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CALSHRM LEGISLATIVE REPORT

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2023 CALIFORNIA LEGISLATIVE SUMMARY

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The 2023 Legislative session is officially already underway and has resulted in a record number of new bills being introduced in the California Assembly and Senate. In Sacramento, the deadline to introduce new bills has now passed, and the legislature has introduced the highest number of bills in more than a decade.

We are tracking more than 60 employment-related bills and an additional 33 employment-related "spot" bills (essentially placeholders that allow legislators to come back later and propose more substantive legislation). We have identified the "Top Ten" bills that – if passed – would have the most significant impact on California employers. These bills that would:

- Increase **paid sick leave** from 24 hours/3 days to 56 hours/7 days (SB 616)
- Prohibit discrimination on the basis **of family caregiver status** (AB 524)
- Expand the availability of **remote work as a reasonable accommodation** (SB 731)
- Expand various protections against **retaliation** (SB 497)
- Repeal and replace California's **Fair Chance Act** with a sweeping set of new rules limiting employer consideration of conviction history for applicants and employees (SB 809)
- Expand the law against **non-compete agreements** (AB 747)
- Significantly expand California's **Worker Adjustment and Retraining Act** (CalWARN) (AB 1356)
- Prohibit employer-required **attendance at certain meetings** re: politics (including the decision to join a labor organization) or religion (SB 399)
- **Impose joint liability and responsibility on fast food franchisors** for various employment law violations by their franchisees (AB 1228)
- Increase the **minimum wage for health care workers** to $25.00 per hour, with automatic annual increases (and increase the corresponding salary threshold for various exemptions from overtime) (SB 525)

Of course, some of these bills may fail to progress through the legislative process, others may be materially amended, and spot bills may be revised to incorporate new, substantive changes. Looking ahead, the deadline for bills to pass key substantive committees is April 28, 2023, so significant amendments and votes can be expected shortly. Stay tuned – we will keep you informed of developments as they occur!

In the meantime, below is a brief overview of our "Top Ten" potential employment law changes and a summary of the remaining notable employment bills currently pending, largely organized by subject matter.

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TOP TEN PROPOSED EMPLOYMENT LAW CHANGES

Paid Sick Leave Increases (SB 616)

Citing lessons learned from the recent COVID-19 pandemic, this bill would amend California's Paid Sick Leave law (Labor Code section 245 *et seq.*) to increase, beginning January 1, 2024, the number of paid sick leave days by amending Labor Code section 246. For instance, while current law allows an employer to limit an employee to carryover three days or 24 hours of paid sick leave, SB 616 would increase the employer's authorized limitation to seven days or 56 hours and would also change the definition of "full amount of leave" to mean seven days or 56 hours. (It would also make corresponding changes to the sick leave accrual rate for individual providers of in-home support services and waiver personal care services).

While employers may presently use a different accrual method rather than the "one hour of paid sick leave for every 30 hours worked" provided the employee has at least 24 hours by the 120th calendar day of employment, SB 616 would require employees have no less than 56 hours of accrued sick time by the 280th calendar day of employment, or in each calendar year or in each 12-month period. Similarly, while

employers may presently satisfy the accrual requirements by providing 24 hours or three days of paid sick time by the 120th calendar day of employment, SB 616 would modify this satisfaction provision to require the employer provide at least 56 hours or seven days available to the employee by the employee's 280th calendar day of employment.

While employers are not currently required to provide additional paid sick days if they have a paid leave or paid time off policy (usable for the same purposes as paid sick leave) if the employee may earn up to 24 hours or three days off within nine months of employment, SB 616 would increase these amounts to 56 hours or seven days of sick leave or paid time off.

Further, while employers may presently limit an employee's total accrual of paid sick leave to 48 hours or six days, provided an employee's right to accrue and use paid sick leave is not otherwise limited, SB 616 would increase these accrual thresholds for paid sick leave to 112 hours or 14 days.

Several recent attempts to increase California's Paid Sick Leave law to allow five days/40 hours of paid sick leave have stalled (e.g., AB 555 in 2020 and AB 995 in 221), but this bill has been identified as a legislative priority by organized labor.

Prohibition of Discrimination on the Basis of Family Caregiver Status (AB 524)

This bill would amend the Fair Employment and Housing Act (FEHA) to preclude discrimination or harassment based upon an employee's "family caregiver status." "Family caregiver status" is defined to mean "a person who is a contributor to the care of one or more family members." In turn, "family member" would mean spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose association with the employee is the equivalent of a family relationship. (The bill does not define what it would mean to be a "contributor to the care of" one of these family members.) The bill would make it an unlawful employment practice to discriminate against or harass an employee on the basis of family caregiver status.

This bill is a narrower version of AB 2182, which stalled in 2022 after passing two committee votes. Unlike the failed bill, this new bill does not impose any explicit obligation on employers to accommodate an employee's family caregiver responsibilities, although it remains to be seen whether, if this bill is enacted, an employer's failure to grant scheduling requests or remote work requests for employees with family caregiver status might be interpreted to be prohibited discrimination in the terms, conditions, or privileges of employment.

Working from Home as a Reasonable Accommodation (SB 731)

This bill would amend the FEHA to make it easier for employees to be allowed to work from home as a reasonable accommodation. Specifically, it would enact new Government Code section 12940.2 to allow an employee with a "qualifying disability" to initiate a renewed reasonable accommodation request to perform their work remotely if all of the following requirements are met: (1) the employee requested remote work as a reasonable accommodation before March 1, 2020 (i.e., before COVID-related lockdowns) and that request was denied or an alternative accommodation was provided; (2) the

employee performed their essential job functions remotely for at least six of the 24 months preceding the renewed request; and (3) the employee's essential job functions are the same at the time of the renewed request as when the employee performed their work remotely as described in the second requirement.

If these three conditions are met, the employer will be required to grant the renewed request to work remotely as a reasonable accommodation unless the employee can no longer perform all of their essential functions remotely. If the employer denies a renewed request, the employer must: (1) provide written notice to the employee within 30 days of denial, including providing the employer's reasons for denial; and (2) give the employee 30 days' notice to report back to in-person work.

Notably, even if the employee's "renewed request" under this new law is denied or revoked because the employee cannot perform all essential job functions remotely, the employee would still have the ability to request remote work as a reasonable accommodation under the FEHA's general accommodation provisions (Government Code section 12940(m)) and these new provisions would not impact the employer's accommodation or interactive process duties under Government Code section 12940, subsections (m) and (n).

For purposes of this new section, a "qualifying disability" would mean "an employee's medical provider has determined that the employee has a disability that significantly impacts the employee's ability to work outside of their home." Employers would have the ability to request written notice from the employee's medical provider to determine if the employee has a qualifying disability.

Expansion of Retaliation Protections (SB 497)

This bill would amend multiple Labor Code provisions to expand the retaliation protections and/or increase the statutory penalties available. For instance, it would amend the current retaliation protections in Labor Code section 98.6 (dealing with wage-related complaints) and Labor Code section 1197.5 (Equal Pay Act complaints) to state that any adverse actions taken within 90 days of a complaint will create a rebuttable presumption of retaliation in favor of the employee. Further, while California's general whistleblowing provision (Labor Code section 1102.5) presently authorizes a civil penalty up to $10,000 for each violation, this bill would allow $10,000 to be awarded to each employee for each violation, in addition to any other remedies.

Fair Chance Act of 2023 (SB 809)

In 2018, California enacted the Fair Chance Act (AB 1008, codified at Government Code section 12952) enacting new limits upon employer consideration of applicant conviction history and detailing the procedures regarding when and how such information could be obtained and considered. Citing various findings that formerly incarcerated individuals continue to struggle in finding employment, this bill entitled the Fair Chance Act of 2023 would repeal section 12952 and replace it with a sweeping set of new provisions regarding employer consideration of conviction history. This bill is very detailed and overarching so the reader should consider the bill's text for further details and expect numerous amendments moving forward, but here are some of the key points.

Expanded Definitions of "Employee" and "Employer"

SB 809 commences with some broad definitions, defining employee as "an employee, unpaid intern, or volunteer, independent contractor or any other individual providing services pursuant to a contract, and freelancer." "Employer" is similarly broadly defined to include the definition in Government Code section 12945.7 and includes "any direct and joint employer, any entity that evaluates the applicant's conviction history on behalf of an employer, any staffing agency and any entity that selects, obtains, or is provided workers from a pool or availability list."

Unlawful Employment Practices Enumerated

It then specifically identifies the following as "unlawful employment practices:"

- Using any employment advertisement, solicitation or publication that states any limitation or specification regarding conviction history;

- Including on any application for employment or promotion, or directly or indirectly asking the applicant about conviction history;

- Inquiring into, directly or indirectly asking the applicant, or considering the conviction history of the applicant about conviction history (except where expressly allowed elsewhere in these new provision);

- Ending an interview, rejecting an applicant or otherwise terminating the employment or promotion application process based on conviction history information provided by the applicant or learned from any other source (notably, this includes if the applicant volunteers this information, in which case the employer must disregard the information and advise the applicant in writing of their right not to disclose conviction history);

- Making an adverse decision based on the applicant's response, including denial of conviction history, to a question, inquiry or voluntary disclosure regarding the applicant's conviction history;

- Requiring self-disclosure of an applicant's conviction history at the time of, or any time after, a conditional offer of employment or promotion;

- Requiring or requesting that an applicant share any social media, or the employer inquiring into, considering or disseminating conviction history information it obtains from social media, the internet or any source;

- Inquiring into, considering, distributing or disseminating information while conducting a conviction history background check that employers cannot presently obtain or consider (e.g., arrests not resulting in convictions, referrals to or participation in pre-trial or post-trial diversion programs, sealed/dismissed/expunged convictions);

- Interfering with, restraining or denying the exercise of any rights provided under SB 809;

- Taking adverse action on the basis of a delay in obtaining or failing to obtain information during an authorized conviction history check;

- Discriminating against or taking adverse action against an employee because of their arrest or conviction history;

- Discriminating against employees in the terms, conditions or privileges of employment based on arrest of conviction history; or

- Threatening adverse employment action based on an employee's arrest or conviction history.

When Conviction History Checks are Permitted

The general prohibition about employers inquiring about conviction history would not prohibit employers from conducting a conviction history background check in the following circumstances only: (1) federal or state law requires the employer to obtain information about the applicant's particular conviction; (2) federal or state law prohibits an individual with a particular conviction history from holding the position sought, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation; (3) federal or state law prohibits an employer from hiring an applicant with that particular conviction, regardless of whether the conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation. For purposes of these exceptions, "particular conviction" means a conviction for specific criminal conduct or a category of criminal offenses prescribed by federal law, federal regulations or state law.

SB 809 would also not preclude any employer required by federal or state law to conduct conviction history background checks for employment purposes or to restrict employment based on conviction history from complying with these requirements, or from seeking or receiving an applicant's conviction history report. However, as under current law, the employer would be precluded from inquiring about or considering conviction history until after a conditional employment offer has been made, and any background screening process required would need to be done in compliance with the individualized assessment, notification and other requirements of this law.

Individualized Assessment Process (and Potential Reassessment Process)

As under current law, employers intending to deny a position of employment or promotion solely or in part because of the applicant's conviction history must make an "individualized assessment" of whether the applicant's conviction history has a direct and adverse relationship with one or more specific job duties, considering all of the following: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense or conduct; and (3) the nature of the job sought. The employer must put this individualized assessment in writing and provide a copy to the applicant along with the preliminary decision, and any denial will require demonstrating that one or more specific elements in the nature and gravity of the offense or conduct in the applicant's conviction history has a direct and adverse relationship to one or more specific elements in the nature of the job held or sought.

Notably, where the applicant is currently not incarcerated or has completed a sentence of conviction for the crime, a rebuttable presumption will exist that there is no direct and adverse relationship between the conviction and the position, and that the applicant does not pose a risk to the public safety in ordinary circumstances. (However, "completion of a sentence" will not include parole, probation, supervised release, and any other form of supervision.) Similarly, the issuance of a license, certificate, authorization, or other credential from a licensing, regulatory or other government agency or board will demonstrate there is no direct and adverse relationship between the applicant's conviction history and the position.

If the employer makes a preliminary decision that the applicant's conviction history is disqualifying, the employer must notify the applicant in writing of this preliminary decision, providing particular enumerated information regarding the information considered and the employer's reasoning. Largely as before, an applicant must be provided at least 10 business days (rather than the current five business days) to respond to the notice before a final decision may be made, and if the applicant notifies the employer in writing that it disputes the accuracy of the conviction history information relied upon and is obtaining contrary evidence, the applicant must be provided five additional business days to respond.

As before, if the applicant provides additional information, the employer must then conduct a second individualized assessment regarding the conviction history. However, SB 809 would require this second assessment to assume the information provided by the applicant is true and accurate, and not dispute the truth and accuracy of the new information unless substantially inconsistent with information obtained from a third party pursuant to these rules or voluntarily provided by the applicant. As with the first assessment, this second assessment must also be in writing.

If the employer makes a final decision to deny an applicant for employment or promotion solely or in part upon the applicant's conviction history, the employer must notify the applicant in writing with all of the following information: (1) the employer's reasoning for making the final denial or disqualification; (2) any existing procedure with the employer for the applicant to challenge the decision or request consideration; and (3) the right to file a complaint with the DFEH.

The employer would be prohibited from taking adverse action, disadvantaging the applicant or filling the position during this individualized assessment process. The employer also cannot revoke a conditional offer of employment or promotion because of any delay in obtaining information to comply with these requirements.

Posting and Notice Guidelines

SB 809 would also impose new posting obligations, requiring the employer to post a clear and conspicuous notice regarding this law "at every workplace, jobsite and other location under the employer's control and visited by applicants or employees" and include it in any job posting, solicitation or advertisement seeking applicants for employment. These notices would need to be in English, Spanish and any language spoken by at least 10 percent of the employees at the workplace, jobsite or other location at which it is posted. Employers would also be required to affirmatively note in all solicitations or advertisements that they will consider qualified applicants with conviction histories consistent with this law and other federal, state and local laws.

Employers intending to conduct conviction background checks for employment purposes would also need to include both of the following in any job posting, solicitation, advertisement or application: (1) a list of specified job duties of the position for which a conviction may have a direct and adverse relationship and potentially result in an adverse action; and (2) a statement that the employer is considering arrest or conviction history under proposed new section 12945.2.02 and a list of all laws and regulations that impose restrictions or prohibitions for employment on the basis of any conviction, if any.

Any materials required by these notice provisions would need to comply with the notice and certification requirements of Civil Code section 1786.16 regarding investigative consumer reports. SB 809 would also amend Civil Code section 1786.16 regarding consumer reports and require the disclosure provided to the "consumer" also include either (1) all of the specific job duties of the position for which a conviction may have a direct and adverse relationship that has the potential to result in an "adverse employment action;" or (2) all laws and regulations that impose restrictions or prohibitions for employment on the basis of conviction, if any.

Record Retention and Inspection Requirements

SB 809 would also impose record retention and inspection requirements. For instance, employers and their agents would be required to retain all records and documents related to an applicant's employment or promotion application and any written assessments and reassessments for four years following the receipt of an applicant's employment application. Employers and their agents would also be required, upon request, to provide access to these records and documents to the DFEH in any administrative enforcement action, or to the applicant.

Regulations and Enforcement

The DFEH will be required to issue rules and regulations regarding when an employer's action constitutes a violation justifying civil penalties under these new rules. Individuals would also be entitled to pursue an action to recover civil penalties under SB 809, with the penalty amount depending upon the number of employees and whether there have been prior violations. These penalty and enforcement provisions are quite detailed but would allow the penalties to be split between the complainant and the DFEH, with the DFEH's portion being deposited into a special enforcement fund.

Expansion of Law Against Non-Competes and Limitations on Employment Agreements (AB 747)

This bill would change California's rules regarding "non-compete" agreements, choice of law in employment agreements, and employee payment for specified work-related training.

First, California's existing law against non-compete agreements (Business and Professions Code sections 16600 to 16607) voids every contract that restrains anyone from engaging in a lawful trade or business, except as specified. This bill would expand and strengthen the law in several ways.

- This bill would narrow the exception for people with an ownership interest in a business. Existing law authorizes a person selling their ownership interest in a business to agree to refrain from carrying on a similar business within a specified geographic area. This bill would modify the

definition of "ownership interest" to require the partnership interest, membership interest, or capital stock to be more than 10% of the total, thus limiting the number of people who fall within the exception.

- Existing law voids certain non-compete agreements but does not impose penalties on employers who include such void provisions in contracts. This bill would add section 16608 to the Business and Professions Code to expressly prohibit an employer from entering into such an agreement, presenting such an agreement to an employee or applicant, or attempting to enforce any such agreement. For purposes of this law, "employee" includes employees and independent contractors. This bill would allow employees or prospective employees to bring an action for injunctive relief, actual damages, and an additional penalty of $5,000 per employee for violation of this provision, along with recovery of attorneys' fees and costs.

- Further, this bill would add Section 6090.5.5 to the Business and Professions Code to sanction any attorneys with suspension, disbarment or other discipline if they enter into a void non-compete agreement with an employee or prospective employee or present such an agreement to an employee or applicant or attempt to enforce such an agreement. (It is unclear whether this provision would sanction attorneys only for actions with respect to their own employees, or whether it would also sanction attorneys for working on behalf of a client to attempt to enforce the *client's* non-compete agreement.)

Second, the law would further limit employers' and employees' ability to enter into an employment contract that is governed by a law other than California law. Existing law (Labor Code section 925) prohibits an employer from requiring a California employee to agree to a contract that specifies employment claims would be adjudicated outside of California or deprives the employee of the substantive protection of California state law, *unless* the employee is individually represented by counsel in negotiating the terms of the agreement. This bill would amend section 925 to provide that an employee is not considered "individually represented by legal counsel" if the attorney was paid for by, or was selected based upon the suggestion of, the employer.

Finally, the bill would add section 1058 to the Labor Code to prohibit an employer from requiring an employee to pay any costs for specified training related to the employee's responsibilities and duties. For purposes of this rule, "training" would mean "any instruction or course the employer requires the employee to complete as a prerequisite to the employee fulfilling their responsibilities and duties," but would *not* include training necessary to obtain or maintain professional licenses, apprenticeship programs, work experience education programs, or other similar coursework and programs required before employment.

Cal-WARN Act Changes (AB 1356)

This bill would make a number of changes to California's version of the Worker Adjustment and Retraining Act (CalWARN, Labor Code section 1400, *et seq.*) including regarding the length of notice required, the definitions of those affected, and the use of severance agreements. For instance, it would increase from 60 days to 90 days the period for employers to provide required notices regarding a mass layoff, relocation

or termination (as defined in section 1400) before the order takes effect. It would also preclude employers from utilizing compliance with CalWARN in connection with a severance agreement and waiver of an employee's right to claims.

It would also change the definition of "employer" to include a client employer of a labor contractor, and the definition of "employee" to include a person employed by a labor contractor and performing labor with the client employer for at least six months of the 12-month period preceding the date on which notice is required.

The bill would also expand the remedies and increase the liability for failure to provide the required notices. For instance, in light of the new 90-day notice period, it would make a conforming change to 90 days for the calculation of the employer's liability if the notice is not provided. Second, a proposed new subsection to Labor Code section 1402 would require affected employees working with the employer via a labor contractor to be compensated for the remainder of the contract or 90 days, whichever is fewer, by the equivalent of the pay and benefits received by the employee during the last month of employment, or the employee's final rate of compensation, whichever is higher. If this compensation is provided as an additional payment from the employer to the labor contractor, the labor contractor shall ensure that the compensation is provided to the employee and cannot take an additional markup above the rate charged on the contract prior to the date on which notice is required.

Lastly, it would make several changes regarding the use of severance agreements in the context of a mass layoff, relocation or termination. First, it would expressly prohibit and render void any general release, waiver of claims or non-disparagement or nondisclosure agreements conditioned on the employer's payment of amounts for which the employer is liable under section 1402. Second, employers required to provide notice under section 1401 would be prohibited from offering a separate agreement containing a general release, waiver of claims or non-disparagement or nondisclosure agreement unless offered in exchange for consideration in addition to which the employee is already entitled under section 1402. Any non-complying agreement would be deemed void and unenforceable.

Prohibiting Mandatory Employee Attendance at Certain Employer-Sponsored Meetings (SB 399)

Entitled the "California Worker Freedom from Employer Intimidation Act," this bill would enact new Labor Code section 1137 to preclude employers from requiring employees to attend employer meetings regarding certain topics and create new remedies for violations of these prohibitions. Specifically, it would prohibit employers from requiring employees to attend an employer-sponsored meeting or participate in any communications with the employer or its agents or representatives, the purpose of which is intended to communicate the employer's opinion about religious matters, political matters or certain rights guaranteed by the United States or California Constitutions.

"Political matters" would be defined as "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**." "Religious matters" would be defined as "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association." The rights

guaranteed by the United States and California Constitutions would include, but not be limited to, the rights of freedom of speech, freedom of association and freedom of religion."

This prohibition would not prohibit the following: (1) employers or their agents from communicating to employees information the employer is required by law to convey, but only to the extent of that legal requirement; (2) employers or their agents from communicating information that is necessary for employees to perform their job duties; or (3) higher education institutions or their agents from meeting with or participating in communications with employees that are part of coursework, any symposia or an academic program at that institution.

This prohibition also would not apply to the following: (1) religious entities (as enumerated) with respect to speech on religious matters to employees who perform work connected with the activities of the religious entity; (2) a political organization or party with respect to communication of the employer's political tenets or purposes; or (3) an educational institution requiring a student or instructor to attend lectures on political or religious matters that are part of the institution's regular coursework.

The Division of Labor Standards Enforcement will be responsible for enforcing this section and responding to employee complaints. However, employees who have been subjected or threatened to be subjected to discharge, discrimination or retaliation or other adverse action for refusing to attend a prohibited employer-sponsored meeting may bring a civil action for damages, punitive damages, and reasonable attorneys' fees. In such actions, an employee or their exclusive representative may also petition for injunctive relief.

Increased Liability and Responsibility for Fast Food Franchisors (AB 1228)

This bill would impose upon fast food restaurant franchisors increased liability and responsibility for compliance with employment laws by their franchisees. A similar provision was originally included in the 2022 bill creating the Fast Food Industry Council (AB 257) but was removed through the amendment process before the bill became law. (Implementation of that law is now suspended pursuant to a referendum petition.)

The new bill would apply to fast food restaurant franchisors and franchisees. "Fast food restaurant" is defined to mean any establishment in California that is part of a chain of 100 or more establishments nationally that share a common brand or standardized operations, and that regularly provide food or beverages for immediate consumption to consumers who pay before eating with limited or no table service. (This is the same definition applicable to the Fast Food Industry Council.) The bill would:

1. Declare that a fast food restaurant franchisor shares with is franchisee all civil legal responsibility and civil liability for the franchisee's violations of specified laws, including California's Unfair Business Practices Act, the Fair Employment and Housing Act, and many sections of the Labor Code.

2. Specify that all the listed laws may be enforced directly against the franchisor to the same extent they may be enforced against the franchisee (including by a civil lawsuit), after the franchisor has

been given 30 days written notice of the alleged violation of the law and an opportunity to cure the alleged violation. A franchisor would not be subject to an enforcement action or lawsuit if it cured the alleged violation by ensuring that its franchisee is in compliance with the law and any workers against whom a violation was committed are made whole.

3. Forbid a franchisee from waiving these protections or agreeing to indemnify its franchisor.

4. Allow franchisees to sue franchisors for monetary or injunctive relief if the terms of a fast food restaurant franchise prevent or create a substantial barrier to the franchisee's compliance with the specified laws, including because the franchise does not provide for funds sufficient to allow the franchisee to comply with the law. The bill specifies that any changes in the terms of a franchise that increase the costs of the franchise would create a rebuttable presumption of a substantial barrier to compliance with the specified laws.

Health Care Worker Minimum Wage (SB 525)

While the current statewide minimum wage is $15.00 an hour, this bill would establish, beginning January 1, 2024, a special minimum wage for health care workers of $25.00 per hour for hours worked in covered health care employment, as defined. It would further provide that the health care worker minimum wage constitutes the state minimum wage for covered health care employment for all purposes under the Labor Code and the Industrial Welfare Commission Wage Orders and would be enforceable either by the Labor Commissioner or by the covered worker in a civil action.

It would further require that to qualify as exempt from the payment of minimum wage and overtime, an employee paid on a salary basis must earn a monthly salary equivalent of at least two times the health care worker minimum wage for full-time employment. This industry-specific minimum wage would also be adjusted annually with the Director of Finance calculating by August 1st the greater of either 3.5 percent or the changes in the Consumer Price Index. The result of these changes would then be rounded to the nearest ten cents and take effect on the following January 1st.

For purposes of this new minimum wage, "covered health care employment" would be defined as either (1) all work performed on the premises of any health care facility, regardless of the employer's identity; or (2) all paid work providing health care services (as defined) performed for any person that owns, controls, or operates a covered health care facility, regardless of location. It would not include, however, employment as an outside salesperson or any work performed in the public sector where the primary duties performed are not health care services.

"Health care services" would also be broadly defined to mean "patient care-related services, including nursing, caregiving, services provided by medical residents, interns or fellow, technical and ancillary services, janitorial work, housekeeping, groundskeeping, guard duties, business hours, business office clerical work, food services, laundry, medical coding and billing, call center and warehouse work, scheduling, and gift shop work, but only where such services directly or indirectly support patient care." Lastly, "covered health care facility" would be specifically defined to include twenty-one different types

of clinics, hospitals or facilities, so a potentially affected health care provider should consult this list contained in proposed Labor Code section 1182.14(b)(2).

ADDITIONAL PENDING BILLS

Harassment/Discrimination/Retaliation

FEHA Protections for Religious and Cultural Observances (SB 461)

While the FEHA presently prohibits employer discrimination on the basis of a person's "religious creed" which, in turn, includes "religious observances," SB 461 would expand this definition to include "religious or cultural observances." Government Code section 12926(q) would further be amended to specify that "religious or cultural observance shall be construed broadly to include the observance of a holiday or ceremony of an individual's religion, culture, or heritage."

It would also amend Government Code section 19853 regarding holidays for state employees. While presently a state employee who works on a state holiday may elect to receive eight hours of straight time pay and eight hours of holiday credit, SB 461 would allow the employee to elect to receive eight hours of holiday credit for religious or cultural observance in lieu of personal holiday credit.

Prohibition Against Discrimination Based on Ancestry (SB 403)

This bill states the Legislature's intent to amend the FEHA to protect people from discrimination on the basis of their ancestry.

Privilege for Communications re: Complaints of Sexual Assault, Harassment, or Discrimination (AB 933)

Civil Code section 47, subdivision (c) presently provides qualified or conditional privilege protection against a defamation claim for a complaint of sexual harassment by an employee, without malice, to an employer based upon credible evidence, as well as communications between the employer and interested persons, without malice, regarding a complaint of sexual harassment. This bill would amend section 47 to extend this privilege to communications made by a complainant, without malice, regarding a complaint of sexual assault, harassment, or discrimination. In other words, while section 47 presently precludes defamation claims related to good faith sexual harassment complaints raised internally with an employer and investigated by the employer, AB 933 would extend this privilege not only to external complaints but also apply to allegations of sexual assault and discrimination, not just harassment. Indeed, as currently worded, it arguably applies to any form of harassment or discrimination, not just sexual.

For purposes of this proposed new privilege, "a complaint of sexual assault, harassment or discrimination" would mean "factual information related to a complaint of sexual assault, harassment or discrimination experienced by the complainant" in various statutorily enumerated settings (including under the Education Code and the Unruh Act). It would specifically include various FEHA claims including "an act of workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, aiding, abetting, inciting, compelling an act of workplace harassment or discrimination, or an act of retaliation against a person opposing workplace harassment or discrimination."

To further safeguard against defamation claims regarding the types of allegations in this new privilege, AB 933 would also specifically authorize a prevailing defendant to recover their reasonable attorneys' fees and costs plus treble damages for any harm caused as well as potentially punitive damages under Civil Code section 3294.

Veterans' Hiring Preference for Private Employers (SB 73)

While the FEHA presently allows employers to grant a hiring preference in favor of Vietnam War-era veterans and as a defense against sex discrimination claims, this bill (entitled the Voluntary Veterans' Preference Employment Policy Act) would update and expand this exemption for almost all veterans (regardless of when served) and as a defense against all FEHA discrimination claims.

Such a hiring preference would be deemed not to violate any state or local equal employment opportunity law, including the FEHA, if used uniformly and not established for purposes of unlawfully discriminating against any group protected by the FEHA, including against veterans who are members of any other FEHA-protected classification.

"Veterans" would be defined as any person who served full time in the Armed Forces in time of national emergency or state military emergency or during any expedition of the Armed Forces and was discharged or released under conditions other than dishonorable.

Employers adopting such a preference policy would need to annually report to the Civil Rights Department the number of veterans hired in that reporting year under this policy and any demographic information the department requires. An employer's failure to submit this report would nullify the preference's protections for those hiring decisions.

Employers with a veterans' preference employment policy would be permitted to accept the following as proof of an individual's status as a veteran: (1) a DD Form 214, Member-4; (2) a current and valid driver's license with the word "veteran" printed on its face; or (3) a current and valid identification card with the word "veteran" printed on its face.

A similar bill (SB 665) unanimously passed the Legislature in 2021 before being vetoed by Governor Newsom, and similar preference laws have been enacted in nearly 40 states.

FEHA Does Not Preempt Other City and County Discrimination Laws (SB 16)

Government Code section 12993 presently provides that while the FEHA is intended to "occupy the field" regarding discrimination in employment and housing, it does not affect the Unruh Act (Civil Code section 51). This bill would further clarify that the FEHA does not limit or restrict efforts by local entities (including cities, counties, and political subdivisions) to enforce state law prohibiting discrimination against classes of persons covered by the FEHA.

Artificial Intelligence Regulations Contemplated (AB 331)

Entitled the "Artificial Intelligence Act," this bill states the Legislature's intent to enact legislation modifying the FEHA and relating to the use of artificial intelligence in (1) safe and effective systems; (2) algorithmic discrimination; (3) notice and explanation for the use of an automated system; and (4) human alternatives, consideration and fallback. It is anticipated forthcoming amendments will flesh out these proposals.

Workgroup to Address Californians with Disabilities (AB 222)

This bill addresses a concern that the Americans with Disabilities Act and state laws for the protection of people with disabilities are outdated. The bill would require the Civil Rights Department to convene a workgroup to make recommendations to the Legislature for the development of new laws regarding accessibility and antidiscrimination for people with disabilities. The workgroup would be required to submit a report to the Legislature by July 1, 2025, and the Legislature would be required to hold public hearings within one year of submission of the report.

Evaluation of Gender Discrimination in State Agencies (AB 549)

This bill would require all state agencies, in consultation with the Commission on the Status of Women and Girls, to conduct an evaluation of their own departments to ensure the state does not discriminate against women through the allocation of funding and delivery of services. State agencies would be required to report their findings and recommendations on January 1, 2024, and every 2 years thereafter.

Leaves of Absence/Time Off/Accommodation Requests

Expansion of Paid Family Leave to Care for Additional Family Members and "Chosen Family" (AB 518)

Existing law provides up to 8 weeks of paid leave under the state disability insurance program for prescribed purposes, including to care for a seriously ill family member. Existing law defines "family member" as child, spouse, parent, grandparent, grandchild, sibling or domestic partner. This bill would expand definition of "family member" to include *any individual related by blood* or *whose association with the employee is the equivalent of a family relationship*.

This change would be similar to the 2022 amendment to California Family Rights Act (AB 1041), which expanded the definition of family to include a single designated person related by blood or whose association with the employee is the equivalent of a family relationship.

Increased Paid Sick Leave for Healthcare Employees (AB 1359)

Somewhat mirroring the paid sick leave increase proposed in SB 616, this bill notes the Legislature's intent to introduce legislation also allowing health care employees to have up seven days of protected sick leave.

Veterans Day Off for Veterans (SB 855)

This bill would amend the FEHA to make it an unlawful employment practice to require a "veteran" to work on "Veterans Day" (i.e., November 11th) provided three requirements are met. First, the employee must provide 21 days' notice before November 11th that the employee intends to take November 11th as a holiday. Second, the employee must provide the employer with proof of the employee's veteran status (including but not limited to a DD Form 214 or other Armed Forces certificate of discharge). Third, the employee's absence – either alone or in combination with other veteran employees' absences that day – does not negatively impact public health or safety or cause significant economic or operational disruption (as determined by regulations the Civil Rights Department would develop). An otherwise eligible employee who is denied the day off because of the third factor above (i.e., impact on public health, safety or the employer's operations) would be entitled to choose another day off within the next full year to observe Veterans Day, subject to the employer's approval.

For purposes of this law, "veteran" would mean (1) a former member of the United States Armed Forces; (2) a former or current member of the United States Armed Forces reserved who has been called into active military service of the United States; or (3) a former or current member of a California National Guard unit who has been called into active military service of the United States.

This new law also would not require or prevent employers from providing employees with a paid holiday in observation of Veterans Day.

Human Resources/Workplace Policies

Student Loan Repayment Assistance under California Tax Code (AB 509)

While California and federal law presently allow employers to annually provide up to $5,250 of payments for an employee's ongoing educational assistance that is exempted from state and federal income taxes, this bill would change the definition of "educational assistance" to include payments for educational loans incurred by the employee for their own education. In this regard, it is like the recent provisions in the federal Coronavirus Aid, Relief and Economic Security (CARES) Act that enable employers to provide tax-favored repayment assistance for existing student loan debt that would not be considered income for federal income tax purposes.

Similar bills have been introduced on several occasions, including AB 2478 (2017), AB 152 (2019), and AB 1729 (2022), which passed the Tax and Revenue Committee before stalling.

Clarification/Expansion of Law Against Non-Competes (AB 1076)

Like AB 747 (summarized in our "Top Ten" section), this bill seeks to clarify and expand the prohibition on non-compete agreements but is less specific than AB 747. First, this bill would codify the holding of *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, that existing law voids the application of any non-compete agreement in the employment context that does not satisfy an exception in the law. This does not change the law but is simply a declaration of existing law.

Second, this bill would make it unlawful to include a noncompete clause in an employment contract or to require an employee to enter into a non-compete agreement, if the agreement does not satisfy an exception set forth in the statute.

Changes to Wage Theft Prevention Act Notices (AB 636)

Existing law – the "Wage Theft Prevention Act" (Labor Code section 2810.5) requires employers to provide a written notice to employees at the time of hiring with certain specified information. This bill would require the notice to include information about the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, was issued within 30 days before the employee's first day of employment and may affect their health and safety during employment.

In addition, the bill would require that any notice given to employees admitted under the federal H-2A agricultural visa program must include more detailed information, including information about pay rates, frequency of pay, rest periods, meal breaks, compensation for travel time, and many more topics. The bill contemplates that the Labor Commissioner would provide a template for such disclosures.

Expansion of Workplace Temporary Restraining Orders (SB 428)

Existing law allows an employer to seek a temporary restraining order and injunction on behalf of an employee who has suffered unlawful violence or a creditable threat of violence that can reasonably be construed to have been carried out or to have been caried out at the workplace. This bill would expand that rule to allow an employer to seek a TRO and injunction on behalf of an employee who has suffered harassment. For purposes of this bill, "harassment" is defined as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose," and the "course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress."

Domestic Violence Prevention Posters (SB 526)

This bill would require the Department of Industrial Relations to develop and prepare a poster regarding domestic violence prevention that employers *may* display in their workplaces and make it available to employers for download on the internet. The bill does not purport to *require* employees to display the anticipated poster.

Workplace Violence Prevention Plans (SB 553)

Presently, California law requires hospital employers to adopt a workplace violence prevention program as part of the hospital's injury and illness prevention plan to protect health care workers from aggressive and violent behavior. This bill would require CalOSHA to adopt standards by a to-be-determined date requiring employers not covered by these hospital standards to adopt workplace violence prevention programs as part of their injury and illness prevention programs. SB 553 contemplates these standards would be consistent with the hospital standards, except as CalOSHA determines to be necessary.

Employer Electronic Notification Requirements of Employee Benefits (AB 1355)

This bill would allow California employers the option to provide certain required documents to employees via email, but only if the recipient has opted into receipt of electronic statements. The bill would separately allow electronic distribution of: (1) required notifications regarding the federal and California earned income tax credit and (2) information about unemployment benefits claims, but only if the employee or unemployed individual opts in to receipt of electronic statements or materials.

The bill does not specify whether employees must specifically opt into receipt of each type of document, or whether a generic opt-in to receipt of electronic messages would suffice.

Limitations on Downloading Social Media Programs on State-Owned Devices (AB 227/SB 74)

Echoing similar proposals at the federal level to limit state employees from downloading "Tik Tok," these bills would prohibit applications for social media platforms from being downloaded on state-owned or state-issued devices if certain conditions are met. Broadly speaking, these conditions would include that an "entity of concern" or a "country of concern" (as defined) owns, directly or indirectly controls, or holds 10 percent or more of the voting shares of the social medial company that owns the application. While SB 74 would direct the Governor to prepare the list of "countries of concern," AB 227 specifically identifies them as follows: (1) Venezuela; (2) North Korea; (3) Iran; (4) China; (5) Cuba and the (6) Russian Federation.

Election Day Holiday (AB 13)

This bill would make election day (the first Tuesday after the first Monday in November in any even-numbered year) an optional bank holiday and a state holiday for state employees. The bill would also make changes to the vote by mail rules, which are outside the scope of this newsletter.

Proposed Standard to Require Women's Restrooms (AB 521)

This bill is motivated by the concern that women are underrepresented in the trades, and that one barrier faced by women is access to clean and secure restrooms on jobsites. This bill would require the Division of Occupational Safety and Health to submit a rulemaking proposal to consider a regulation to require at least one women's designated restroom at any jobsite with two or more required water closets. The deadline for submitting the proposal would be December 1, 2025.

Human Trafficking Notice – Pediatric Care Facilities (AB 1740)

Existing law requires specified businesses (including airports, hotels, etc.) to post a notice from the Department of Justice relating to slavery and human trafficking. This bill would extend the posting requirement to facilities that provide pediatric care.

Wage and Hour

Recommendation re: Linking Minimum Wage and Housing Costs (SB 352)

The proponents of this bill posit that a minimum wage earner would have to work more than two full-time jobs to afford a one-bedroom apartment in most major markets in California. The bill would require several state government officials to examine housing costs by county and create a formula to determine how much the local minimum wage must be for a full-time worker to reasonably afford housing and basic expenses; and to recommend to the Legislature each year the minimum wage for a full-time minimum earner to afford housing in each county and recommend a method to annually adjust figures to account for inflation.

Individualized Alternative Workweek Schedules (SB 703)

Entitled the Workplace Flexibility Act of 2023, this bill would allow individual employees to obtain a so-called "alternative workweek schedule" (e.g., a 4 day/10 hour schedule rather than a 5 day/eight hour schedule) allowing them to work up to ten hours a day without daily overtime but without complying with the stringent requirements for such schedules when proposed by an employer (i.e., secret ballot election, work unit approval, etc.). Hours worked in excess of ten hours would be entitled to overtime and the employee or employer would have the ability to discontinue the schedule by giving written notice.

Similar versions of this bill have been introduced on numerous occasions but have consistently stalled in the face of labor opposition.

Reliance on DLSE Opinion Letters (SB 592)

The Division of Labor Standards Enforcement (DLSE) occasionally publishes opinion letters and enforcement policies. This information is available on its website, and employers sometimes rely on the opinion letters and enforcement policies when the law and regulations are unclear. However, courts are not bound to follow the DLSE's opinions or policies; thus, there is a chance that an employer who complies with the DLSE's recommendations might still be found to be in violation of the law.

This bill would prohibit the imposition of punishment or liability for costs on a person who has relied on a published opinion letter or an enforcement policy of the DLSE that is displayed on the division's website, *except* for restitution of unpaid wages. The bill would require the person asserting the defense to have acted in good faith and to have relied upon, and conformed to, the applicable opinion letter or enforcement policy, and to have provided true and correct information to the division. A person asserting reliance on this defense would also need to post a bond with the applicable court or administrative body in the amount of the reasonable estimate of alleged unpaid wages resulting from reliance on the opinion letter or policy.

The bill would also require the Labor Commissioner to translate each of its internet websites, and all materials available on those websites, into Spanish, Chinese, Tagalog, and Vietnamese by January 1, 2026.

Meal and Rest Period Exemption for Flight Crews Covered by Collective Bargaining Agreement (SB 41)

This bill would add new Labor Code section 512.2 exempting airline cabin crew employees from state law and regulations requiring meal and rest periods under two circumstances:

1. The employees are covered by a valid collective bargaining agreement under the Railway Labor Act containing a provision addressing meal and rest periods for cabin crew members; or

2. The employees are organized pursuant to the Railway Labor Act but not yet covered by a collective bargaining agreement for at least the first 12 months of organization, or longer if agreed to by the employer and the labor organization representing the employee.

For purposes of this exemption, a CBA would need to have a provision providing for meal and rest periods, provide compensation in lieu of meals or per diem (in lieu of meals), or recognize a right to eat on board an aircraft during the course of a duty day.

This bill is deemed an urgency statute and would take effect immediately, if enacted into law. It specifies that, starting December 5, 2022 (the date the bill was introduced), it would prohibit a person from filing a new legal action for alleged meal and rest breaks violations on behalf of an employee covered by a CBA that meets the listed requirements. However, this new section would not affect a settlement agreement or final judgment of any civil action brought by a cabin crew employee, or class thereof, against an employer on a claim of a meal or rest break violation.

Status: Unanimously passed the Senate and is pending in the Assembly.

Potential Changes to Rest Period Rules for Community-Based Providers (AB 1031)

Existing law requires employers to provide rest breaks to employees during working hours. The length and number of such rest breaks is specified in the Labor Code and applicable Wage Orders. Existing law requires that employees be relieved of all duties during rest periods. Employers who fail to provide required duty-free rest periods must pay employees a penalty equal to one additional hour of pay for each day a required rest period is not provided.

This bill would express the intent of the Legislature to make a change to these rules and permit necessary support staff providing services and support in community settings to individuals with intellectual and developmental disabilities to maintain general supervision of their consumers during rest periods. It appears the bill's authors intend to expand an exception that currently exists only for employees of 24-hour residential care facilities for elderly, blind, or developmentally disabled individuals to employees providing services in *community* settings.

Payroll Records for Public Works Projects (AB 587)

Existing law requires each contractor and subcontractor on a public works project to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman,

apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. Existing law specifies that any copy of records made available to a Taft-Hartley trust fund for the purposes of allocating contributions to participants be marked or obliterated only to prevent disclosure of an individual's full social security number, as specified.

This bill would require any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund or joint labor-management committee be provided on forms provided by the Division of Labor Standards Enforcement or contain the same information as those forms. The bill would specify that copies of electronic certified payroll records do not satisfy payroll records requests made by Taft-Hartley trust funds and joint labor-management committees.

Indefinite Exemption from "ABC Test" for Licensed Manicurists (SB 451)

This law extends indefinitely the exemption from the so-called "ABC Test" for employee classification purposes for licensed manicurists who meet certain specified requirements. These working relationships will continue to be governed by the multifactor *Borello* test for purposes of determining whether the fisher is an employee or an independent contractor.

Compensable Time for Obtaining Food Handling Cards (SB 476)

California's Retail Food Code requires a food handler to obtain a food handler card within 30 days of hire and to maintain a valid food handler card for the duration of their employment as a food handler. This bill would require the employer to pay the employee for any cost associated with the employee obtaining a food handler card, including the time it takes for the employee to complete the training, the cost of the food handler certification program, and the time it takes to complete the certification program. Employers would also be required to relieve the employee of all other work duties while the employee is taking the training course and examination. Employers would also be prohibited from conditioning employment on the applicant or employee having an existing food handler card.

The State Department of Public Health will be required, by January 1, 2025, to publish on its website a list of all certified food handler training programs along with the costs. Local public health organizations would also be required to post a link of this page on their internet website or provide the same list on their internet website.

<u>Layoffs/Establishment Closures</u>

Expanded Obligations to Notify and Rehire Workers Laid Off Due to Closure of a "Chain" Establishment (SB 627)

Entitled the Displaced Worker Retention and Transfer Rights, this bill would impose new obligations on an employer operating a chain of establishments upon closure of an establishment in the chain. For purposes of this law, a "chain" is a business in California that has 100 or more establishments nationally that share a common brand and are owned and operated by the same parent company.

The bill would impose several obligations on employers who close an establishment in the chain, resulting in layoffs of workers:

1. The employer must give a "displacement notice" to covered works and their exclusive representative 60 days before the closure takes effect, including specified information.

2. The employer must provide all covered workers the opportunity to remain employed by the employer and to transfer to a location of the chain within 25 miles of the closed establishment as positions become available for one year after the closure. There are specific requirements regarding maintaining a preferential list of workers and deadlines and methods for providing notice of job openings.

3. The employer must retain specified records for each covered worker for three years, including name, job classification, date of hire, contact information, and copies of written notices and communications.

4. The employer must not retaliate against workers for seeking to enforce their rights under this section.

For purposes of this bill, a "covered worker" is a person whose primary place of employment is at the covered establishment subject to closure, who is employed directly by the employer, and who has worked for the employer for at lest 6 months before the date of the closure; however, this law does *not* cover managerial, supervisor, or confidential workers, or temporary/seasonal workers. (The bill does not define "confidential worker.")

This bill would not apply to employees covered by a collective bargaining agreement under certain circumstances, including that the agreement expressly waives the requirements of this bill in clear and unambiguous terms.

A laid-off worker would be authorized to file a complaint with the Division of Labor Standards Enforcement for violation of these new rules, seeking transfer and reinstatement, front pay or back pay, and the value of benefits the covered worker would have received. Any employer, agent of the employer, or other person who violates or causes to be violated these rules would be subject to a civil penalty of $100 for each worker whose rights are violated and an additional sum payable as liquidated damages in the amount of $500 **per worker per day** continuing until the violation is cured, which shall be recovered by the Labor Commissioner, and paid, upon appropriation by the Legislature, to the worker as compensatory damages.

Notably, "employer" is defined to include any person, *including a corporate officer or executive*, who directly or indirectly owns or operates a chain and employes or exercises control over the wages, hours, or working conditions of workers; and penalties could specifically be imposed on any person who violates these rules. Therefore, this bill could impose personal liability on corporate officers, executives, or other individuals who fail to comply with the new requirements in connection with closures.

While the DLSE will have exclusive authority to enforce this new section, this law would not preclude an employee's ability to sue for wrongful termination, and it would not preempt local ordinances providing greater worker protections.

Changes to Protections for Grocery Workers Upon Change in Control of Establishment (AB 647)

Existing law imposes requirements on grocery employers upon change in control of a grocery establishment, including requiring that the incumbent employer provide the successor employer with list of eligible grocery workers within 15 days, and that the successor to maintain a preferential hiring list, hire from that list for 90 days, and retain eligible workers for at least 90 days. (Labor Code section 2500 *et seq.*) This bill would change the deadlines, giving the incumbent employer 25 days to provide the list of employees; and requiring the successor to hire from the list for 100 days and to retain eligible workers for at least 10 days.

Grocery Worker Retention Rights (SB 725)

While California presently has its version of the federal Worker Adjustment and Retraining Notification Act (WARN, Labor Code section 1400 *et seq.*) and "grocery establishment"-specific worker retention requirements (Labor Code section 2500 *et seq.*) AB 851 would essentially create Cal-WARN act requirements specific to "grocery establishments." "Grocery establishments" following a "merger" (as defined in Labor Code section 2502) would be precluded from ordering a "mass layoff," "relocation" or "termination" (as defined in Labor Code section 1400) at a covered establishment unless the employer gives notices of the order 180 days before it takes effect.

This notice would need to be provided to (1) the affected employees; and (2) to the Employment Development Department, and the chief elected official of each city and county government within which the termination, relocation or mass layoff occurs. These notices will also need to include the elements required under the federal WARN Act (29 U.S.C. § 2101 *et seq.*). Notably also, if the grocery establishment is located in a geographic area designated as a "food desert" by the United States Department of Agriculture, then this notice would to be served upon the Department of Justice, the State Department of Public Health and the State Department of Social Services.

However, as under the Cal-WARN Act, this notice would not be required if the mass layoff, relocation or termination is necessitated by a physical calamity or act of war.

Grocery Establishment Closure Notices in "Food Deserts" (AB 853)

As mentioned above regarding SB 725, California already has "grocery establishment" specific rules regarding worker retention and preferential rehire eligibility following a transfer, but not if the grocery establishment is located in a "food desert" and specified conditions apply. (Labor Code section 2500 *et seq.*) This law would add new Labor Code section 2516.1 to prohibit grocery establishment closures in a food desert following a merger unless the grocery establishment provides written notice 180 days before the establishment ceases to be fully operations and open to the public. This written notice would need to

be provided to the city council, city attorney, board of supervisors, county counsel, State Department of Public Health, and Attorney General.

These notices would also need to include both of the following: (1) a written analysis and explanation (along with data) of how residents in the "food desert" will be able, at comparable cost, to purchase food after the establishment ceases being fully operational and open to the public; and (2) the establishment's profit and loss statement for the two years prior to the merger, attested to by a responsible officer of the successor employer.

Public Sector/Labor Relations

Legislative Employees Allowed to Organize (AB 1)

This bill would authorize employees of the California Legislature to unionize. Similar bills have been introduced multiple times but stalled.

Extending Overtime Requirements to Legislative Employees (SB 276)

This bill would extend California daily overtime requirement (codified in Labor Code section 510) to employees (but not "Members") of the California Legislature.

Paid Parental Leave for California State University Employees (AB 1123)

This bill would add section 89519.3 to the Education Code and would grant leaves of absence to "employees" of California State University (as defined in Government Code section 3562). Employees would be entitled to a leave of absence with pay for one semester of an academic year, or an equivalent duration, in a one-year period commencing on the date leave is first taken, following the birth of a child or placement of a child with an employee for adoption or foster care. The leave would be required to be taken without interruption unless otherwise agreed to by mutual consent between the employee and an appropriate administrator, and only working days will be charged against the leave of absence. (This bill is similar to AB 2464, which was vetoed in 2022).

State Provided Benefits

Savings Accounts for Childcare Expenses (AB 14)

This bill states the Legislature's intent to provide for tax-preferred childcare savings and investment accounts to allow families to save for childcare expenses.

Employer Tax Deduction for Health Savings Accounts (SB 230)

To further incentivize smaller employers to offer healthcare benefits, this bill would allow a tax deduction for employers with 50 or fewer employees that make contributions to a health savings account (as defined under the Internal Revenue Code). This deduction would exist in taxable years beginning January 1, 2023 and before January 1, 2028.

COVID-19 Regulatory Compliance Credit (SB 375)

This bill would allow an employer to claim a COVID-19 regulatory compliance credit for the 2023 and 2024 calendar years. For employers with 100 or more employees, the credit would l not exceed $50 per employee; and for employers with fewer than 100 employees, the credit will not exceed $100 per employee. This amount would be credited against employee personal income tax withholding amounts required to be remitted to the Employment Development Department but does not alter the employee's tax liability.

Public Posting of Information Regarding Timeframes for Handling Unemployment Claims (AB 337)

This bill would require the Employment Development Department to post on the department's internet website information about timeframes for processing unemployment insurance claims, issuing a first payment when the department does not request additional or clarifying information, and making final determinations of eligibility benefits. (This bill is similar to AB 1821, which stalled in the assembly in 2022.)

Extension of Authorization to Deposit Workers' Compensation Disability Indemnity Payments in Prepare Cards (AB 489)

Existing law allows an employer to deposit disability indemnity payments in a prepaid card account for employees who have workers' compensation injuries (with the employee's written consent). That law is set to expire January 1, 2024. This bill would extend the authorization for this program to January 1, 2025.

Unemployment Assistance for Undocumented Workers (SB 227)

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, 2027, the "Excluded Workers 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 or the calendar year 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. Eligible individuals would be able to receive $300 per week for each week of unemployment between January 1, 2025, and December 31, 2025, 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. (A similar law [AB 2847] passed the Legislature in 2022 but was vetoed by Governor Newsom.)

Miscellaneous

Expand Authority of DIR (AB 594)

This bill would state the intent of the Legislature to enact legislation to expand the authority of the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Commissioner to strengthen labor law enforcement efforts and protect workers from wage theft and other labor violations.

Labor Trafficking Unit within the DLSE and/or Civil Rights Department (AB 235 and AB 380)

These two similar bills would each establish a Labor Trafficking Unit to coordinate with other state enforcement agencies. AB 235 would situate the unit within the Civil Rights Department (CRD), while AB 380 would place it in the Division of Labor Standards Enforcement (DLSE). Both bills would give the unit(s) authority to receive and investigate complaints alleging labor trafficking and to take steps to prevent labor trafficking. The unit(s) would also receive evidence from the Division of Occupational Safety and Health regarding possible labor trafficking and would coordinate with other agencies and refer cases for potential civil and criminal actions relating to labor trafficking violations. The unit(s) would also annually submit a report to the Legislature regarding their activities, including the number of complaints received and the number of complaints referred. It is unclear whether the bills' authors intend to establish only a single Labor Trafficking Unit in the CRD *or* the DLSE or whether they intend to establish two such units to coordinate with each other.

Public Availability of Labor Statistics (SB 335)

Existing law requires the Department of Industrial Relations to publish an annual report containing statistics on state work injuries and occupational diseases and fatalities and requires the report to be made available to the public. This bill specifies that the report shall be made available to the public in a manner determined by the department.

Change in Court Rules regarding Arbitration (SB 365)

Existing law allows a party to appeal an order dismissing or denying a petition to compel arbitration. Existing law generally stays the proceedings in the trial court while an order is being appealed, subject to specified exceptions. This bill would prohibit a California trial court from staying proceedings during the pendency of an appeal of an order dismissing or denying a petition to compel arbitration. (The U.S. Supreme Court is currently considering the same issue under the Federal Arbitration Act in the case *Bielski v. Coinbase*.)

Requirements for Call Centers Contracting with State Agencies (AB 1381)

This bill would require, beginning January 1, 2025, state agencies that contract with a private entity specifically for call center services to provide public or customer service for that or another state agency shall ensure that by January 1, 2026, 90% of the call center work is conducted in California. However, this change would not apply to contracts entered into before January 1, 2025 and does not apply to contracts for programs or other services that are not call centers. For state agencies contracting with private entities

for programs or other services, including no-fee contacts, in which call center customer support services are included but the contract is not specifically for call center support services, the agency shall prioritize the work being conducted in California and require that at least 50% of call center jobs are in California (increasing to 75% for contracts entered into, renewed or extended after January 1, 2027).

These new requirements would authorize temporary exceptions allowing non-California call center usage in the event of a disaster, or for overflow periods not to exceed 48 hours, or for previously approved periods approved by the state agency to accommodate seasonable needs and avoid unreasonable, short-term costs for the state.

Utility Worker Protections (SB 705)

This bill would state the intent of the Legislature to enact legislation to enhance legal protections for utility workers.

California Workforce Pay for Success Program (SB 382)

This bill would establish the California Workforce Pay for Success Program. Upon appropriation of funds, this bill would provide for contracts with non-profit organizations that provide job training and workforce services to individuals with employment barriers. The bill would also establish the Workforce Pay for Success Program Board within the Labor and Workforce Development agency, which shall administer the program.

Workplace Readiness/Work Permits (AB 800)

This bill is intended to inform and educate young people about their rights as workers, including their explicit rights as employed minors.

Pursuant to that goal, this bill would require the first full week in May to be known as "Workplace Readiness Week" and would require public schools to educate pupils on their rights as workers on specified topics during that week (including the right to organize a union, the history of the labor movement, and the labor movement's role in winning various specified employee protections). This would be mandatory for students in grades 11 and 12 and optional for other grades.

The bill would also require that any minor seeking a signature on a work permit, must receive a document clearly explaining basic labor rights extended to workers, including the topics covered during Workplace Readiness Week. The bill would authorize bona fide labor organizations to create and provide sample forms meeting these requirements to schools.

OSHA Protections for Cannabis Delivery Employees (AB 1424)

Existing law prohibits an employee from being laid off or discharged for refusing to perform work that would include a violation of heath and safety laws, standards, or orders, if the violation would create a real and apparent hazard to the employee of their fellow employees.

This bill would expand that law by providing that a cannabis delivery employee shall not be laid off, discharged, *or subject to an adverse employment action* for refusing to perform work in violation of health and safety laws, standards, or orders *or for refusing to perform work that would create a real and apparent hazard to the employee or their fellow employees.* The bill expands protections for cannabis workers in two ways: first – they would be protected from adverse employment actions (while other employees are only protected from lay-off or discharge); and second, they would be protected for refusing to perform work that would create a hazard, even if there is no violation of a health and safety law, standard, or order (while other employees are only protected if they refuse to perform work in violation of a law or standard). For purposes of this bill, a "cannabis delivery employee" means an employee of a retailer, microbusiness, or nonprofit licensed pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Cal. Bus. & Prof. Code §§ 26000, *et seq*.), delivering cannabis or cannabis products.

Spot Bills to Watch

The Legislature has also introduced several so-called "spot bills" which initially reference only "technical" or "non-substantive" changes to a particular existing statute, but which may be materially and substantively amended later, including as key committee votes approach. These spot bills suggest future amendments may be forthcoming regarding, amongst other things: paid family leave (AB 575), paid sick leave (SB 723), time off for grief (SB 848), the definition of the workweek (AB 1100), employment discrimination (SB 876), wage theft (SB 864), employee privacy issues (AB 733, AB 1546, AB 1721), independent contractor issues (AB 504, SB 881), PAGA (SB 330), FEHA cannabis protections (SB 700), joint and several liability in property services or long-term care (AB 520), employee housing (AB 770, AB 1670), and arbitration (AB 924).

LOCAL ORDINANCES

Minimum Wage Increases

The San Francisco minimum wage will increase to $18.07 per hour on July 1, 2023. For more information, see: www.sf.gov/mwo.

Wage and Hour Ordinances

Berkeley recently enacted a "Fair Workweek Ordinance" that will impose scheduling restrictions on Berkeley employers. For more information, see: https://drive.google.com/file/d/1feM4zFSpbkEQasiHWAVrxF4EqAE-47lF/view.

NOVEMBER 2024 BALLOT

Initiative to Raise the Minimum Wage

This ballot measure seeks to increase the minimum wage by $1.00 per year until it reaches $18.00 per hour and then to increase the minimum wage annually to adjust for inflation. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

Initiative to Repeal PAGA

This ballot measure seeks to repeal the Private Attorneys General Act, which allows employees to file lawsuits on behalf of themselves and other employees to recover monetary penalties for certain state employment law violations. The Labor Commissioner would retain the authority to enforce these laws and impose penalties. The initiative would require the legislature to provide funding for Labor Commissioner enforcement. This initiative has received the requisite number of signatures and is set to be qualified for the November 2024 election unless withdrawn by the proponent.

Initiative Challenging the 2022 Law Authorizing Creation of a Fast Food Industry Council

This ballot measure seeks to repeal 2022 Assembly Bill 257, which created a fast food industry council to establish sector-wide minimum standards on wages, working hours, and other working conditions for fast food restaurant workers. This initiative has qualified for the ballot, and AB 257 is on hold until after the November 2024 election.