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WHITE PAPER

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A Review of 2024 Labor & Employment Legislation in California

The 2024 California legislative session saw the passage of a number of new and important labor and employment laws.

In June 2024 and effective immediately as emergency legislation, California enacted the first significant reforms to the Private Attorneys General Act, or PAGA, in more than a decade.

Springboarding off of the workplace violence legislation effective in 2024, the Legislature continued to expand the law to protect victims of violence, including family members who are victims of violence, and expanded the definition of a "qualifying act of violence" for the purposes of protective leave.

Another key area for the Legislature is employer speech. Likely influenced by the current political climate, SB 399 seeks to end captive audience meetings during work hours, and prohibits employers from subjecting, or threatening to subject, employees to discrimination, retaliation, or adverse action because an employee declines to attend employer meetings intended to share the employer's opinion on "religious" or "political" matters.

Anti-discrimination initiatives were also at the forefront of California law. Beginning January 1, 2025, under SB 1100 and with limited exceptions, employers may not include in job postings that applicants are required to have a driver's license. Separately, under SB 1137, where an individual claims multiple bases of discrimination, it may be necessary to determine whether the discrimination occurred based on a *combination* of protected characteristics rather than each characteristic in isolation.

Other new and amended statutes will require employers to revisit company policies and litigation strategies.

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PAGA REFORM

SB 92 / AB 2288

California's Private Attorneys General Act ("PAGA") was the target of a November 2024 ballot initiative that, if passed, would have repealed the Act in response to perceived abuses and frivolous lawsuits. In a negotiated compromise brokered by California Governor Gavin Newsom and legislative leaders, business and labor groups announced on June 18, 2024, that a deal had been reached to pass legislation reforming PAGA and to withdraw the proposed initiative from the ballot. Read our *Commentary*, "California Enacts First Significant Reforms to PAGA in More Than a Decade," for a more detailed discussion of the amendments.

SUMMARY OF COMPLIANCE, CURE, AND EEC PROVISIONS OF PAGA REFORM 2024

Reduction of Penalties for Taking "All Reasonable Steps" To Be in Compliance

Timing of Employer's Compliance Steps. If "all reasonable steps" for compliance occurred (as to all provisions identified in the notice) *prior* to receiving the notice of violation required by Section 2699.3, or *prior* to receiving a request for records pursuant to Section 226, 432, or 1198.5 from the aggrieved employee or the employee's counsel, then the civil penalty that may be recovered will not be more than 15% of the penalty sought. *See* Cal. Lab. Code § 2699(g)(1).

If the employer takes those steps to prospectively be in compliance with all provisions alleged in the notice within 60 days *after* receiving notice, penalties are still reduced, but only to 30% of the total penalty sought. *See* § 2699(h)(1).

What Actions May Constitute "All Reasonable Steps"? "All reasonable steps" may include, but are not limited to, any of the following: (i) conducted periodic payroll audits (or, if notice has been filed, conducted an audit of the alleged violations) and took action in response to the results of the audit; (ii) disseminated lawful written policies (and, if a notice has been filed, disseminated lawful written policies as to the alleged violation); (iii) trained supervisors on applicable Labor Code and wage order compliance; or (iv) took appropriate corrective action with regard to supervisors. *See* § 2699(g)(2).

Whether the employer's conduct was reasonable will be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity, and duration of the alleged violations. *See* § 2699(g)(2). The existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take all reasonable steps. *See* § 2699(g)(2).

Cure Process and Requirements

Cure Process for Employers with <100 Employees. Effective October 1, 2024, employers that employ *fewer than 100 employees* during the period covered by the notice may submit to the Labor & Workforce Development Agency ("LWDA"), within 33 days of the postmark date of the PAGA notice, a confidential proposal to cure one or more of the alleged violations. *See* § 2699.3(c)(2)(A). The LWDA may set a conference to evaluate the sufficiency of the proposed cure, and the employer must complete the cure no more than 45 days after the conference as well as submit sworn notice to the agency and the employee that the cure is completed. *See* § 2699.3(c)(2)(B) (C). This notice must be accompanied by a payroll audit and check register if the violation involves a payment obligation and must also include any information the parties deemed necessary to determine the sufficiency of the cure. *See* § 2699.3(c)(2)(B). If the cure includes the payment of unpaid wages, the agency must also determine at the conference whether to request that the employer pay the proposed cure amount, including any wages and liquidated damages due and 7% interest, into escrow or will provide such other form of security as the agency deems suitable. *See* § 2699.3(c)(2)(B).

If the LWDA determines that the violation is not cured or does not provide timely notice, the aggrieved employee may file a PAGA lawsuit. However, the employer is entitled to file a request for a stay and early evaluation conference, as explained in "Early Neutral Evaluation Process," below. *See* § 2699.3(c)(2)(B). If the LWDA determines that the alleged violation has been cured, the aggrieved employee may not proceed with a civil action. However, if the aggrieved employee disagrees with the cure determination, he or she may appeal that determination to the superior court. *See* § 2699.3(c)(2)(D).

Cure Process for Only Violations of Cal. Lab. Code § 226. Effective October 1, 2024, employers of *any size* may cure violations of Labor Code Section 226 (wage statement violations). *See* § 2699.3(c)(3). An employer seeking to cure only violations of Labor Code Section 226 must, within 33 days of the postmark date of the PAGA notice, give written notice by certified mail to the aggrieved employee or representative and by online filing to the LWDA that the alleged violation has been cured, including a description of actions taken, and no PAGA action may commence. *See* § 2699.3(c)(3)(A). If the alleged violation is not cured within the 33-day period, the employee may file a PAGA lawsuit. *See* § 2699.3(c)(3)(A).

An aggrieved employee may dispute the sufficiency of the cure. *See* § 2699.3(c)(3)(B). The LWDA will review cure disputes and provide written notice of its decision to the aggrieved employee and the employer. The LWDA may give the employer three additional days to complete the cure. If the LWDA determines that the violation is not cured or does not provide timely notice, the aggrieved employee may file a PAGA lawsuit. *See* § 2699.3(c)(3)(B).

An employer may not use the cure provisions more than once in a one-year period for the same violations. *See* § 2699.3(d). No cure or proposal to cure may be deemed an admission of liability by the employer that submitted the proposed cure. *See* § 2699.3(c)(2)(E). Any cure proposal will be deemed a confidential settlement proposal subject to Section 1152 of the Evidence Code. *See* § 2699.3(c)(2)(E).

Requirements for Effective Cure. Curing a violation requires: (i) correcting the alleged violation; (ii) compliance with the statute(s) alleged to have been violated; and (iii) making whole each aggrieved employee. *See* § 2699(d)(1). If an aggrieved employee is owed wages, the cure must include unpaid wages back three years from the notice, 7% interest, any liquidated damages required by statute, and reasonable attorneys' fees and costs. *See* § 2699(d)(1). An employer seeking to cure wage statement violations of paragraphs (1) to (7), and (9) of Labor Code § 226(a) must provide, at no cost to the employees, fully compliant, itemized wage statements to each aggrieved employee for each pay period of the violation going back three years prior to the PAGA notice date. *See* § 2699(d)(2)(B). For wage statement violations of Labor Code § 226(a)(8), employer must provide written notice of the correct information to each aggrieved employee. *See* § 2699(d)(2)(A).

Early Neutral Evaluation Process

For cases filed after October 1, 2024, employers (with at least 100 total employees during the period covered by the PAGA Notice) who are served with a PAGA Summons and Complaint (arising from a PAGA Notice submitted to the LWDA on or after June 19, 2024) have an opportunity to stay proceedings to conduct an Early Evaluation Conference ("EEC"). *See* § 2699.3(f).

The request for an EEC must be made prior to or at the same time the employer files its responsive pleading or other initial appearance and must also set forth other specific information, including whether the employer intends to cure alleged violations (and if so, which), and identify the allegations it disputes. *See* § 2699.3(f)(2).

At the same time, the employer should file a request for a stay. If requested, the court will, absent good cause, issue a stay of the proceedings and order an EEC. *See* § 2699.3(f)(3). Once that occurs, the EEC must take place on "a date as soon as possible from the date of the order but in no event later than 70 days after issuance of the order." *See* § 2699.3(f)(3)(A).

Who Conducts the EEC? According to Section 2699.3, an EEC is to be conducted by a judge, commissioner, or "such other person who is knowledgeable about and experienced with issues arising under the code who the court shall designate." *See* § 2699.3(f)(12). This would seem to leave open the possibility that a professional neutral party could be considered for submission to the court for designation. Presumably, this may require a stipulation by the parties.

What Does the Process Look Like? The statute provides that both parties must submit sequential confidential statements, beginning with the defendant, and followed by the plaintiff, which outline their positions, including the claims the defendant seeks to dispute and, again, whether there is an intention to cure. *See* § 2699.3(f)(3). The plaintiff's statement must then respond with, among other things, a factual basis for each of the alleged violations, the amount of penalties the plaintiff claims for each violation (including a description of how those amounts were calculated), the amount of attorneys' fees and costs to date, a settlement demand, and a basis for accepting or rejecting the employer's proposed plan to cure. *See* § 2699.3(f)(3)(E).

The statute does not expressly provide discovery mechanisms during this phase, but it seems doubtful a plaintiff would be in a position to prepare this type of informed statement without, at a minimum, an informal exchange of information.

After statements are submitted, the neutral evaluator will then decide whether to accept or reject the defendant's proposed plan to cure. *See* § 2699.3(f)(4). In doing so, the neutral evaluator must consider, where applicable:

(i) Whether any of the alleged violations occurred and if so, whether the defendant has cured the alleged violations; (ii) the strengths and weaknesses of the plaintiff's claims and the defendant's defenses; (iii) whether the plaintiff's claims, including any claim for penalties or injunctive relief, can be settled in whole or in part; and (iv) whether the parties should share other information that may facilitate early evaluation and resolution of the dispute. *See* § 2699.3(f)(1)(B).

If the neutral evaluator decides to accept the defendant's proposed plan to cure, the defendant must present evidence within 10 calendar days (or longer, if stipulated by the parties) demonstrating that the cure has been accomplished. *See* § 2699.3(f)(4). If the defendant fails to timely submit this evidence, the court may terminate the EEC process and any stay. If the neutral evaluator and parties agree that the employer has cured the alleged violations, the parties must jointly submit a statement to the court setting forth the terms of their agreement. *See* § 2699.3(f)(5). And if there are no more alleged violations that remain in dispute, the matter will be closed. *See* § 2699.3(f)(6).

What if the Plaintiff Does Not Agree that There Has Been a Cure or the Plan to Cure Is Sufficient? First, if a partial agreement is reached, the remaining issues will proceed to litigation. Second, if the defendant's proposals are rejected outright, the case will go forward in litigation. Third, if the neutral evaluator or the plaintiff do not believe the defendant properly cured the alleged violations pursuant to their plan, the employer can return to the court to seek a determination on the sufficiency of the steps they have taken to cure. *See* § 2699.3(f)(7)–(9). Regardless of the outcome, the entirety of the EEC process must take place within 30 days unless the parties mutually agree to extend the time. *See* § 2699.3(f)(11).

Importantly, all statements or evidence submitted for purposes of the EEC and "all discussions" at the EEC "shall be subject to Section 1152 of the Evidence Code." *See* § 2699.3(f)(10).

Recommendations for Employers: Employers should take steps to understand what these PAGA reforms will mean for future cases and closely monitor PAGA-related legal developments. Employers should continue in their efforts to implement strong wage and hour policies and practices as a first line of defense against wage and hour claims. Employers facing new PAGA claims should move quickly to make sure they are taking advantage of these changes, including options to cure or remediate potential violations.

AB 1034—EXEMPTION FROM PAGA FOR CONSTRUCTION INDUSTRY

For certain employes in the construction industry, AB 1034 extends the PAGA exemption from January 1, 2028, until January 1, 2038.

"Employee in the construction industry" means "an employee performing work associated with construction, including work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work as described by Chapter 9 . . . of Division 3 of the Business and Professions Code, and other similar or related occupations or trades."

Covered employees in the construction industry include those who perform work under a collective bargaining agreement that provides "for the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate."

In addition, to apply, the collective bargaining agreement must prohibit violations of the labor code that are redressable pursuant to PAGA and provide a grievance and binding arbitration procedure to redress violations. Further, the collective bargaining agreement must expressly waive PAGA in clear and unambiguous terms, and authorize an arbitrator to award any and all remedies otherwise available under the California Labor Code,

except for those penalties payable to the Labor and Workforce Development Agency.

Recommendations for Employers: While there is no immediate action required by this update, employers in the construction agency who meet the definitions set forth in AB 1034 can experience additional relief from PAGA for 14 more years.

WAGE & HOUR

MINIMUM WAGE INCREASES

Beginning January 1, 2025, the California minimum wage is expected to increase to $16.50 per hour for all employers, regardless of size. In addition, effective January 1, 2025, the minimum salary for full-time exempt employees is an annual salary of $68,640 (an increase of $2,080) or $1,320 a week.

Further, on the November 2024 ballot was Proposition 32, which, if passed, would have increased the minimum wage to $18 an hour in 2025 for employers with more than 25 people, and in 2026 for others. However, California voters rejected Prop 32, by a 0.8% margin.

Certain California cities also have specific local minimum wages that increase in the new year. For example, beginning January 1, 2025, San Jose and San Mateo minimum wages increase to $17.95 per hour, and San Diego minimum wage increases to $17.25 per hour. In addition, certain California localities will also increase their minimum wages effective January 1, 2025, including West Hollywood ($19.65) and South San Francisco ($17.70). Other California cities will increase their minimum wages effective July 1, 2025, including Los Angeles County.

SB 525—HEALTH CARE MINIMUM WAGE

On October 16, 2024, the California Health Care Worker minimum wage bill (SB 525) went into effect. The law was slated to take effect in June 2024 after being signed by Governor Newsom in 2023 (SB 325) but was delayed by SB 159 due to concerns over the budget impact. The law covers more than 20 different types of "covered health care facilit[ies]" and works to gradually increase "covered health care employee[s]" minimum wages to $25 per hour over a number of years; different facility types have different phased increases.

SB 525 also significantly limits health care employers' abilities to meet the salary threshold required for most exemptions from overtime and minimum wage. To be properly classified as exempt, salaried employees must earn a monthly salary of no less than 150% of the health care worker minimum wage, or 200% of the applicable state minimum wage for all workers under Section 1182.12, whichever is greater.

For certain limited employers who cannot afford to pay the new wage scales, the law creates a waiver program. These employers may seek a temporary pause or an alternative phase-in schedule for the new minimum wage requirements. To qualify for a waiver, an employer must provide documentation of its financial condition, as well as that of any parent or affiliated entity, "to continue as a going concern under generally accepted accounting principles."

SB 525 imposes a 10-year moratorium on local measures to increase compensation for health care workers covered by this bill.

Finally, covered employers must provide notice to covered employees, notifying them of the minimum wage schedule that applies to them when the law takes effect. Covered employers must also post a supplement to the minimum wage order on the effective date of the earliest minimum wage increase.

Recommendations for Employers: Covered health care employers should take careful notice of the broad applicability of the minimum wage increases to all employees who work in the health care setting, regardless of title. Employers should also evaluate how increases in the new minimum wage will impact overall compensation of the organization, determine which exempt employees are impacted by the salary basis threshold increase and either increase their salary to maintain the exemption or reclassify them, review any collective bargaining agreements if relying on the California exemption to overtime (Labor Code Section 514), and ensure proper notice is provided to covered employees and postings are in place.

AB 1228—FAST FOOD COUNCIL AND MINIMUM WAGE

AB 1228 went into effect on April 1, 2024, and establishes a Fast Food Council within the Department of Industrial Relations, which has the authority to set minimum employment standards for national fast food chains operating in California, including regulations relating to wages, hours, health and safety, and other working conditions, with limited exceptions. Read our *White Paper*, "A Review of 2023 Labor & Employment Legislation in California," for a more detailed discussion of the law.

NOTICE AND POSTING UPDATES

AB 1870—WORKERS' COMPENSATION NOTICE

Labor Code section 3550 currently requires employers to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer, or if self-insured, who is responsible for claims adjustment.

Effective January 1, 2025, AB 1870 expands the law to require that the notice states: "the injured employee may consult a licensed attorney to advise them of their rights under workers' compensation laws. In most instances, attorney's fees will be paid from an injured employee's recovery."

AB 2299—WHISTLEBLOWER POSTING

Effective January 1, 2025, AB 2299 codifies the requirement that the California Labor Commissioner develop a model list of employees' rights and responsibilities under the whistleblower laws. Also effective January 1, 2025, employers must prominently display the model list, written in lettering larger than size 14-point type, which includes a list of employees' rights and responsibilities under the whistleblower laws and the telephone number of the whistleblower hotline that is maintained by the office of the attorney general, as described in California Labor Code section 1102.7.

The Labor Commissioner's model list must be accessible on the Labor Commissioner's website so that it is reasonably accessible to an employer.

INDEPENDENT CONTRACTORS

SB 988—FREELANCE WORKER PROTECTION ACT

SB 988 provides protections for "freelance workers" providing "professional services" to a hiring party worth $250 or more, by imposing minimum requirements relating to contracts between the employer and freelance worker.

A "freelance worker" is defined as "a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than two hundred and fifty dollars ($250), either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days."

"Professional services" is defined in California Labor Code section 2778 and includes, for example, in specific instances, marketing, administration of human resources, graphic design, payment processing agents, travel agent services, professional foresters, grant writing, services provided by appraisers, enrolled agents who are licensed by the United States Department of the Treasury to practice before the Internal Revenue Service, photographers, photojournalists, videographers, photo editors, fine artists, freelance writers, translators, editors, copy editors, illustrators, newspaper cartoonists, licensed estheticians, licensed electrologists, licensed manicurists, licensed barbers, licensed cosmetologists, specialized performers hired by a performing arts company or organization to teach a master class for no more than one week, content contributors, advisors, producers, narrators, or cartographers, among others.

SB 988 specifically requires a written contract between the freelance workers and hiring party, and the contract must include at a minimum:

- The name and mailing address of each party.
- An itemized list of all services to be provided by the freelance worker, including the value of those services and the rate and method of compensation.
- The date on which the hiring party must pay the contracted compensation or the mechanism by which the date must be determined.
- The date by which a freelance worker must submit a list of services rendered under the contract to the hiring party to meet the hiring party's internal processing deadlines for purposes of timely payment of compensation.

In addition, the hiring party cannot discriminate or take any adverse action against a freelance worker for enforcing their rights provided under SB 988, and freelance workers and public prosecutors may bring a civil action to enforce their rights.

SB 988 applies only to contracts entered into or renewed after January 1, 2025. Contracts must be retained by the hiring party for four years. SB 988 does not prevent freelance workers from enforcing oral contracts or recovering under promissory estoppel.

Recommendations for Employers: If employers utilize freelance workers or independent contractors that qualify as freelance workers, ensure compliance with the minimum contractual requirements set forth in SB 988 during renewal or at the outset of the relationship. In addition, ensure systems are in place and human resources personnel are aware of the four-year minimum contract retention policy.

DISCRIMINATION AND RETALIATION

SB 1100—DISCRIMINATION: JOB POSTING REQUIREMENTS

Effective January 1, 2025, SB 1100 makes it unlawful for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license, unless two conditions are met: (i) the employer reasonably expects driving to be one of the job functions for the position; (ii) the employer reasonably believes that satisfying the job function by using an alternative form of transportation would not be comparable in travel time or cost to the employer.

"Alternative form of transportation" includes, but is not limited to: using a ride-hailing service, taxi, carpooling, bicycling, or walking.

SB 1100 seeks to combat discrimination against individuals without a driver's license, and appears to be based on the concern that because issuance of a driver's license requires proof that the applicant's presence in the United States is authorized, it results in national origin discrimination.

Recommendations for Employers: Employers should review their job postings (both internally and on third-party platforms), applications, advertisements, and other materials distributed to applicants to remove driver's licenses as a requirement where driving or transportation is not part of the job. Where transportation is part of the job, employers should evaluate whether transportation could be accomplished through other means.

SB 1137—DISCRIMINATION: INTERSECTIONALITY

SB 1137 clarified that anti-discrimination provisions under the Fair Employment and Housing Act ("FEHA"), the Unruh Civil Rights Act, and the Education Code prohibit discrimination on *any combination* of protected characteristics, known as "intersectionality." Specifically, the legislature affirmed the decision of the Ninth Circuit Court of Appeals in *Lam v. University of Hawai'i* (9th Cir. 1994) 40 F.3d 1551, which explained that where an individual claims multiple bases of discrimination, it may be necessary to determine whether the discrimination occurred based on the combination of factors, not just each distinct component.

SB 1137 amends FEHA to clarify that the protected characteristics listed in the statute include: (i) any combination of those characteristics; (ii) a perception that a person has any characteristic or any combination of those characteristics; and (iii) a perception that a person is associated with a person who has, or is perceived to have, any characteristic or any combination of characteristics.

Recommendations for Employers: Given that workplaces commonly employ individuals who may fall into multiple protected classes, employers should revise their anti-discrimination, harassment, and retaliation policies, procedures, employee

handbooks, and trainings to ensure they address preventing discrimination on the basis of a combination of characteristics, a perception that a person has any characteristic or combination of characteristics, and a perception that a person is associated with a person who has, or is perceived to have, any characteristic or any combination of characteristics and also address the concept of intersectionality.

AB 1815—DISCRIMINATION: HAIRSTYLES

Under AB 1815, the definition of "race" set forth in the California Government Code, Education Code, and Unruh Civil Rights Act is amended to include "traits associated with race, including, but not limited to, hair texture and protective hairstyles." Notably, the word "historically" was also removed from the definition, previously stating "traits historically associated with race." "Protective hairstyles" is also defined as including "such hairstyles as braids, locs, and twists."

Recommendation for Employers: Employer's should update their anti-discrimination policies and employee handbooks to reflect the new definitions provided in AB 1815.

SB 1340—LOCAL ENFORCEMENT OF WORKPLACE DISCRIMINATION LAWS

Effective January 1, 2025, SB 1340 mandates the California Civil Rights Department ("CRD") work with local agencies in an effort to prevent and eliminate discriminatory employment practices. Employers should keep in mind that local enforcement may occur only after the CRD issues a right to sue notice. The potential impact of SB 1340 is more timely responses and resolutions to discrimination complaints.

LEAVES OF ABSENCE

SB 1105—PAID SICK LEAVE FOR AGRICULTURAL EMPLOYEES

As it pertains to "agricultural employees" as defined under California Labor Code section 9110, SB 1105 provides clarification of California's paid sick leave, to permit agricultural employees to be provided paid sick days where "there are smoke, heat, or flood conditions created by a local or state emergency if the Governor proclaims a state of emergency . . . or a local emergency is proclaimed . . . due to smoke, heat, or flooding conditions that prevent agricultural employees from working."

Recommendations for Employers: Employers of agricultural employees should review their existing sick leave policies and revise them to provide that sick leave can be taken where there is smoke, heat, or flood conditions created by a local or state emergency as proclaimed by the governor or locally.

AB 2123—PAID FAMILY LEAVE

Historically, employers could require that as a condition to receiving paid family leave benefits to, for example, care for an ill family member, for baby bonding, or other qualified reasons, employees had to use earned but unused vacation prior to receiving paid family leave. Effective January 1, 2025, California employers can no longer require that employees use accrued vacation leave before receipt of paid family leave benefits under AB 2123.

Recommendations for Employers: Employers who required the use of earned but unused vacation prior to employees accessing paid family leave benefits should revise their policies and employee handbooks immediately.

AB 2499—CRIME VICTIMS

AB 2499 expands the protections already established under California law that protect employees from discrimination or retaliation if they take time off for jury duty, appearing in court, or attempting to obtain prescribed relief.

The new law broadens the definition of "victim" to include "an individual against whom a qualifying act of violence is committed" with "qualifying acts of violence" defined as: "any of the following, regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime:

(A) Domestic violence.
(B) Sexual assault.
(C) Stalking.
(D) An act, conduct, or pattern of conduct that includes any of the following:
    (i) In which an individual causes bodily injury or death to another individual;
    (ii) In which an individual exhibits, draws, brandishes, or uses a firearm, or other dangerous weapon, with respect to another individual;
    (iii) In which an individual uses, or makes a reasonably perceived or actual threat to use, force against another individual to cause physical injury or death."

The new law expands employee eligibility for reasonable accommodations at work and the reasons a victim of crime can take time off. It also requires employers to provide employees with time off to help family members who are victims of crime. The definition of "family members" broadly includes "designated individuals" whose association is "the equivalent of a family relationship."

Employers cannot interfere with the attempt to exercise the rights provided under AB 2499, and an employee is entitled to use vacation, personal leave, paid sick leave, or compensatory time (unless otherwise provided by a collective bargaining agreement) to take time off pursuant to the reasons set forth in AB 2499.

AB 2499 also repeals Labor Code sections 230 and 230.1, which previously housed the time-off provisions covered by AB 2499, and relocates them under the Fair Employment and Housing Act ("FEHA") (Government Code Section 12945.8), where the California Civil Rights Department ("CRD") will now have enforcement authority.

Finally, employers must provide written notice to their employees of their rights under this bill at the following times: annually, to new hires upon hire, upon employee request, and if an employee informs the employer that the employee or their family member is a victim. AB 2499 directs the CRD to create a model form (titled, "Survivors of Violence and Family Members of Victims Right to Leave and Accommodations") on or before July 1, 2025, that employers may use to satisfy their notice requirements. Employers are required to comply with the notice requirement once the CRD posts the form on its website.

Recommendations for Employers: Employers should monitor the CRD's website to obtain and utilize the "Survivors of Violence and Family Members of Victims Right to Leave and Accommodations" to satisfy their notice requirement. Employers should also review their existing policies and employee handbooks and revise them to align with the broader provisions of AB 2499. In addition, employees in a supervisory capacity should be made aware of the changes and expanded scope of protected leave.

SB 951—PAID FAMILY LEAVE AND STATE DISABILITY INSURANCE BENEFIT INCREASE

Signed by Governor Newsom in 2022, SB 951 set forth scheduled increases to wage replacement rates for low-wage earners under California's paid family leave and state disability insurance programs.

The increases are set to take effect in 2025, providing that workers who earn 70% or less than the state's average quarterly wage will be eligible for the weekly benefit amount of 90% of their regular wages.

SOCIAL COMPLIANCE AUDITS

AB 3234—SOCIAL COMPLIANCE AUDITS

On September 22, 2024, Governor Newsom signed A.B. 3234 into law. The bill adds new, specific—and mandatory—disclosure requirements related to social compliance audits concerning the involvement of child labor in operations or practices to the California Labor Code. Read our *Alert*, "California Imposes Mandatory Disclosure Law for Voluntary Child Labor Audits," for a more detailed discussion of the law.

EMPLOYER SPEECH

SB 399—CALIFORNIA WORKER FREEDOM FROM EMPLOYER INTIMIDATION ACT

SB 399 went into effect January 1, 2025, and prohibits employers from subjecting, or threatening to subject, an employee to discharge, discrimination, retaliation, or any other adverse action because "the employee declines to attend an employer-sponsored meeting or affirmatively declines to participate in, receive, or listen to any communications with the employer or its agents or representatives, the purpose of which is to communicate the employer's opinion about religious or political matters." If an employee is working at the time of the meeting, and declines to attend, he or she must still be paid while the meeting is being held.

The terms "political matters" and "religious matters" are broadly defined. "Political matters" means "matters relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization," while "religious matters" means "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."

SB 399 provides a civil penalty of $500 per employee for each violation, and provides a private right of action for an employee who has suffered a violation to bring a civil action in a court of competent jurisdiction for damages caused by that adverse action, including punitive damages. The Labor Commissioner may also enforce SB 399, including investigations, ordering temporary relief and issuing citations if violations are found.

Certain religious institutions, political organizations, and educational institutions are exempt from the law. In addition, SB 399 states that it does not prohibit an employer from "communicating to its employees any information that is necessary for those employees to perform their job duties." However, similar bills in other states, such as HB 24-1260 in Colorado, have been vetoed given the "unworkable" definitions of "political matters" and "religious matters" that "could chill free speech." As a result, the constitutionality of SB 399 may be challenged.

Recommendations for Employers: Voluntary meetings are still allowed. However, employers should consider revising their handbook to specify that meetings concerning religious or political matters are voluntary, and will not result in discipline if an employee decides not to attend. In addition, employers should ensure that managers and supervisors are informed about the requirements of SB 399, and the voluntary nature of employee participation given the potential liability and corresponding penalties.

WORKPLACE VIOLENCE AND SAFETY

SB 428—WORKPLACE RESTRAINING ORDERS FOR HARASSMENT

While Governor Newsom signed SB 428 on September 30, 2023, it finally took effect on January 1, 2025. SB 428 expands current law and enables employers to seek harassment-related restraining orders on behalf of their employees as well. Read our *White Paper*, "A Review of 2023 Labor & Employment Legislation in California," for a more detailed discussion of the law.

AB 2975—VIOLENCE PREVENTION IN HEALTH CARE WORKPLACES

By March 1, 2027, the California Division of Occupational Safety and Health ("Cal/OSHA") is directed to adopt standards requiring hospitals to "implement a weapons detection screening policy that requires the use of weapons detection devices that automatically screen a person's body . . . at the hospital's main public entrance, at the entrance to the hospital's emergency department, and at the hospital's labor and delivery entrance if separately accessible to the public." With limited exceptions, handheld metal detector wands cannot be the sole equipment used.

Personnel who implement the weapons detection screening must not be health care providers and must undergo a minimum of eight hours of training on: (i) the hospital's policies and procedures on how to respond if a dangerous weapon is detected at the point of screening; (ii) how to operate the hospital's weapons detection devices; (iii) de-escalation; and (iv) implicit bias.

Hospitals will also be required to post, "in a conspicuous location in a size and manner" in proximity to where the weapon

detection devices are utilized, a notice advising the public that the hospital conducts screenings for weapons upon entry but that no person will be refused medical care.

Recommendations for Employers: While no immediate action is required, covered employers should begin thinking about the logistics of the placement of weapons detection devices, including where the devices will be located within the facility and which personnel will be assigned (or hired) to monitor and operate the devices.

AB 1976—FIRST AID OPIOID ANTAGONISTS

The opioid crisis has sparked additional legislation in California to combat tragic overdoses. AB 1976 requires Cal/OSHA to submit a draft rulemaking proposal "to revise Sections 1512 and 3400 of Title 8 of the California Code of Regulations to require first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist." Naloxone hydrochloride, also known as Narcan, is a medicine that reverses and blocks the effects of opioids with the goal of reversing overdose.

The Occupational Safety and Health Standards Board has until December 1, 2027, to adopt the revisions; they must also provide guidance to employers on the proper storage of the opioid antagonist and instructions for use.

In addition, AB 1976 expressly provides that an individual who administers an opioid antagonist in good faith and not for compensation will not be liable for civil damages resulting from an act or omission related to the treatment, unless it constitutes gross negligence, or willful or wanton misconduct.

Recommendations for Employers: While no immediate action is required, employers should keep in mind that revisions to their first aid kits and opioid antagonist administration training is on the horizon. Employers should also assess whether their workspaces provide for the safe storage of opioid antagonists, i.e., temperature-controlled locations.

SB 1350—HOUSEHOLD DOMESTIC SERVICES

Historically, Cal/OSHA excluded "household domestic services" from its jurisdiction. Effective July 1, 2025, Cal/OSHA's workplace safety requirements will apply to household domestic services.

Under SB 1350, the definition of "employment" was amended to include "household domestic service performed on a permanent or temporary basis" but expressly *excludes* the following types of household domestic services:

(i) Household domestic service that is publicly funded;
(ii) Employment in family daycare home;
(iii) "Individuals who, in their own residences, privately employ persons to perform for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks, including housecleaning, cooking, and caregiving."

Recommendations for Employers: Employers should review the job duties of any domestic service workers they employ, and ensure compliance with Cal/OSHA.

COVID-19 CAL/OSHA SUNSET

On December 15, 2022, the Occupational Safety and Health Standards Board adopted non-emergency COVID-19 prevention regulations, which took effect February 3, 2023. The non-emergency COVID-19 prevention regulations were slated to remain in effect for two years. The two-year period is now coming to an end on February 3, 2025. However, the recordkeeping subsections are still in effect through February 3, 2026.

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