

2023

# California

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STATE HR ADVOCACY &  
LEGISLATIVE CONFERENCE

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CALIFORNIA  
STATE COUNCIL OF SHRM



# 2023 California Legislative Forecast

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Johnny C Taylor, Jr. Welcome to CalSHRM 2023

# Session Objectives

- Provide an overview of currently pending employment bills potentially affecting Human Resources Professionals
- Identify how these bills may change current policies
- Discuss tips for providing HR-input into the legislative process

# Monitoring Legislative Developments

- CalSHRM Legislative Report  
([Calshrm.org/onevoice-newsletter.html](https://calshrm.org/onevoice-newsletter.html))
- Twitter
  - @michaelkalt-law
  - @chrismicheli
  - @CalSHRM
  - @SHRM
  - @SHRMATEAM
- SHRM Newsletters (via email)
  - Government Affairs
  - California HR News



# 2023 Advocacy Day

- Office visits tomorrow will support two CalSHRM sponsored bills:
  - AB 509 (Fong) – Employer-provided student loan repayment assistance
  - SB 703 (Niello) – Individual alternative work week schedules
- Other advocacy efforts in 2023 include:
  - SB 73 (Seyarto) – Veterans hiring preference
  - SB 616 (Gonzalez)/SB 881 (Alvarado-Gil) – Paid sick leave changes



# Top Ten Employment Bills to Watch in 2023



# Paid Sick Leave – Part One (SB 616)

- Would increase current Paid Sick Leave (PSL) minimums from current 3 days/24 hours to 7 days/56 hours
- Would also increase accrual limits from 6 days/48 hours to 14 days/112 hours
- Would make corresponding changes to non-default accrual methods (i.e. 7 days/56 hours by 280<sup>th</sup> calendar day of employment)





# Paid Sick Leave – Part Two (SB 881)

- Would increase current PSL limits from 3 days/24 hours to 5 days/40 hours (with corresponding changes for alternative accrual methods)
- But would also require PSL be paid at employee's "base rate" rather than "regular rate"
- Would allow employers to request written documentation for leave usage
- Would also (largely) pre-empt local PSL ordinances and preclude PAGA suits





# Reproductive Loss Leave (SB 848)

- Employees would be entitled up to 5 days leave following a miscarriage, unsuccessful assisted reproduction, failed adoption, failed surrogacy, diagnosis negatively impacting pregnancy/fertility/childbirth (as defined)
- Modeled upon recently enacted bereavement leave:
  - Unpaid generally, (but can use other PTO)
  - Must have been employed 30 days;
  - Time off need not be consecutive but completed within three months
  - Employer must protect confidentiality



# “Family Caregiver Status” Protections under FEHA (AB 524)

- Would amend FEHA to prohibit discrimination/harassment based on “Family Caregiver Status”
- “Family Caregiver Status” means “a person who contributes to the care of one or more family members”
  - “family member” defined as same as under CFRA
  - “contribute to the care of” presently undefined
- No express accommodation obligations (different from prior versions)



# Remote Work as a Reasonable Accommodation (SB 731)

- Would amend FEHA to allow an employee with a “qualifying disability” to initiate a “renewed reasonable accommodation request” if:
  - Before 3/1/20, the employee’s request for remote work as accommodation was denied;
  - The employee worked remotely for at least 6 of the 24 months preceding renewed request; and
  - Employee’s job functions the same as when working remotely



# Remote Work as a Reasonable Accommodation (SB 731)

- If conditions met, employer must grant renewed request unless employee can no longer perform essential functions remotely, in which case employer must:
  - Provide written notice of denial;
  - Allow 30 days to return to in-person work
- Even if “renewed request” denied, employee may still request remote work as reasonable accommodation under Gov. Code §12940(m)
- “Qualifying disability” means medical provider has determined a disability “impacts ability to work outside home”

# Fair Chance Act Changes (SB 809)

- Background: In 2018, California enacted the Fair Chance Act [FCA] (AB 1008) limiting when/how employers could consider conviction history (i.e. after a conditional offer) and identifying applicable procedures (e.g., “individualized assessment”) to consider such information
- SB 809 would repeal these rules and replace with very detailed, new provisions



# Fair Chance Act Changes (SB 809)

- Identifies 13 categories of “unlawful employment practices” related to conviction history inquiries, limitations or decisions
- Broadly speaking, while California currently allows conviction history consideration if FCA procedures followed, SB 809 would generally preclude conviction history consideration unless narrow exception applies
- “Individualized assessment” changes:
  - Must be in writing;
  - Employee has 10 business days to respond
  - Presumption of no risk if individual not incarcerated or completed sentence

# Fair Chance Act Changes (SB 809)

- New posting requirements:
  - Poster at all workplaces/job sites
  - Include in all job postings, solicitations or advertisements
  - Affirmatively state compliance in all solicitations/advertisements
- New record retention requirements (e.g., four years for applications, written assessments, etc.)
- DFEH entitled to inspect/access records
- Agency and individual enforcement actions



# Workplace Violence Restraining Orders and Prevention Plans (SB 553)

- Current: Employers may seek a TRO to protect employees from workplace violence
- New: Would also allow a collective bargaining representative to seek TRO's etc. on employee's behalf
- Current: Employers must have injury prevention programs (IIPP)
- New: All employers would also need to have a workplace violence prevention plan (WVPP)

# Workplace Violence Restraining Orders and Prevention Plans (SB 553)

- In effect, would extend “healthcare” employer WVPP requirements to all employers (and despite Cal-OSHA ongoing efforts to prepare on a Draft Multi-Industry Standard)
- Note: “workplace violence” broadly defined to include not only threats or use of physical force, but also conduct that “seriously alarms, annoys, or harasses an employee”

# Workplace Violence Restraining Orders and Prevention Plans (SB 553)

- The WVPP requirements are quite detailed, with (at least) 12 elements
- Employers must also maintain a “violent incident log” (with detailed requirements, including incidents, responses and investigations)
- Employers (with employees and bargaining representatives) must annually review the WVPP’s effectiveness
- New training requirements for all employees about workplace violence risks and procedures
- New WVPP retention and inspection requirements

# Non-Compete Agreement Changes (AB 747, SB 699, and AB 1076)

- Current: Non-compete agreements are void in CA (except in very narrow circumstances)
- Concern: Employers are still using invalid non-compete agreements, stifling employee mobility
- While each bill varies, broadly speaking they would prohibit employers from using such agreements, with stiff penalties and enforcement
- AB 747 would also discipline attorneys who use such agreements

# Cal-WARN Act Changes (AB 1356)



- Would increase from 60 to 90 days the notice period before a mass layoff, relocation or termination (Federal WARN Act = 60 days)
- Would also change the definition of “covered establishment” from an “industrial or commercial facility” to a “place of employment” (which may also be a single location or group of locations)
- Would change definition of “mass layoff” to include 50+ employees at “or reporting to” a covered establishment (i.e., remote employees)

# Cal-WARN Act Changes (AB 1356)



- Would also increase liability for failure to provide required notices (e.g., 90 days worth of back pay and lost benefits)
- Would preclude (and void) severance agreements/releases conditioned upon employer payments owed due to failure to provide Cal-WARN notice
- In severance agreements, employers who were required to provide Cal-WARN notice would need to include consideration beyond amounts already owed, and state so in clear and unequivocal language

# Rehiring Displaced Workers (SB 723)



- Background: Enacted in 2021, SB 93 created rehire rights until 12/31/24 for hospitality/business service industry employees laid off due to COVID-19 pandemic
- SB 723 removes the expiration date or the requirement lay-offs due to COVID-19 (i.e., basically a permanent right to recall for any layoff or reduction-in-force for covered employers.)
- Does not change definition of “covered employers” (e.g., hospitality and related industries) or requirements regarding extending offers and notices, etc.



# Rehiring Displaced Workers (SB 723)

- But “laid off employee” would include separations due to public health directive, government shut down order, lack of business, a reduction in force or other economic non-disciplinary reason
- It will also apply indefinitely into the future
- If enacted, almost certainly will face legal challenges

# Automated Decision Tools (AB 331)



- Artificial Intelligence (AI) and Automated Decision Tools (ADTs) are hot legislative and regulatory topic (e.g. 5 bills plus Civil Rights Department regulations pending)
- “Developers” and “Deployers” would be required to prepare annual “impact assessments” (as defined)
- AB 331 would prohibit use of an ADT in manner causing algorithmic discrimination

# Automated Decision Tools (AB 331)

- Developers/Deployers would also have disclosure/notification obligations to any natural person affected by an ADT's "consequential decision"
- Potential accommodation obligations for natural person's request to not be subject to an ADT
- Developers/Deployers would need to have governance programs and an Artificial Intelligence Policy
- Private right of action with significant penalties

# Thank You!

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