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CALSHRM LEGISLATIVE REPORT

PREPARED BY

MICHAEL S. KALT,
CALSHRM GOVERNMENT AFFAIRS DIRECTOR
WILSON TURNER KOSMO LLP

mkalt@wilsonturnerkosmo.com
https://twitter.com/michaelkalt_law

KATHERINE M. MCCRAY
PARTNER
WILSON TURNER KOSMO LLP

kmccray@wilsonturnerkosmo.com

CALIFORNIA LEGISLATIVE SUMMARY

JULY 6, 2022

Summer recess has arrived, at least for students and the California Legislature. Before heading out on recess until August 1, 2022, the California Legislature continued working on many employment bills, providing an increasingly clear picture of the bills likely to make it to Governor Gavin Newsom's desk. These include bills that would:

- Preclude discrimination against employees or applicants for cannabis usage away from the workplace and limit the drug screening employers can consider (AB 2188).
- Require some businesses to address third-party harassment of customers and provide related training to employees (AB 2448).
- Revive previously time-barred sexual harassment and wrongful termination claims under certain circumstances (AB 2777).
- Entitle employees to up to five days of bereavement leave (AB 1949).
- Extend until January 1, 2025, the period under which employers must provide written notices of COVID-19 exposure (AB 2693).
- Implement new requirements regarding pay scale disclosures and amend the recently enacted Pay Data Reporting requirements (SB 1162).
- Enact new fast food industry regulations, including setting "minimum standards" and imposing joint and several liability for franchisors and franchisees (AB 257).
- Require employers to allow the public to access employee restrooms under certain circumstances (AB 1632).

There has also been considerable discussion that the California Legislature will introduce legislation responding to the United States Supreme Court decisions in *Viking River Cruises* and *Dobbs* regarding the Private Attorneys General Act and abortion respectively. It also remains to be seen whether the Legislature will attempt to further extend the so-called "employee information" exception for the California Consumer Privacy Act (CCPA), which is otherwise set to expire on December 31, 2022. So far, however, the actual text of any such proposed legislation for these items has not yet been introduced.

Looking ahead, the California Legislature will be on recess until August 1, 2022, at which point the Assembly and Senate will need to pass bills before the August 31st deadline to send any bills to Governor Newsom.

In the interim, another California summer tradition is California cities and/or counties raising their minimum wage levels on July 1, 2022, and this year is no exception with many cities (including Los Angeles, San Francisco and Berkeley [to name just a few]) increasing their minimum wage further above the state minimum wage. At the federal level, the Internal Revenue Service has also recently announced that, effective July 1, 2022, the standard mileage reimbursement rate will increase to 62.5 cents for the remainder of this calendar year.

Below is a summary of the new laws recently signed by Governor Newsom, followed by the key employment bills currently pending, organized by subject matter, as well as some local or agency developments affecting employers and human resource professionals.

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NEW LAWS AND REGULATIONS

California

Statewide Minimum Wage Increases to $15.50 on January 1, 2023

Enacted in 2016, SB 3 implemented a series of annual increases to the statewide minimum wage until reaching $15.00 per hour. Presently, the statewide minimum wage is $15.00 per hour for employers with 26 or more employees, and $14.00 per hour for employers with 25 or fewer employees (with the minimum wage for these smaller employers scheduled to increase to $15.00 per hour on January 1, 2023).

However, SB 3 also contains provisions requiring further minimum wage increases if the Consumer Price Index exceeds certain enumerated levels, which it has over the last year. Accordingly, the statewide minimum wage will increase to $15.50 per hour for all employers, regardless of the number of employees, on January 1, 2023. The minimum salary threshold necessary to maintain an employee's exempt status will also increase to $64,480 annually and to $5,373.33 per month on January 1, 2023.

On July 1, 2022, a number of California cities or counties (including Los Angeles, San Francisco, and Berkeley) increased their minimum wage, including often fairly dramatically above the state minimum wage. A complete list of these city and county-level minimum wage increases in California is available at https://www.govdocs.com/california-minimum-wage/.

DFEH Acting in Public Interest (AB 2662)

This law declares that in enforcing the FEHA, the Department of Fair Employment and Housing represents the state and effectuates the declared public policy of California to protect the rights of all persons to be free from unlawful discrimination and other FEHA violations. It is intended to be declarative of existing law and to codify the holding in *Department of Fair Employment and Housing v. Cathy's Creations, Inc*. (2020) 54 Cal.App.5th 404, 410.

Federal Agency

IRS Increases Mileage Reimbursement Rate for Remainder of 2022

Although the Internal Revenue Service usually announces updated mileage reimbursement rates at the end of the calendar year, on June 9, 2022, it announced a mid-year increase in response to historically high gas prices. https://www.irs.gov/newsroom/irs-increases-mileage-rate-for-remainder-of-2022. Accordingly, effective July 1, 2022, and through the remainder of 2022, the optional standard mileage rate will increase to 62.5 cents per mile, up four cents from the 58.5 cents rate that took effect January 1, 2022.

California Agency

Changes to Definition of "Close Contact" for COVID-19 Purposes

CalOSHA updated its Emergency Temporary Standards and corresponding FAQs in late June. Notably, there are several revised definitions that will be applied in connection with the California Department of Public Health's recommendations regarding isolation and quarantine periods:

1. “Close Contact” is now defined as someone sharing the same indoor airspace (e.g., home, clinic waiting room, airplane etc.) for a cumulative total of 15 minutes or more over a 24-hour period (for example, three individual 5-minute exposures for a total of 15 minutes) during an infected person's infectious period.

2. “Infectious Period” is now defined as:

    a. For symptomatic infected persons, 2 days before the infected person had any symptoms through Day 10 after symptoms first appeared (or through Days 5-10 if testing negative on Day 5 or later), and 24 hours have passed with no fever, without the use of fever-reducing medications, and symptoms have improved, OR

    b. For asymptomatic infected persons, 2 days before the positive specimen collection date through Day 10 after positive specimen collection date (or through Days 5-10 if testing negative on Day 5 or later) after specimen collection date for their first positive COVID-19 test.

    For the purposes of identifying close contacts and exposures, infected persons who test negative on or after Day 5 and end isolation are no longer considered to be within their infectious period.

For the most up-to-date information regarding current notification, isolation, and testing guidelines, please check the state website here.

Local Ordinances

San Francisco Amends Family Friendly Workplace Ordinance

In 2014, the Family Friendly Workplace Ordinance became operative in San Francisco. It gave certain employees the right to request flexible or predictable work arrangements to assist with caregiving responsibilities. On March 14, 2022, the City of San Francisco amended its Family Friendly Workplace Ordinance. The amendments will go into effect July 12, 2022, and will affect any employer with 20 or more employees (in any location) which has workers either *working in* or *telecommuting out of* San Francisco. Pursuant to the amendment, the ordinance will apply to employers whose employees telecommute out of San Francisco if the employer maintains an office or worksite within the city of San Francisco at which the employee may work, or prior to the COVID-19 pandemic was permitted to work.

The ordinance covers employees who are employed in San Francisco, have been employed for six months or more by their current employer, and work at least eight hours *per week* in San Francisco on a regular basis.

While the existing ordinance simply gives employees the right to request flexible or predictable work arrangements, the amendment will *require* employers to provide predictable or flexible working arrangements for qualifying caregiving responsibilities upon request by the employee except where it would create an undue hardship, as defined. The amendment also requires employers to engage in a good-faith interactive process to find predictable or flexible arrangements. There are specific requirements for responding to an employee request, including that the employer must respond to a request in writing within 21 days, must explain the basis for any denial, and – if a request is denied – must engage in a good faith interactive process to determine an alternate flexible or predictable working arrangement that is acceptable to the employee and employer. An

employer may deny a flexible or predictable working arrangement only if granting such an arrangement would cause the employer undue hardship by causing the employer significant expense or operational difficulty when considered in relation to the size, financial resources, nature, or structure of the employer's business.

The ordinance, as amended, protects caregiving for a child/children under the age of 18, a person/persons with a serious health condition in a family relationship with the employee, or any person age 65 or older who is in a family relationship with the employee. "Family relationship" is defined as a relationship in which a caregiver is related by blood, legal custody, marriage, or domestic partnership to another person as a spouse, domestic partner, child, parent, sibling, grandchild, or grandparent.

The San Francisco Office of Labor Standards and Employment has released Proposed Rules to implement the FFWO amendments. More information is available at the city's website: https://sfgov.org/olse/family-friendly-workplace-ordinance-ffwo.

PENDING BILLS

Harassment/Discrimination/Retaliation

Protections for Non-Work-Related Marijuana Usage and Testing Limitations (AB 2188)

This bill addresses concerns that some employer drug testing focuses on the presence of so-called "nonpsychoactive cannabis metabolites" that do not indicate actual impairment at work as opposed to simply revealing an employee may have smoked marijuana at some point and away from the workplace. It is also intended to encourage employers to rely more on testing for tetrahydrocannabinol (THC), which measures active impairment or psychoactive effects. Accordingly, it would amend the FEHA to preclude discrimination against an employee or applicant based upon (a) the person's use of cannabis off the job and away from the workplace (but it would not prohibit "scientifically valid" pre-employment drug screening conducted through methods that do *not* screen for nonpsychoactive cannabis metabolites) ; or (b) an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids. Given the bill's purpose, while it limits testing for nonpsychoactive cannabis metabolites, it does not limit THC testing.

To address employer concerns raised with prior versions, this bill would not permit employees to possess, be impaired by or to use cannabis at work, nor would it affect an employer's rights or obligations to maintain a drug and alcohol-free workplace, as specified under Health and Safety Code section 11362.45 or any other rights or obligations of an employer specified by federal law or regulation. This bill would not apply to employees in the building and construction trades or applicants or employees in positions that require a federal background investigation or security clearance. Additionally, the bill would not preempt state or federal laws requiring applicant or employee testing for controlled substances, or the manner in which this testing occurs, including laws and regulations requiring applicant or employee testing as a condition of receiving federal funding or federal licensing-related benefits.

If enacted, the new rules would become operative on January 1, 2024.

This bill is similar to AB 1256, which stalled in 2021.

Status: Passed the Assembly and the Senate Judiciary and Labor Committees and is pending in the Senate Appropriations Committee.

Revival of Sexual Assault and Other Claims (Including Wrongful Termination and Sexual Harassment) (AB 2777)

Entitled the Sexual Abuse and Cover Up Accountability Act, this bill would address concerns that victims of sexual assault may need additional time to pursue legal claims by modifying the statute of limitations for two types of sexual assault claims.

The first change would involve claims of adult sexual assault and addresses concerns that a recent extension of the relevant statute of limitations to 10 years was insufficient to revive otherwise stale claims. For background, in 2019, California enacted AB 1619 extending the statute of limitations for sexual assault from two to ten years. However, AB 1619 did not expressly state that it was intending to revive otherwise time-barred claims. Thus, AB 2777 would provide that any sexual assault claim (as defined) based upon conduct that occurred after January 1, 2009 (ten years preceding AB 1619) and commenced after January 1, 2019, which would have been barred solely because of the statute of limitations, is timely if filed by December 31, 2026.

The second change has greater potential applicability to employers and involves damages suffered because of a cover up of sexual assault "or other inappropriate conduct, communication, or activity of a sexual nature" occurring on or after a victim's 18th birthday, which could include "related claims" including wrongful termination and sexual harassment. For such claims that would otherwise be barred because the statute of limitations expired before January 1, 2023, it would allow such claims to be revived if filed between January 1, 2023, and December 31, 2023. This provision could theoretically apply to *any* time-barred covered claim and does not have a limit on the age of the claims that may be revived.

To qualify for this claim revival, a plaintiff would be required to allege all of the following: (a) they were sexually assaulted or subjected to other inappropriate conduct, communication, or activity of a sexual nature; (b) one or more entities are legally responsible for damages arising out of this alleged conduct; and (c) the entity or entities (including their agents, officers or employees) engaged in or attempted to engage in a "cover up" of a *previous instance* of sexual assault or other inappropriate conduct by an alleged perpetrator of such abuse.

For purposes of this new law, "cover up" would mean a concerted effort to hide evidence relating to a sexual assault or other inappropriate conduct, communication or activity of a sexual nature that incentivizes individuals to remain silent or prevents information relating to this behavior from being public or disclosed to the plaintiff, including the use of non-disclosure or confidentiality agreements.

As noted, if revival occurs, it will apply to any "related claims" arising out of the misconduct, including for wrongful termination and sexual harassment, except for claims (a) litigated to finality in a court of competent jurisdiction before January 1, 2023, or (b) that have been compromised by a written settlement agreement between the parties entered into before January 1, 2023.

Status: Unanimously passed the Assembly and has passed the Senate Judiciary Committee and is pending in the Senate Appropriations Committee.

Retaliation Protections Related to Natural Disasters (SB 1044)

This bill responds to media reports of employees killed or injured during recent natural disasters (e.g., warehouse employees affected the December 2021 tornado outbreak, or domestic workers forced to work during

California's fire outbreaks). Accordingly, it would preclude employers from taking or threatening adverse action against employees who refuse to report to or who leave a workplace within the affected area because the employee felt unsafe due to a "state of emergency" (as defined) or an "emergency condition." This particular provision would *not* apply to various statutorily enumerated employers and employees, including first responders, disaster service workers, health care workers, employees working on a military base or in the defense industrial base sector, utility workers, licensed residential care facilities and certain "depository institutions" (as defined).

A broader provision would preclude all employers from preventing employees from accessing their mobile devices or other communications device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety.

For purposes of this bill, "state of emergency" would be defined as any of the following that is declared in the county where a worker lives or works, but *is not* a health pandemic, and poses an imminent and ongoing risk of harm to the worker, the worker's home or the worker's workplace: (1) a Presidential declaration of a major disaster or emergency caused by natural forces, (2) a declared state of emergency under the Government Code; or (3) a federal, state, regional or county alert of imminent threat to life or property due to a natural disaster or emergency. "Emergency condition" would mean the existence of either (1) 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 (2) 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. The bill defines "feels unsafe" to mean that a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the premises. However, the bill also provides that it is intended to apply only to emergency conditions positing an imminent risk of harm and not simply to a declared official state of emergency that remains in place (i.e., COVID-type restrictions).

As in other time-off contexts, an employee will be required, when feasible, to notify the employer of the state of emergency or emergency condition requiring the employee to miss or leave work. If such notice is not feasible, the employee shall notify the employer of these conditions afterwards.

The bill specifies that in a PAGA action for violations of the chapter, an employer shall have the right to cure alleged violations as set forth in Labor Code Section 2699.3.

Status: Passed the Senate and has passed the Assembly Labor and Employment and Emergency Management Committees on party-line votes and is pending in the Assembly Appropriations Committee.

Preventing Harassment of Customers (AB 2448)

California's Unruh Civil Rights Act (Civil Code section 51 *et seq.*) prohibits business establishments from discriminating (i.e., withholding services or denying accommodations) based on specified characteristics, including sex, race, religion, sexual orientation, medical condition, national origin, or immigration status. Citing concerns about increased bias-based harassment of the public (particularly against Asian Americans following the pandemic), this bill would require certain businesses to address the harassment of their customers on their premises and to provide training to their employees regarding how to identify discrimination and harassment.

Specifically, private businesses with a physical presence in California that are open to the public and have 100 or more employees in California would be required to address the harassment (as defined) of customers on their "premises," whether by the businesses' employee or a third-party not affiliated with the business. A business's premises would include areas inside the building that are under the business's possession, management, or control, as well as areas outside of the building if under the business's possession, management, or control, such as parking lots and outdoor eating areas.

"Harassment" would be defined to include "words, gesture, or actions directed at a specific person that the person finds unwelcome and offensive that are on account of any characteristic listed or defined in [the Unruh Civil Rights Act], or because the person is perceived to have one or more of those characteristics or because the person is associated with a person who has or is perceived to have one or more of these characteristics." As presently drafted, this definition of "harassment" appears to differ from the physically violent behavior needed for temporary restraining order purposes, and from the "severe or pervasive" standard used for FEHA harassment purposes.

Covered businesses will be required to do all of the following: (1) post in a visible and conspicuous space a DFEH-created sign notifying customers of their rights and how to report harassment, (2) ensure employees receive training regarding such third-party bias-based harassment, and (3) develop a policy regarding how the business collects and maintains data related to such third-party harassment, collect and maintain data in accordance with this policy, notify employees of the policy, and provide this data to the DFEH upon request. The DFEH would create a standardized form to report incidents of harassment, which shall specify that employees are to make good faith determinations as to whether an incident qualifies as harassment for the purposes of reporting the data. Businesses would not be required to affirmatively intervene in harassment upon their premises but would be precluded from retaliating against any employee for actions taken or not take pursuant to these new requirements.

Similar to current FEHA harassment training requirements, the DFEH will be required by June 30, 2024, to develop and make available an online training course for employees regarding discrimination and harassment at businesses (at least one hour in length by no longer than two hours, with no distinction between the training required for supervisory and nonsupervisory employees). The DFEH will also be required to provide certificates of training that would be portable across employers. By January 1, 2025, covered businesses will be required to provide such training to all employees in the state who interact with the public. Thereafter, businesses must provide refresher training every two years to employees who interact with the public and provide this training to new employees within six months of being hired or promoted, unless the employee has received the training from a prior employer within the two years preceding their hire. Such training would need to take place during regularly scheduled work hours, on paid time and at a time dedicated solely to the training.

The bill would authorize DFEH to receive, investigate, and prosecute reports of violations of the bill, meaning failure to put up the required sight, failure to provide the required training, or failure to take a report of harassment from a customer, and would establish a one-year limitations period for bringing such claims.

Status: Unanimously passed the Assembly and unanimously passed the Senate Judiciary and Labor Committees and is pending in the Senate Appropriations Committee.

Human Resources/Workplace Policies

Changes Regarding Pay Scale Postings and Annual Pay Data Reporting (SB 1162)

Pay equity concerns have been a primary legislative focus recently, and this law would update several recently enacted laws regarding pay scales and pay data reporting.

- Pay Scale Posting

Labor Code section 432.3 presently requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant after the applicant has completed an initial interview with the employer. This bill would require employers with 15 or more employees to post the pay scale within any job posting. Employers with 15 or more employees would also be required to provide the pay scale to a third party engaged to announce/post/publish a job posting, and the third party must include the pay scale in the job posting. Employers with fewer than 15 employees would still be required to provide the pay scale to an applicant upon reasonable request. While section 432.3 presently only requires employers provide such pay scales to "applicants," this bill would also require employers, upon reasonable request, to provide pay scale information to current employees in connection with the employee's current position. For purposes of this new requirement, "pay scale" means a salary or hourly wage range.

Employers would also be required to maintain records of a job title and wage rate history for each employee for the duration of employment plus three years after the end of employment. The Labor Commissioner would be entitled to inspect these records.

The bill would allow aggrieved individuals to file a civil action or a written complaint with the Labor Commissioner, establish a civil penalty of $100 to $10,000 per violation, and create a rebuttable presumption in favor of an employee's claim if an employer fails to keep required records.

Responding to employer concerns these Labor Code requirements potentially subject them to representative actions under the Private Attorneys General Act (PAGA), this bill would allow employers the opportunity to "cure" any PAGA claim after receiving notice, and outlines the specific methods for cure, depending on the violations alleged.

- Annual Pay Data Reporting

In 2020, California enacted SB 973 requiring private employers with 100 or more employees to file an annual Employer Information Report (EEO-1) pursuant to federal law and to submit a pay data report to the DFEH, including the number of employees by race, ethnicity, and sex in specified job categories. SB 973 allowed employers to comply with this new reporting requirement by submitting an EEO-1 to DFEH containing the same or substantially similar pay data information.

As often happens in California, SB 1162 would amend these new reporting requirements in several respects. First, while private employers with 100 or more employees must annually submit a pay data report to DFEH, this bill would also require employers with 100 or more employees to submit a separate pay data report for employees hired through labor contractors, and to disclose on the pay data report the ownership names of all labor contractors used to supply employees. The bill's author states this expansion to include labor contractor-related hiring is to combat employers trying to circumvent the current pay data reporting limited to employees,

and to expand the information collected when assessing pay equity issues. For purposes of this new law, a “labor contractor” means an individual or entity that supplies, either with or without contract, workers to perform labor within the client employer’s usual course of business.

Second, the pay data report would also now be required to include median and mean hourly rates for each combination of race, ethnicity, and sex within each job category. Third, employers would no longer be permitted to submit an EEO-1 in lieu of a pay data report.

Fourth, while the authors of SB 973 had previously stated these pay data reports would not be published, this bill would require the DFEH to publish private employer pay data reports on a public internet website, with the publication start date depending on the employer size (i.e., employers would 1000 or more employees would start in 2025, those with 500 or more in 2026, and those with 250 or more employees in 2027 and each year thereafter). However, the DFEH would not publish any individually identifiable information associated with a specific person. Responding to employer concerns this publication may lack necessary context, the DFEH would be required to provide a mechanism on its website for visitors to view additional information the employer wishes to provide regarding its pay data.

Fifth, this bill would impose new civil penalties of $100 per employee on an employer who fails to file the required report for a first offense, and $200 per employee for subsequent violations. Sixth, it would require these reports be due by the second Wednesday of May of each year (beginning in May 2023) rather than the current March 31st deadline.

Lastly, responding to employer concerns these published reports will subject them to suit but without sufficient context, SB 1162 would specifically provide those civil actions based solely upon these pay data reports will be subject to a pleading challenge.

Status: Passed the Senate and has passed the Assembly Judiciary and Labor and Employment Committees and is pending in the Assembly Appropriations Committee.

Public Access to Employee Restrooms (AB 1632)

Since 2005, 17 states have passed laws requiring businesses to allow members of the public experiencing a medical emergency to use employee-only restrooms. AB 1632 would enact a similar requirement in California.

Accordingly, places of business open to the public for the sale of goods and that have a toilet facility for their employees would need to permit certain individuals who are lawfully on the business’ premises to use that toilet facility during business hours, even if the business does not normally allow public usage of the employee restrooms. Such access would need to be provided if all of the following conditions are met: (1) the individual requesting access has an “eligible medical condition” or uses an ostomy bag; (2) three or more employees are working onsite when the employee requests access; (3) the employee toilet facility is not located in an area where access would create an obvious health/safety risk to the requesting individual or an obvious security risk to the place of business; (4) use of the employee toilet facility would not create an obvious risk or safety risk to the requesting individual; and (5) a public restroom is not otherwise immediately accessible.

"Eligible medical condition" would be defined as Chron's disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome, or another medication condition that requires immediate access to a toilet facility.

Businesses would be permitted to require the individual to present reasonable evidence of an eligible medical condition or the use of an ostomy device. Such evidence would include a signed statement issued to the requesting individual by a physician, nurse practitioner or physician assistant on a form to be developed by California's State Department of Public Health. Businesses also would not be required to make any physical changes to the employee toilet facility to comply with this bill, and these employee toilet facilities would not be considered "places of public accommodation" for purposes of state disability law.

The Public Health Department would be solely responsible for enforcing these provisions (i.e., there would be no private civil action allowed), and violations would result in civil statutory penalties up to $100 per violation. Places of businesses would only be civilly liable for willful or grossly negligent violations. Employees of a business would not be subject to civilly liable, nor could they be discharged or subjected to other disciplinary action by their employer for any violations of these new access requirements.

Status: Unanimously passed the Assembly and has passed the Senate Business, Professions and Economic Development Committee and the Senate Health Committee and is pending in the Senate Appropriations Committee.

Expansion of Businesses Required to Post Human Trafficking Notice (AB 1661)

Existing law requires specified businesses and other establishments, including, among others, airports, rail stations, certain medical facilities, and hotels, to post a notice, as developed by the Department of Justice, which contains information relating to slavery and human trafficking, and imposes penalties for failing to comply. This bill would additionally require businesses providing hair, nail, and skin care (as defined) to post the notice.

Status: Unanimously passed the Assembly and the Senate and is being sent to Governor Newsom. This bill appears unopposed and likely to be signed into law.

New Requirements Regarding Employee Parking (AB 2206)

To combat air pollution and promote alternative transportation, Health and Safety Code section 43845 presently requires that in certain "air basins designated as a nonattainment area," employers with 50 or more employees that provide a parking subsidy to employees must also offer a "parking cash out program" to employees that do not use this parking. However, the fact that many commercial leases simply bundle parking with other services in the lease rather than separately designating the cost of parking spots has made it difficult for employers to calculate and pay out this subsidy. This reality has also made it difficult for the state agencies to enforce the law's requirements, including penalizing employers who were not paying this parking cash out programs.

To address these problems, this bill would revise the definition of "parking subsidy" to mean the difference between the price, if any, changed to the employee for the use of a parking space made available by the employer and the lowest of the following: (A) the market rate cost of parking available to the employee, which may (but is not required to be) reflected in the employer's lease; (B) the out-of-pocket amount paid by an employer for onsite or offsite employee parking acquired through the marketplace; or (C) the price for use of a

parking space located within on-quarter mile of the place of employment, as defined. If the monthly market rate of parking determined by these methods exceeds $350, the market value shall be assumed to be $350. If the market value cannot be established and the employer has documented its efforts to establish the value, the value shall be assumed to be equal to the lowest-priced transit serving the site or $50 per month, whichever is higher.

Whereas previously employers were not specifically required to provide a parking cash-out program unless the parking costs were specifically enumerated, employers would now be required to maintain such a program even if the lessor does not separately identify the market rate parking costs.

Status: Passed the Assembly and the Senate Transportation and Judiciary Committees and is pending on the Senate Floor.

Background Checks Involving Date of Birth and Driver's License Information in Court Records (SB 1262)

Background check companies typically use an individual's date of birth or driver's license information to effectively locate information related to an applicant or employee when performing a background check through court records, and to avoid the risk of returning information about another person with the same name. However, a recent California appellate court decision in *All of Us or None of Us v. Hamrick* (2021) 64 Cal.App.5th 751, held that California Rule of Court 2.507 precluded electronic access to such information in court records. Responding to concerns that this interpretation would complicate background checks and potentially lead to unverifiable "false hits" based on common names, this bill would specifically authorize searches and filtering of publicly accessible court records based on a criminal defendant's driver's license number or date of birth, or both.

Status: Unanimously passed the Senate and has unanimously passed the Assembly Public Safety Committee and is pending in the Assembly Appropriations Committee.

Sealing of Criminal Records Regarding Felony Convictions (SB 731)

Like many states, California has recently enacted several laws designed to remove employment barriers related to an applicant's arrest records or criminal convictions. These laws include California's "ban the box" law (AB 1008 [2017]), which generally limited an employer's ability to inquire about conviction history until after a conditional employment offer is made, and its automatic relief law (AB 1076 [2019]), which requires the state Department of Justice (DOJ) to affirmatively review and seal criminal record information related to certain convictions (generally misdemeanors).

This bill would expand these protections in several regards. First, it would expand the court's discretionary power to provide expungement relief to all felonies except those that require registration as a sex offender, where certain conditions are met. Second, it would expand automatic arrest record relief – i.e., where the state DOJ reviews and seals records rather than requiring an applicant to petition for such relief – to most felony offenses provided certain criteria are present (e.g., there is no indication criminal proceedings have been initiated, at least three calendar years have elapsed since the arrest date and no conviction occurred, or the arrestee was acquitted of any charges arising from that arrest).

Third, it would expand automatic conviction relief – where the state DOJ reviews records and grants relief without requiring a petition for relief – to convictions for non-violent, non-serious felonies that do not require sex offender registration provided certain criteria are present (e.g., completion of all terms of incarceration, probation, mandatory supervision, post-release community supervision, and parole, and a period of four years has elapsed during which the defendant was not convicted of a new felony offense). This form of conviction relief would have some limited implications (for example, it would not relieve a person of the obligation to disclose a criminal conviction in an application for employment as a peace officer and would not make a person eligible to provide defined in-home supportive services), and the prosecuting attorney or probation department may petition to prevent the relief based on a showing of a substantial threat to public safety.

In addition, the bill would specify that these various forms of conviction relief do not apply to teacher credentialing or employment in public education, except that the bill would prohibit denial of a credential based on a record of conviction for possession of specified controlled substances that is more than five years old and from which relief was granted.

This bill would not necessarily impose new affirmative duties upon employers, except to the extent it would further limit the information they can seek out and/or consider during background checks.

Status: After being passed by the Senate and then stalling in the Assembly in 2021, SB 731 was removed from the inactive list and passed by the Assembly after amendment on June 23, 2022. This bill has now passed the Assembly on a largely party-line vote and will to return to the Senate for concurrence in the Assembly amendments.

Prohibition on Confidentiality Agreements re: Dangers to Public Health or Safety (SB 1149)

This bill would prohibit confidentiality provisions in *any agreements between the parties to litigation* that limits disclosure of factual information related to actions for damages regarding a defective product or environmental condition that poses a danger to public health or safety – that is, a product or condition that has caused, or is likely to cause, significant or substantial bodily injury or illness or death. (The bill excludes civil actions regarding a motor vehicle brought pursuant to the Song-Beverly Consumer Warranty Act unless the action also includes a claim of physical personal injury.) This bill does not preclude a confidentiality provision regarding medical information or personal identifying information regarding an injured person, the amount of a settlement, or trade secrets (but disclosure of trade secrets may only be restricted based on a court order). However, as amended, it appears to apply to – and bar – stipulated protective orders or confidentiality agreements that would shield discovery materials from public disclosure as well as confidentiality provisions in settlement agreements.

Although not obviously applicable to most common disputes between employers and employees, practitioners should take note as public safety could be implicated by certain settlements of employment disputes, and this bill would provide that an attorney's failure to comply with these provisions may be a ground for professional discipline. Notably, any person, including a representative of the media, can challenge any provision that restricts disclosure of covered information.

Status: Passed the Senate and the Assembly Judiciary Committee and is pending on the Assembly floor.

Creation of Ultrahigh Heat Standard and Revision of Wildfire Smoke Standard (AB 2243)

Existing law, the California Occupational Safety and Health Act of 1973 (OSHA), requires employers to comply with certain safety and health standards, including a heat illness standard to prevent heat-related illness in outdoor places of employment and a standard for workplace protection from wildfire smoke. This bill would require the Division of Occupational Safety and Health to submit a rulemaking standard to *consider* revising the heat illness standard to include an "ultrahigh" heat standard for employees in outdoor places of employment for heat in excess of 105 degrees Fahrenheit, which will include mandatory paid preventative cooldown rest periods every hour, readily and immediately available accessible cool water, and increased employer monitoring of employees for symptoms of heat-related illnesses, and to require employers to provide a copy of the Heat Illness Prevention Plan to all new employees upon hire and upon training required by 8 C.C.R. § 3395, but no more than twice per year to each employee. The bill would also require a rulemaking proposal to consider revising the wildfire smoke standard to reduce the existing air quality index threshold at which respiratory protective equipment becomes mandatory and to remove the requirement that the employer reasonably anticipate the employees may be exposed to wildfire smoke. Finally, the bill would require the division to consider developing or revising regulations related to additional protections related to acclimatization to higher temperatures and training programs for outdoor employees in administering first aid related to extreme heat-related illnesses. The bill would require the division to submit these rulemaking proposals before December 1, 2025 and require the standards board to consider adopting revised standards before December 1, 2025.

Status: Passed the Assembly and is the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Creation of Advisory Committees Re: Extreme Heat and Humidity (AB 1643)

This bill would require the Labor and Workforce Development Agency to establish an advisory committee to study the effects of extreme heat on California's workers and to recommend regulatory changes to improve the state's understanding of the effects of extreme heat on California's workers and economy and report its findings no later than January 1, 2025.

Status: Unanimously passed the Assembly and has unanimously passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Employee and Subcontractor Compliance with Workplace Safety Requirements at Live Events (AB 1775)

This bill applies to "contracting entities," defined as bodies that contract with an entertainment events vendor to set up, produce, and tear down a live event at a public events venue – including state or county fairgrounds, state parks, the University of California, or California State University. Contracting entities would need to require an entertainment events vendor to certify for their employees and subcontractors' employees that those individuals have complied with specified training, certification, and workforce requirements, including that employees involved in setting up, tearing down, or the production of a live event at the venue have completed proscribed OSHA training. The bill imposes civil penalties against entertainment events vendors for violation of the requirement.

Status: Passed the Assembly and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

"High Road Employment Plan" Certification for State Contractors (SB 700)

This bill would require each bidder for a state contract, as a condition of eligibility, to submit a High Road Employment Plan to the Department of General Services certifying, under penalty of perjury, that all workers are properly classified pursuant to Labor Code section 2750.5. This plan will also need to include all of the following information: (1) the number of full-time employment jobs proposed to be retained and created by the contract; (2) wage and benefit amounts by job classification for nonsupervisory employees under the contract; (3) the number of jobs specifically proposed to be retained and created for individuals "facing barriers to employment" (as defined by Section 14005 of the Unemployment Insurance Code) under the contract; (4) detailed information regarding any training or apprenticeship programs; and (5) planned or actual retention of nonsupervisory workers by percentage of the workforce.

In addition, the plan must also demonstrate job quality standards and employment practices that include, but are not limited to, all of the following: (1) compliance with the "high road standard" (also defined in section 14005); (2) consistency with workplace laws and regulations, including to remedy past problems and compliance with Labor Code section 2775; (3) adoption of mechanisms to include "worker voice and agency" in the workplace; (4) offering a stable employment schedule; (5) providing benefits such as health care, retirement, paid sick leave and paid family leave; (6) opportunities for career advancement and training with wage increases as skills are acquired; and (7) providing safe and healthy working conditions.

The Labor and Workforce Development Agency, the Government Operations Agency (including the Department of General Services) and the Governor's Office of Business and Economic Development will comprise an "Interagency High Road Team" to develop evaluation metrics for plans submitted by interested bidders.

These amendments reflect the Legislature's increased focus on so-called "high road employment" (i.e., requiring employers to satisfy various criteria set by statute) as another bill (AB 2095) was introduced but recently stalled.

Status: Presently pending in the Assembly Labor and Employment and Appropriations Committees. However, the proposals discussed above were introduced only recently by "gut and amend" changes, meaning this bill would need to return to the Senate for concurrence in the Assembly amendments.

Establishing "Juneteenth" as a State Holiday (AB 1655)

This bill would add June 19, known as "Juneteenth," as a state holiday and would authorize state employees to elect to take time off with pay, with specified exemptions.

Status: Unanimously passed the Assembly and has unanimously passed the Senate Governmental Organization and Rules Committees and is pending in the Senate Appropriations Committee. This bill does not appear to be opposed.

<u>COVID-19-Related Proposals</u>

Extended Employer Notice Requirements Regarding COVID-19 Exposure and Expanded Cal-OSHA Powers (AB 2693)

In 2020, California enacted new mandatory employer notification requirements related to potential COVID-19 exposures in the workplace. (AB 685, codified at Labor Code section 6409.6 and 6325.) Specifically, if an

employer or a representative of the employer receives a "notice of potential exposure to COVID-19," the employer must provide statutorily enumerated notices within one business day of the notice of potential exposure, and potentially may also have to provide separate notice to local public health agencies within 48 hours. Cal-OSHA also can prohibit employer access to and usage of portions of the worksite that may constitute an imminent hazard to employees due to potential COVID-19 exposure. These requirements are set to expire on January 1, 2023. The new bill would extend these requirements through January 1, 2025.

Status: Passed the Assembly and has passed the Senate Labor Committee and is pending on the Senate Floor.

Extension of Presumption of Workers' Compensation Coverage for COVID-19 (AB 1751)

On September 17, 2020, California created a rebuttable presumption of workers' compensation coverage for employees who contracted a COVID-19-related illness under certain circumstances, with slightly different rules depending on whether the workplace exposure occurred before or after July 6, 2020. (SB 1159, codified at Labor Code sections 3212.86, 3212.87, and 3212.88.) The original law is set to expire January 1, 2023. This new bill would extend the rules regarding the rebuttable presumption of coverage through January 1, 2025.

Status: Passed the Assembly and has passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

<u>Leaves of Absence/Time Off/Accommodation Requests</u>

Bereavement Leave Proposed Again (AB 1949)

An emerging criticism of the California Family Rights Act (CFRA) and the Family Medical Leave Act is that they provide time off to care for a seriously sick family member but provide no time off to the employee in the event the family member passes away.

Accordingly, this bill would require employers to provide up to five days of bereavement leave following the death of an employee's "family member" (e.g., spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law). This bill would apply to private employers with five or more employees and to any state or civil subdivision of the state (e.g., counties and cities), and employees would need to have been employed at least 30 days prior to the commencement of the leave to be eligible. However, it would not apply to employees covered by a collective bargaining agreement that contains specially enumerated provisions, including bereavement leave.

The days of bereavement leave would not need to be consecutive but must be completed within three months of the date of the person's death. For most employers, this bereavement leave would be unpaid (unless the employer has an existing bereavement leave policy requiring paid time off), but an employee may use otherwise accrued or available vacation, personal leave, or compensatory time off. If an employer has an existing leave policy providing less than five paid days of bereavement leave, the employee would still be entitled to five days of bereavement leave, consisting of the number of days of paid leave under the policy and the remaining days of unpaid bereavement leave under this new law.

For permanent state employees, the first three days of bereavement leave would be paid, and those employees would be entitled to request an additional two days without pay, but without the current requirement that these two additional days only apply for out-of-state deaths.

Notably, although this new law would be codified in a new section (Government Code section 12945.7) immediately after the statute creating CFRA, bereavement leave would be considered separate and distinct from time off under the CFRA.

If requested by the employer, an employee would need to provide within 30 days of the first day of the leave documentation of the person's death, including a death certificate or a published obituary or written verification of death, burial, or memorial service from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency. Employers would need to maintain the confidentiality of employees requesting this leave and to treat any documentation obtained as confidential and not disclose it except where required by law.

Because this new right would be codified at new Government Code section 12945.7, employees who believe they have been discriminated or retaliated against (or denied available time off) would presumably be entitled to the same remedies available for violations of the CFRA and/or the FEHA. However, alleged violations of this new section against smaller employers (i.e., with between five and nineteen employees) would also be subject to the recently created mediation pilot program for CFRA claims against such smaller employers.

Similar bills (including AB 2999 in 2020 and AB 95 in 2021) have stalled. However, several other states (e.g., Oregon and Maryland) and the City of Pittsburgh have recently enacted bereavement leave laws, suggesting this may be an emerging trend.

Status: Passed the Assembly with bi-partisan support and has passed the Senate Judiciary and Labor Committees and is pending in the Senate Appropriations Committee.

Paid Parental Leave for California State University Employees (AB 2464)

New Education Code section 89519.3 would entitle California State University "employees" (as defined in Government Code section 3562) to a leave of absence with pay for one semester of an academic year, or an equivalent duration, in a one-year period following the birth of a child or placement of a child with an employee for adoption or foster care The leave would need to be taken in consecutive periods unless otherwise agreed to by mutual consent between the employee and an appropriate administrator, and only working days would be charged against the leave of absence.

Status: Passed the Assembly and has passed the Senate Labor Committee and is pending in the Senate Appropriations Committee.

Pay and Benefits for State Employees for National Guard Drills (SB 984)

Presently, state employees who are members of reserve military units and the National Guard are entitled to an unpaid leave of absence to attend scheduled reserve drill periods or to perform other inactive duty reserve obligations. This bill would repeal these provisions regarding unpaid time off. Instead, state employees, who are already entitled to up to 30 days of compensation for short-term military leave for active-duty military duty, would be able to use these 30 days of paid military leave for periods of inactive duty training or "drills."

Status: Unanimously passed the Senate and has unanimously passed the Assembly Public Employment and Military and Veterans Affairs Committees and is pending in the Assembly Appropriations Committee.

PENDING BILLS

Changes to Active-Duty Compensation and Benefits for State Employees (AB 1768)

Existing law references specific provisions of federal law for purposes of identifying events that establish how long state employees may receive compensation and benefits while serving as members of the California National Guard or a United States military reserve organization. This bill would delete the references to federal law but would leave in place the maximum period of compensation, which is 180 days. The apparent purpose is to remove the possibility for future confusion by state agencies when processing claims.

Status: Passed the Assembly, and unanimously passed the Senate Labor and Military and Veterans Affairs Committees and is pending in the Senate Appropriations Committee.

Wage & Hour

Fast Food Industry Regulations (AB 257)

This bill would establish the Fast-Food Sector Council within the Department of Industrial Relations (DIR), whose purpose would be to establish minimum standards on wages, working hours, and other working conditions related to the health, safety, and welfare of fast-food restaurant workers. It would define a fast-food restaurant, including that it is a part of a set of restaurants consisting of 30 or more establishments nationally that share a common brand or standards, and that it primarily provides food or beverages in disposable containers for immediate consumption either on or off the premises with limited to no table service. These minimum standards, however, would not supersede those provided for in a collective bargaining agreement provided the agreement expressly provides for the wages, hours of work and working conditions of the employees, and the agreement provides better wages and conditions than the minimum standards established by the council.

The bill would also require that fast food restaurant franchisors shall be responsible for ensuring that franchisees comply with a variety of employment, worker, and public health and safety laws and orders, including those related to unfair business practices, employment discrimination, the California Retail Food Code, a range of labor regulations, emergency orders, and standards issued by the council. Franchisors would also be jointly and severally liable for violations of these same laws by their franchisees and the specified laws could be enforced against a franchisor to the same extent that they may be enforced against a franchisee. The bill would prohibit a fast-food franchisee from waiving this provision or from agreeing to indemnify its franchisor for liability.

The bill would give fast food franchisees a cause of action against franchisors for monetary or injunctive relief if the terms of a franchise prevent or create a substantial barrier to a fast food restaurant franchisee's compliance with the specified laws, orders, and regulations, and would establish a rebuttable presumption that any changes in the terms of a franchise that increase the costs of the franchise to the franchisee create a substantial barrier to compliance with these laws and orders.

It would also be unlawful for a fast food restaurant operator to discharge or discriminate or retaliate against any employee because the employee made a complaint or disclosed information regarding employee or public health and safety; the employee instituted, testified in, or participated in a proceeding relating to employee or public health or safety; or the employee refused to perform work in a fast food restaurant because the employee had reasonable cause to believe the practices or premises of the fast food restaurant would violate any specified worker and public health and safety laws, regulations or orders, or would pose a substantial risk to the health and safety of the employee, other employees, or the public. The bill would create a private right of action for

violation of this provision and allow treble damages for lost wages and work benefits, along with attorney's fees and costs. There would be a rebuttable presumption of unlawful discrimination or retaliation if a fast-food restaurant operator discharges or takes any other adverse action against one of its employees within 90 days following the date the operator had knowledge of the employee's protected action.

Status: Passed the Assembly and has passed the Senate Labor and Judiciary Committees and is pending in the Senate Appropriations Committee.

Further Garment Manufacturing Changes (SB 1260)

In 2021, California enacted SB 62 to address wage and hour violations in the garment manufacturing industry by, amongst other things, requiring that various entities in the garment manufacturing process (e.g., manufacturers, contractors, brand guarantors, etc.) be jointly and severally liable for damages and penalties flowing from such violations. This bill would specify that such damages for joint and several liability purposes include liquidated damages in an amount equal to the wages unlawfully withheld and liquidated damages in an amount equal to the unpaid overtime compensation due.

Status: Passed the Senate and the Assembly Labor and Employment and Judiciary Committees on party-line votes and is pending on the Assembly floor.

Extension of Meal and Rest Period Requirements to Employees of Public Hospitals (SB 1334)

Existing law requires an employer to provide specified meal and rest periods to employees of private sector hospitals and provides a remedy of one hour of premium pay for missed meal and rest breaks, while excepting employees in the public sector from these requirements. This bill would apply to employees who provide direct patient care or support direct patient care in a general acute care hospital, clinic, or public health setting and who are employed by the state, political subdivisions of the state, municipalities, and the regents of the University of California. Employees would be entitled to one unpaid 30-minute meal period on shifts over 5 hours and a second unpaid 30-minute meal period on shifts over 10 hours, as well as a rest period based on the total hours worked daily at the rate of 10 minutes net rest time per 4 hours worked or major fraction thereof. Employers would be required to pay one hour of pay at the employee's regular rate of compensation for each meal period violation and rest period violation.

Status: Passed the Senate and has passed the Assembly Labor and Employment Committee and is pending in the Assembly Appropriations Committee.

Changes to Final Pay Rules for Seasonal Employees (AB 2133)

Labor Code section 201 currently regulates the payment of wages after an employer discharges an employee and provides that if an employer lays off a group of seasonal employees employed in the curing, canning, or drying of fruit, fish, or vegetables, the employer must pay final wages within a reasonable time, not to exceed 96 hours. This bill would reduce the time limit on payment of such wages to 48 hours.

Status: Passed the Assembly and the Senate Labor Committee and is pending on the Senate Floor.

Extended Exemption from "ABC Test" for Commercial Fishers (AB 2955)

This bill would extend from January 1, 2023, to January 1, 2026, the exemption from the so-called "ABC Test" for employee classification purposes for commercial fishers working on an "American vessel" (as defined). During this period, these relationships would continue to be governed by the multifactor *Borello* test for purposes of determining whether the fisher is an employee or an independent contractor.

Status: Unanimously passed the Assembly and unanimously passed the Senate Labor Committee and is pending in the Senate Appropriations Committee. However, this bill was previously pending as a minimum wage citation bill and was just "gutted and amended" to recharacterize as an employee classification bill. Accordingly, it will need to return to the Assembly for concurrence in these substantive amendments.

Public Sector/Labor Relations

Penalties and Potential Liability for Discouraging Union Membership (SB 931)

Government Code section 3550 currently prohibits a public employer from deterring or discouraging employees or applicants from becoming members of an employee organization, authorizing representation by an employee organization, or authorizing dues or fees to an employee organization. This bill would authorize an employee organization to bring a claim before the Public Employment Relations Board alleging violation of these rules and would establishing a civil penalty up to $1000 for each affected employee, not to exceed $100,000 in total, to be deposited in the General Fund. The bill would instruct the Board to award attorney's fees and costs to a prevailing employee organization unless the Board finds the claim was frivolous, unreasonable, or groundless when brought, or the employee organization continued to litigate after it clearly became so.

Status: Passed the Senate and has passed the Assembly Judiciary and Public Employment Committees and is pending in the Assembly Appropriations Committee.

New Labor Relations Rules for Agricultural Employers (AB 2183)

This bill makes several changes to regulation of labor relations for agricultural employees. First, it would allow a labor organization to obtain an agricultural employer's employee list upon notice of an intention to organize. The employer would have to submit an employee list to the Agricultural Labor Relations Board within five days from the date of filing the notice and, if the employer contends the unit named in the notice is inappropriate, the employer will have to submit written arguments in support of its contention. The bill would also permit agricultural employees, as an alternative to holding a secret ballot election, to select labor representatives through representation ballot card election by submitting cards signed by majority of employees in a bargaining unit. It would create civil penalties for employers who commit unfair labor practices of up to $10,000. The bill would also require an employer who appeals or petitions for writ of review of any order of the board involving make-whole, backpay or other monetary awards to employees to post an appeal bond in the amount of the entire economic value of the order.

***Status*:** Passed the Assembly and the Senate Labor Committee and Judiciary Committee and is pending in the Senate Appropriations Committee.

<u>**State-Provided Benefits**</u>

Increase Paid Family Leave Benefits (SB 951)

To address concerns the current Paid Family Leave benefits paid by the state Disability Fund are insufficient to enable many lower wage workers to take family leave, this bill would increase the weekly benefits from 60% to up to 70% of an employee's wages (subject to certain caps). These increased benefits would begin January 1, 2025. The bill would also remove a limitation on workers' contributions to the Unemployment Compensation Disability Fund. This is a modified version of AB 123, which passed the Legislature last year but was vetoed by the Governor.

Status: Passed the Senate and has passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

Pilot Program Regarding Unemployment Assistance for Undocumented Workers (AB 2847)

Existing law prohibits payment of unemployment compensation benefits to a person who is not a citizen or national of the United States, unless that person is lawfully admitted for permanent residence, was lawfully present for the purposes of performing work, or was permanently residing in the United States under color of law. This bill would establish, until January 1, 2025, the "Excluded Workers Pilot Program" to provide income assistance to excluded workers who are not eligible for state or federal unemployment benefits. The bill would apply to individuals who reside in California and who performed at least 93 hours of work or earned at least $1,300 in gross wages over the course of three calendar months (which do not need to be consecutive) for work performed in California within the 12 months preceding their application for benefits. Eligibility would be based on self-attestation and submission of specified documentation to establish proof of work history or a credibility interview. The bill would make individuals eligible to receive $300 per week for each week of unemployment between January 1, 2024, and December 31, 2024, up to a maximum of 20 weeks. The bill would require a separate appropriation by the Legislature of sufficient funds to carry out the program.

Status: Passed the Assembly and the Senate Labor Committee and Judiciary Committee and is pending in the Senate Appropriations Committee.

Treatment by Licensed Clinical Social Workers under Workers' Compensation (SB 1002)

Existing workers' compensation law requires employers to provide medical services reasonably required to cure or relieve an injured worker from the effects of covered injuries. This bill would expand the meaning of medical treatment to include the services of a licensed clinical social worker (LCSW) and would authorize an employer to provide an employee with access to an LCSW. The bill would authorize medical provider networks to add LCSWs as providers and would prohibit an LCSW form determining disability, as specified.

Status: Unanimously passed the Senate and has passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

Changes to Workers' Compensation Liability Presumptions, Coverage, and Penalties (SB 1127)

Existing law provides that if an employer does not reject liability within 90 days after receiving an injured employee's claim form, an injury is presumed compensable under the workers' compensation system. This bill

would reduce that period to 75 days for certain injuries for law enforcement or first responders. In addition, the bill would increase the number of compensable weeks for specified firefighters and peace officers for illness or injury related to cancer from 104 weeks to 240 weeks. Finally, the bill would increase the penalty for unreasonably rejecting specified claims for law enforcement or first responders from the current amount (25% of the unreasonably delayed or refused claim or a minimum of $10,000) to five times the amount of the benefits unreasonably delayed, up to a maximum of $50,000.

Status: Passed the Senate and has passed the Assembly Insurance Committee and is pending in the Assembly Appropriations Committee.

Extension of Provisions for Electronic Application for Work Sharing Program Under Unemployment Insurance Law (AB 1854)

Existing unemployment compensation law deems an employee unemployed in any week if the employee works less than their usual weekly hours of work because of the employer's participation in a work sharing plan that meets specified requirements, pursuant to which the employer, in lieu of a layoff, reduces employment and stabilizes the workforce. Existing law creates an alternative process for submitting and approving employer work sharing plan applications, allowing applications to be submitted electronically. This law is in effect until January 1, 2024. This bill would extend these provisions indefinitely.

Status: Unanimously passed the Assembly and Senate and is being sent to Governor Newsom. This bill appears unopposed and is likely to be signed into law.

Miscellaneous

Call Center Job Protections (AB 1601)

This bill would require employers (as defined) of customer service employees working in a call center to provide at least 120 days' notice to the Labor Commissioner before relocating the call center from California to a foreign country. If a violation occurs, the Labor Commissioner would be authorized to award either a civil penalty up to $10,000 for every day of violation, or to award damages proportionate to the impact on the community as determined by a community impact study, for which the employer shall pay.

The Labor Commissioner will also compile and publish a list of employers providing notice regarding an intent to relocate, and the list will be made available to specified state entities. Employers appearing on the list will be ineligible for state grants, state-guaranteed loans, or tax benefits for five years after the date that the list is published and would be required to remit the unamortized value of any existing grant, guaranteed loan, or tax benefit, as specified.

The bill would also require that private entities which have contracted with the state of California for call center services as of January 1, 2023, must ensure that a certain percentage of services are performed in California.

Similar bills (AB 1677 in 2019 and AB 2317 in 2020) have previously stalled.

Status: Passed the Assembly and has passed the Senate Labor and Governmental Organization Committees and is pending in the Senate Appropriations Committee.

Tax Credits for Hiring Homeless of Foster Youth (SB 1484)

SB 1484 would provide a tax credit of either 25% or 40% of the first-year wages (capped at $2,400 per employee) if an employer hires an employee who is a foster youth or former foster youth (as defined).

Status: Unanimously passed the Senate and is pending in the Assembly Committee on Revenue and Taxation.

Remote Work for Finance Lender Employees (AB 2001)

While California's Financing Law (CFL) presently precludes finance lenders from transacting business at a location other than that identified in its license, this bill would authorize licensees under the CFL to designate employees who could work at a "remote location" (as defined) provided certain criteria are met (e.g., prohibiting consumer's personal information from being stored at the remote location unless stored on an encrypted device or encrypted media, as defined). In effect, it would codify the COVID-19 requirements issued by the Department of Financial Protection and Innovation to enable finance lender employees to work remotely during the initial stages of the pandemic.

Status: Unanimously passed the Assembly and has passed the Senate Banking and Financial Institutions and Judiciary Committees and is pending in the Senate Appropriations Committee.