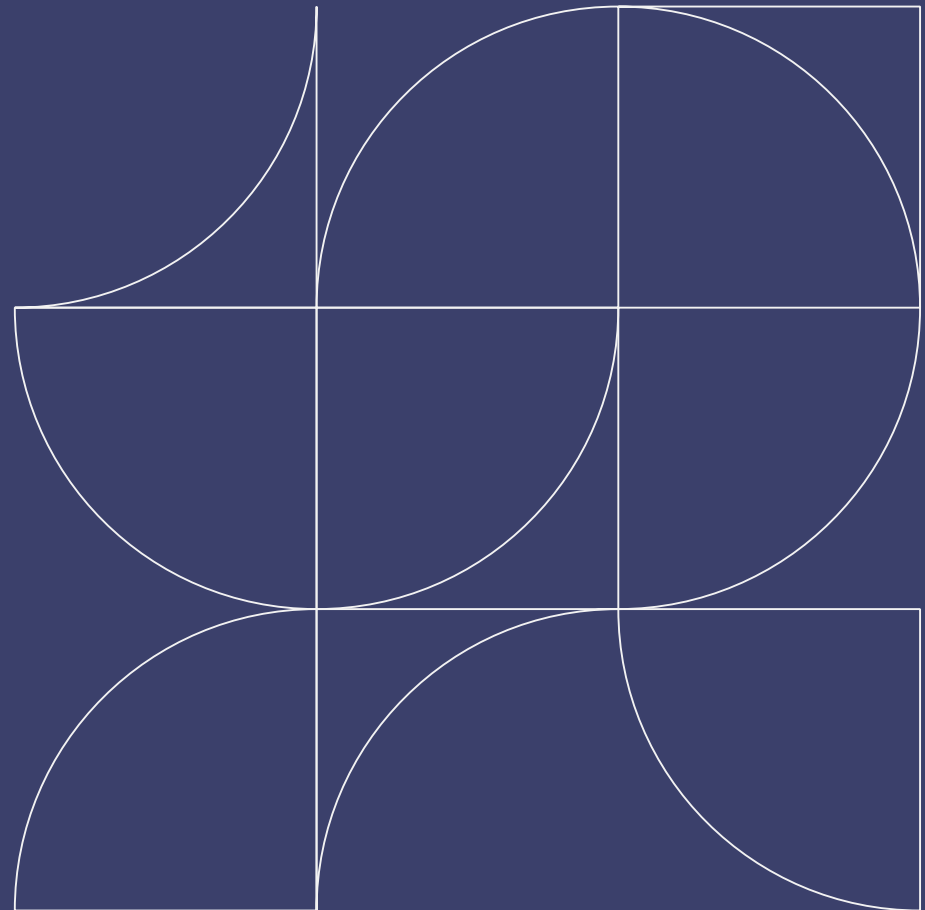


- 1 | Soon-to-be New laws
- 2 | Vetoed Bills
- 3 | Didn't Make the Legislature's Cut

California 2023 Legislative Calendar - Key Dates

January 4, 2023:	Legislative Session Reconvened
February 17, 2023:	Last day for bills to be introduced
March 30 - April 10, 2023:	Spring Recess
June 2, 2023:	Last day to pass bills introduced in house of origin
July 14 - August 14, 2023:	Summer Recess
September 14, 2023:	Last date for each house to pass bills
October 14, 2023:	Last day for Governor to sign or veto bills passed by Legislature before September 1, 2023
January 1, 2024:	Non-Urgency Statutes take effect

Soon-To-Be New Laws



SB 497

Retaliation Rebuttable Presumption

*Amends Sections 98.6, 1102.5
and 1197.5 of the Labor Code*

- Creates a *rebuttable presumption* of retaliation under if an employer subjects an employee or applicant to an adverse action within 90 days of the individual:
 - making complaints or claims related to rights under the jurisdiction of the Labor Commissioner;
 - making complaints about unpaid wages; or
 - making complaints about equal pay violations
- Expands penalties for whistleblowers from a single \$10,000 penalty for a violation to a \$10,000 penalty *per employee*, awarded to the aggrieved employee(s)
 - Civil penalty amount discretionary based on evidence
- Reminders of current provisions:
 - Complaints may be internal or external
 - Retaliation also prohibited where an employee's family member has made a complaint or is perceived to have made a complaint

AB 594

PAGA Updates

Amends Sections 218 and 226.8 of, and adds Chapter 8 and repeals Sections 181 of the Labor Code

- Authorizes public prosecutors—district attorneys, city and county attorneys and prosecutors, or the Attorney General—to prosecute specified violations of the Labor Code occurring within their jurisdictions independently and without direction from the DLSE
 - States that individual arbitration agreements (i.e., not CBAs) or agreements to limit representative actions do not apply to limit prosecutions under this law
 - Remedies: injunctive relief, any other remedies available, reasonable attorney’s fees, costs, witness fees, for prevailing plaintiffs
- Provides that the penalties (for misclassification of ICs) may be recovered by an employee as a statutory penalty under LC 98 or PAGA, but not both, or the Labor Commissioner as a civil penalty under 98.3
- Stated intent to help with fight against wage theft and help an under-resourced DLSE

SB 699 and

AB 1076

Non-Compete Agreements

*Amend Sections 16600.5 of
and add Sections 16600.1 and
16600.5 to the Business and
Professions Code*

- Makes any contract that is void as a restraint on trade (including non-competes) unenforceable regardless of where and when the employee signed the contract
 - No matter how narrowly tailored, with limited exceptions, even when the person restrained is not a party to the contract
- Prohibits employers from entering into contracts with current or prospective employees that contain non-compete provisions
- Employers entering into these agreements or attempting to enforce them are liable for injunctive relief, damages, and attorneys' fees/costs under SB 699
- AB 1076 requires *affirmative notice* to current & former employees by 2/14/24 that any noncompete clause/agreement previously signed is now void
- States a violation constitutes an act of unfair competition under BPC 17200 *et seq.*

SB 365

Stay Pending Appeal, Arbitration

*Amends Section 1294 of the
Code of Civil Procedure*

- Eliminates the current rule automatically staying all trial court proceedings pending appeal of a denial of a motion to compel arbitration
 - May mean employers have to be actively defending lawsuits in court while attempting to enforce arbitration agreements
- Decision whether to stay proceedings will be discretionary with the trial court
 - Likely to see forum shopping with plaintiffs
- Reminder: Double check your arbitration agreements!
 - Ensure there's compliant language
 - Consider incorporating mandatory stay language into the agreement

SB 616

Paid Sick Leave

*Amends Sections 245.5, 246,
and 246.5 of the Labor Code*

- Amends and expands the Healthy Workplaces, Healthy Families Act of 2014.
- Increases the number of days/hours an employee can accrue mandatory sick leave **from 24 hours or 3 days each year of employment to 40 hours or 5 days.**
- Raises the max accrual of PSL from 48 hours to 80 hours.
- Extends the current anti-retaliation and procedural provisions to include those covered by a valid CBA, & expressly exclude railroad carrier employers and their employees.
- Preempts certain provisions of local ordinances that are contrary to the state law relating to payout on separation, lending of leave, written notice of leave, and other administrative (not entitlement) issues.

SB 848

Leave Related to Reproduction or Adoption

*Adds Section 12945.6 to the
Government Code*

- Provides employees with ***five days of unpaid leave*** after a miscarriage, unsuccessful assisted reproduction, failed adoption or surrogacy, or stillbirth.
- If an employee experiences more than one reproductive loss event in a 12-month period, the employee is entitled to ***no more than 20 days of leave***.
- Prohibits retaliation against an individual who uses this leave or shares information about it.

AB 933

Harassment: Defamation Privilege

Adds Section 47.1 to the Civil Code

- Defendants who are sued for making defamatory statements based on their own experiences as victims of others' sexual assaults, sexual harassment, workplace harassment and discrimination, and cyber bullying may assert this defamation privilege as a bar to liability.
- "Communication" means factual information relating to incidents of sexual assault, harassment, or discrimination experienced by an individual making the communication including:
 - Acts of sexual assault or harassment
 - Acts of workplace harassment or discrimination
 - Failure to prevent, workplace harassment or discrimination
 - Aiding/abetting/inciting/compelling/coercing workplace harassment or discrimination
 - Retaliation for reporting or opposing harassment or discrimination
- Only applies to individuals who have, or at any time had, a reasonable basis to file complaints of sexual assault, harassment, or discrimination, whether a complaint was filed.
- Prevailing defendants can recover reasonable attorney's fees and costs, treble damages, and punitive damages.

SB 428

Workplace Violence Restraining Orders: Harassment

*Amend, repeal and add Section
527.8 to the Code of Civil
Procedure*

- Starting January 1, 2025
- Amends the Workplace Violence Restraining Order Statute (CCP 527.8).
- Currently, employers can seek TROs/injunctions against an individual who has engaged in workplace violence or threats of violence against employees.
- Employers will now also be able to seek TROs/injunctions against an individual who has harassed employees.
- “Harassment” defined as:
 - A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person and that serves no legitimate person.
 - The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress.
- Prohibits a court from issuing an order that would prohibit speech or activities protected by the NLRA.

SB 553

Workplace Violence Prevention Plans

Amend, repeal and add Section 527.8 to the Code of Civil Procedure, and amends Section 6401.7 and adds 6401.9 to the Labor Code

- Requires nearly all California employers to create, adopt, and implement written Workplace Violence Prevention Plans with limited exception by July 1, 2024.
- These plans must be in writing and easily accessible to employees.
- They must include in part:
 - Procedures for implementation and training on the Plan and compliance with the Plan
 - Procedures for communicating with employees about how to report violent incidents, threats, or workplace violence concerns, and how concerns will be investigated and results communicated
 - Procedures for identifying and evaluating workplace violence hazards
 - Violent incident logs
- Five-year record retention requirement.

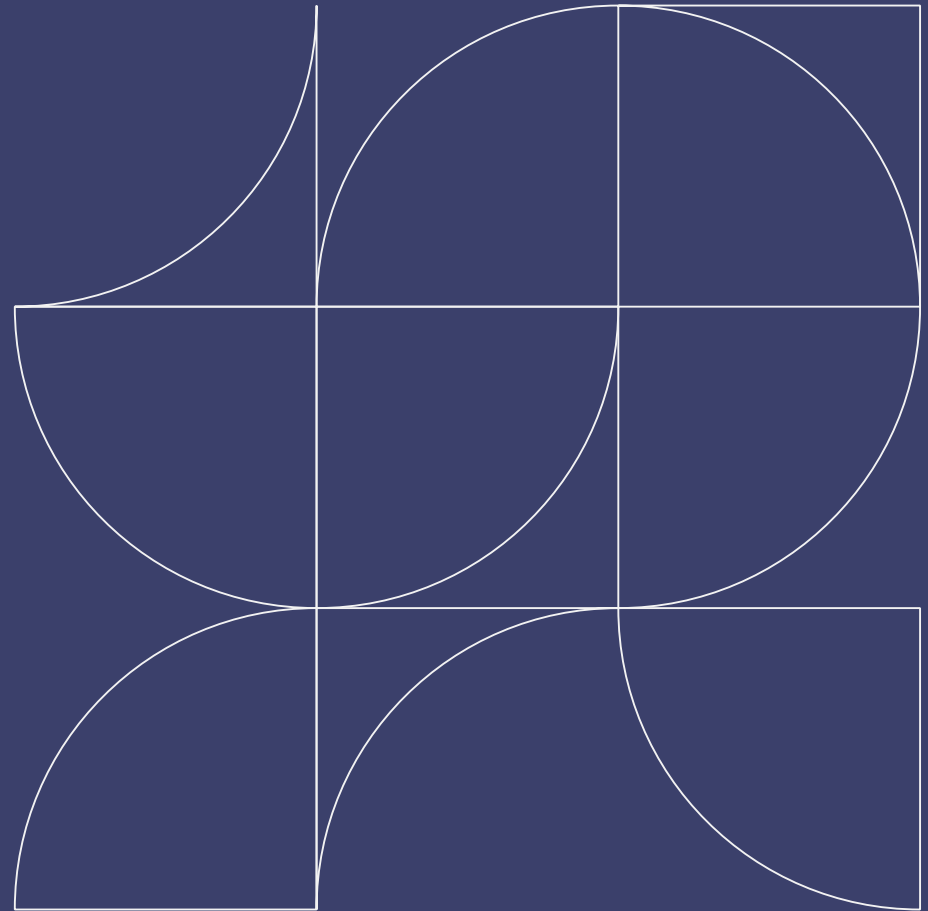
AB 1355

Electronic Notices

Amends, repeals, and adds Section 19853 of the Revenue and Taxation Code and amends, repeals and adds Section 1089 of the Unemployment Insurance Code

- Permits an employer to provide required notifications via email instead of through paper under the:
 - Revenue and Taxation Code: that employees may be eligible for the federal and CA earned income tax credit (and more, due at time of W-2/1099).
 - Unemployment Insurance Code: at the time an individual becomes unemployed, copies of printed statements or materials relating to claims for benefits.
- Only if the employee opts in, via electronic or written acknowledgement, to receiving such electronic communications.
- Prohibits retaliation against an employee who refuses to opt in.
- Sunsets on January 1, 2029.

Industry-Specific Bills



SB 41 Airline Cabin Crew Employees Meal and Rest Breaks

*Adds Section 512.2 to the
Labor Code*

SB 723 Right to Recall in Hospitality

*Amends and repeals Section
2810.8 of the Labor Code*

- **SB 41 – Airline Cabin Crew Employees Meal and Rest Breaks**
 - Effective March 23, 2023
 - Airline cabin crew employees covered by CBAs with valid meal and rest break provisions are expressly exempt from California’s meal and rest period requirements.
- **SB 723 – Right to Recall in Hospitality**
 - Expands certain hospitality employees’ right to recall after being laid off for reasons related to COVID-19.
 - Extends the December 31, 2024 sunset date to December 31, 2025.
 - Presumption that separation due to a lack of business, reduction in force, or other economic, non-disciplinary reason is due to a reason related to the COVID-19 pandemic.

SB 525

Healthcare Employee Pay

*Adds Sections 1182.14 and
1182.15 to the Labor Code*

- Minimum wages for California health care workers will increase to at least \$18/hour and up to \$23/hour beginning June 1, 2024
- Broad definition of “Covered Health Care Employers”
- Raises minimum wages for California health care workers
- Five separate minimum wage schedules for covered health care employees depending on the nature, size, and structure of the employer’s business
 - The same minimum wage rates apply to two of the five schedules, with the remaining three having distinct wage rates
 - Each schedule provides for annual wage increases
 - Minimum wage increases also impact exempt Health Care employees
- Prohibits local jurisdictions from enacting competing wage requirements

AB 1228

Fast Food- Industry Changes

Adds Part 4.5.5 (commencing with Section 1474) to Division 2 of the Labor Code and repeals Part 4.5.5 (commencing with section 1470) of Division 2 of the Labor Code

- Repeals existing suspended law, which established the Fast Food Council within the DIR, if the referendum is withdrawn by January 1, 2024
- Would re-establish a more limited Council than the prior iteration of this law
 - This Council is not empowered to unilaterally “set” or “promulgate” sector-wide standards, except as to minimum wages
 - Council’s role is limited to develop and then propose minimum employment standards for other topics affecting fast food workers including health and safety conditions, protected time off, and discrimination, harassment and retaliation
- Would apply to national fast food chains:
 - Primarily engaged in providing food and beverages for immediate consumption on or off premises
 - Where patrons order/select items and pay before consuming
 - With limited or no table service

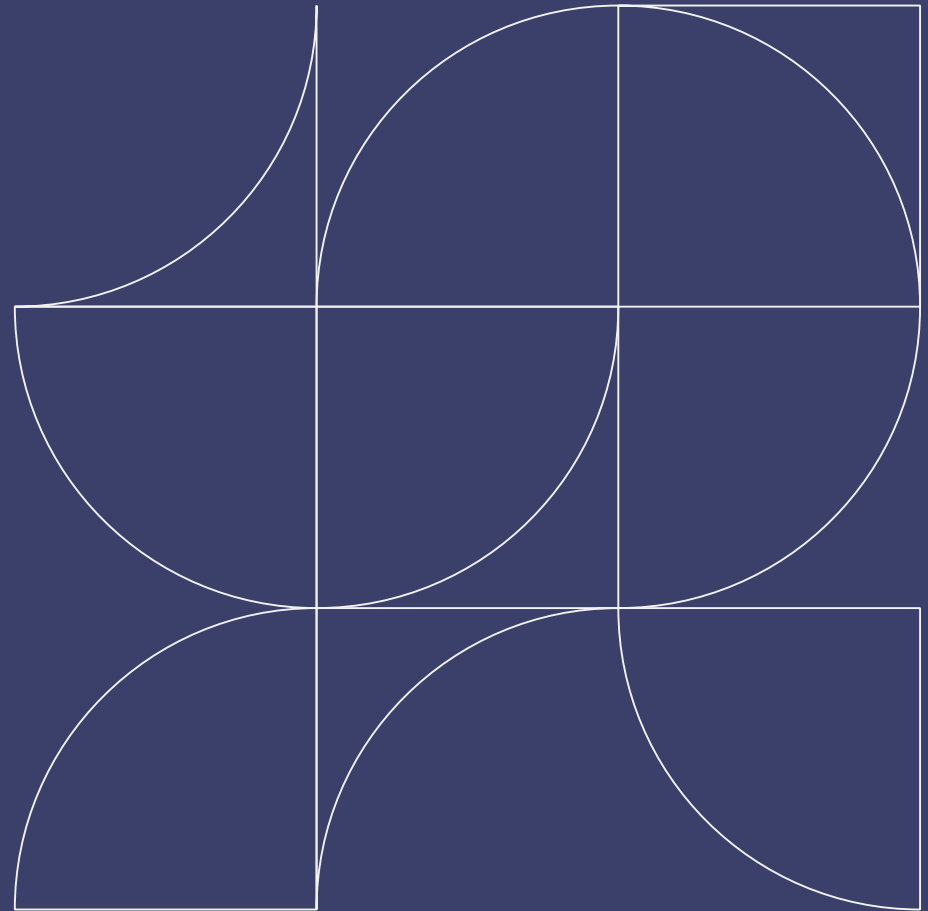
AB 647

Successor Grocery Employers

*Amends Sections 2502, 2504,
and 2512 of the Labor Code
and adds Sections 2509, 2510,
and 2517 to the Labor Code*

- Places new requirements on successor grocery employers' hiring and reinstatements when there is a change in control.
- Expands definition of a grocery establishment subject to existing laws about preferential hiring lists to include:
 - Distribution centers regardless of square footage.
 - Retail stores that ceased operations less than 12 months ago.
- Narrow exemption for grocery employers and successor grocery employers who collectively employ less than 300 individuals prior to the change in control.

Vetoed Bills



AB 524

“Family Caregiver Anti-Discrimination Act”

Added family caregiver status as a FEHA protected class.

SB 403

“Caste” Protected Class

Added “caste” as a protected class to various laws including the FEHA and Unruh Act.

AB 524 - “Family Caregiver Anti-Discrimination Act”

- Defined as “a person who is a contributor to the care of one or more family members”—“a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose association with the employee is the equivalent of a family relationship.”

SB 403 – “Caste” Protected Class

- Attempted to clarify existing law prohibiting caste discrimination as a type of ancestry, which is already a listed protected class.
- Defined “ancestry” as including additional markers, such as “lineal descent, heritage, parentage, caste, or any inherited social status.
- Defined “caste” as an individual’s perceived position in a system of social stratification on the basis of inherited status.

SB 731

Remote Work As A Reasonable Accommodation

- Required that an employer provide 30 days' written notice (by email or mail) to a remote employee, before requiring in-person return to work, that the employee has the right to ask the employer to allow continued remoted work as a reasonable accommodation.

“You have the right to ask your employer to allow you to continue working remotely as an accommodation if you have a disability. Your employer is required to engage in a timely, good faith, interactive process to determine if there are effective reasonable accommodations for your disability, including working remotely. If you are able to perform all of your essential job functions while working remotely, your employer must grant your request unless it would create an undue hardship for your employer, an alternative reasonable accommodation is available, or you do not meet the definition of disability under the law. You can learn more about your rights at <https://calcivilrights.ca.gov/accommodation/>.”

UI for Striking Workers

SB 799: Striking Workers' Unemployment Benefit Eligibility - would have:

- Made striking workers eligible for unemployment benefits after 2 weeks of leaving work due to a trade dispute (other than a lockout).
- Required greater draws on California's \$18 billion unemployment insurance fund deficit—perhaps resulting in higher payroll taxes.

SB 627

“Displaced Worker Retention and Transfer Rights”

- would have required “chain employers” to:
 - provide covered workers a displacement notice at least 60 days before the expected date of closure of a covered establishment.
 - for one year after the closure:
 - provide all covered workers the opportunity to transfer to a location of the chain within 25 miles as positions become available
 - offer all covered workers all available positions for which they’re qualified within 5 days of a position becoming available.
 - maintain a preferential transfer list of covered workers and make offers of transfer in order of greatest length of service based on the worker’s date of hire at the chain.

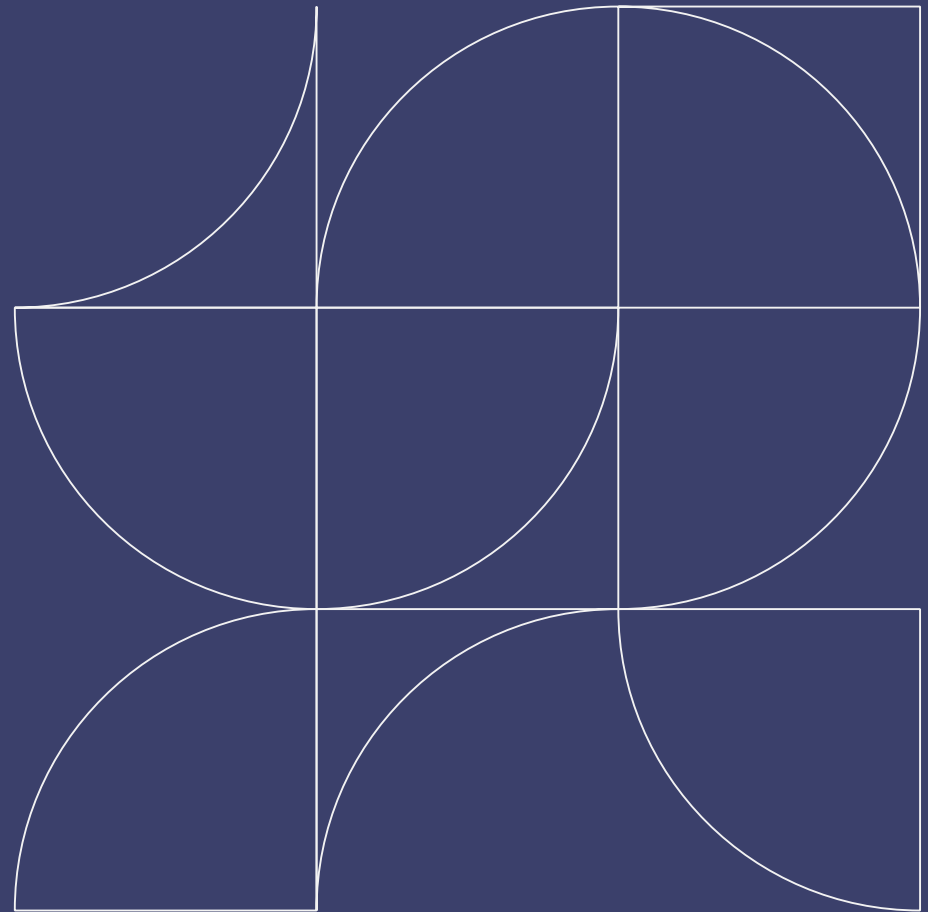
AB 1356

CalWARN

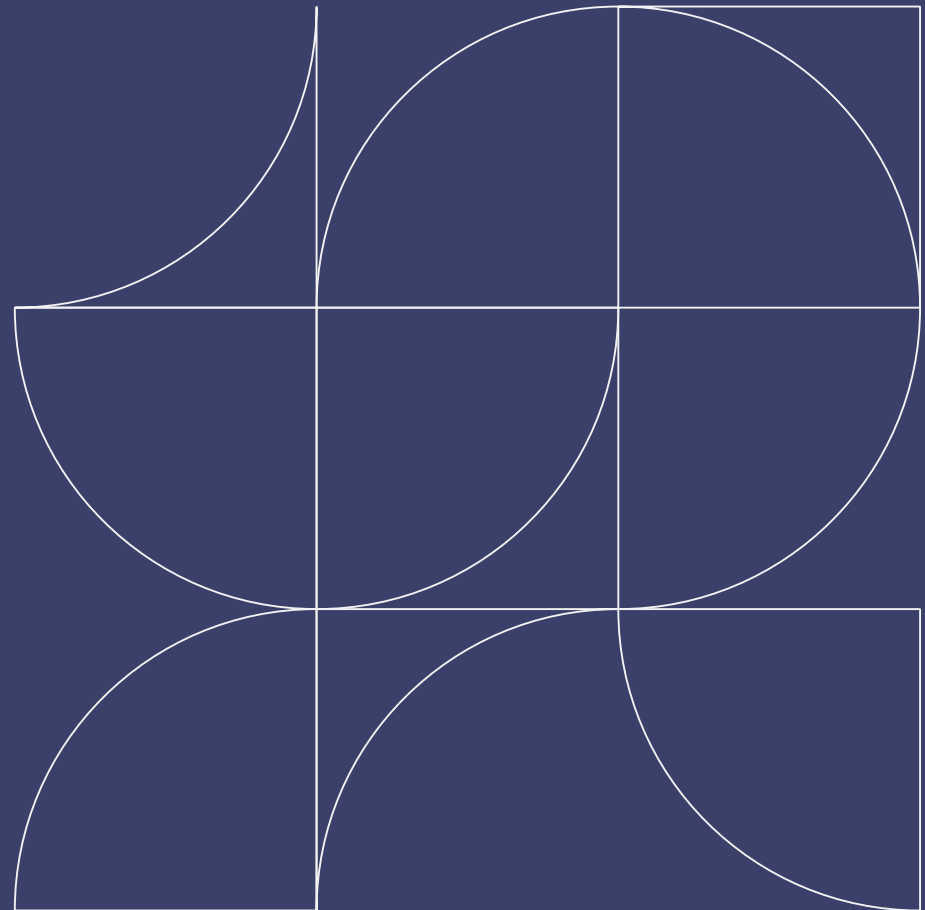
*Amends Sections 2502, 2504,
and 2512 of the Labor Code
and adds Sections 2509, 2510,
and 2517 to the Labor Code*

- would have amended CalWARN to:
 - Increase from 60- to 75-days (was 90 in prior versions of the bill) the period in which employer must provide notice prior to ordering a mass layoff.
 - Expand its application beyond industrial or commercial facilities to all places of employment that have employed 75 or more persons in the preceding 12 months.
 - Expand the types of workers that must receive notice to include labor contractors.
- Would have also prohibited employers from requiring any general release, waiver of claims, or nondisparagement or nondisclosure agreement as a condition of the payment of amounts for which the employer is liable for violating the notice provisions.
 - But an employer would have been able to do this via separate agreement with additional reasonable consideration.

CLE Code



Did Not Make the Legislature's Cut



Paid Sick & Family Leave

FEHA Protected Class

- **AB 518 – Paid Family Leave Expansion** – would have expanded the PFL program beyond immediate family members to include individuals who take time off work to care to care for a seriously ill “designated person,” defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship.”
- **SB 461 - Religious or Cultural Observance** – Originally intended to expand the FEHA protected category of “religious observance” to include “cultural observance.” Amended to cover only state employees’ allotment of time off for observance of religious/ cultural holidays, such as Cinco de Mayo.

Website Accessibility

- **AB 1757** would have:
 - Adopted WCAG 2.1 Level AA as the de facto standard for websites and mobile apps that can be accessed from California.
 - Imposed liability for statutory damages on business establishments AND website developers.

Employer Intimidation

Veterans Preference

- **SB 399** - “**California Worker Freedom from Employer Intimidation Act**” – would have:
 - Prohibited an employer from subjecting, or threatening to subject, employees to any form of adverse action for refusing to participate in meetings or communications whose purpose is to (very broadly) communicate the employer’s opinion about religious or political matters.
- **SB 73** - “**Voluntary Veterans’ Preference Employment Policy Act**” – would have:
 - Permitted private employers to establish and maintain a written veterans’ preference employment policy to give a voluntary preference for hiring a veteran over another qualified applicant.
 - Warned employers to be careful not to run afoul of the numerous anti-discrimination provisions of California law.

Noncompetes

COVID Reimbursement

AB 747 would have prohibited an employer from entering into, presenting an employee or prospective employee as a term of employment, or attempting to enforce any covenant not to compete that is void.

SB 375 - “COVID-19 regulatory compliance credit” would have authorized an employer to claim, for 2023-24, a COVID-19 regulatory compliance tax credit in a specified amount to be credited against employee personal income tax withholding amounts.

Flexible Workweek

PAGA Reform

- **AB 1100**: declared the intent of the Legislature to enact legislation that would establish a **4-day workweek**.
- **SB 703** – “**California Workplace Flexibility Act of 2023**” would have permitted an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek without OT for the additional two hours in a workday.
- **SB 330**: Would have required that PAGA notices:
 - set forth the relevant facts, legal authorities, and authorities supporting each alleged violation.
 - inform an employer where there is a right to cure.
 - include an estimate of the number of employees on whose behalf relief is being sought.
 - if the number of employees represented is 10 or more, to verify the notice under penalty of perjury.

Speakers



Kristina Launey

Partner – Sacramento
Seyfarth Shaw LLP
(916) 498-7034
KLauney@seyfarth.com



Coby Turner

Partner – Sacramento
Seyfarth Shaw LLP
(916) 498-7001
CTurner@seyfarth.com



Catherine Feldman

Associate – Los Angeles
Seyfarth Shaw LLP
(310) 201-1540
CFeldman@seyfarth.com

An abstract geometric design consisting of white lines on a dark blue background. The design features a central horizontal line and a vertical line that intersect. A large circular arc is positioned on the left side, and another large circular arc is on the right side. The lines and arcs create a sense of depth and movement.

Thank You