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CALSHRM LEGISLATIVE REPORT

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LEGISLATIVE SUMMARY

The deadline for the California Legislature to pass bills expired on September 10, 2021, and as expected, a number of employment-related bills were forwarded to Governor Gavin Newsom to sign or veto. These include bills that would:

- Amend the Fair Employment and Housing Act (FEHA) to allow employers to provide a voluntary hiring preference for veterans (SB 665);
- Expand the California Family Rights Act (CFRA) to allow time off to care for a "parent-in-law" (AB 1033);
- Prohibit confidentiality provisions in a settlement agreement involving any form of FEHA harassment or discrimination, and extend these prohibitions to separation or severance agreements (SB 331);
- Expand from two years to four years the retention period for certain employment records (SB 807);
- Clarify several aspects of an employer's notice obligations related to COVID-19 exposure at work (AB 654); and
- Define intentional wage deprivation as "grand theft" for criminal prosecution purposes (AB 1003).

As always, there were a number of other employment bills that stalled in 2021, including those that would expand the CFRA leave to non-family member "designated persons" (AB 1041), expressly authorize employer COVID-19 vaccine mandates (AB 1102), seal felony conviction records (SB 731), and allow employers to provide tax-favored student loan repayment assistance (AB 116). These bills remain pending given California's two-year legislative cycle, and may re-emerge in 2022.

Looking ahead, Governor Newsom has until October 10, 2021 to sign or veto any of the bills passed by the California Legislature. Accordingly, below is an overview of the employment bills currently on Governor Newsom's desk, with some predictions for the likelihood of their enaction.

BILLS SENT TO GOVERNOR NEWSOM

Harassment/Discrimination/Retaliation

Veterans' Hiring Preference for Private Employers (SB 665)

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 also need to report this policy to the DFEH and annually report to the DFEH the number of veterans hired in that reporting year under this policy and any demographic information the DFEH requires. An employer's failure to submit this report would nullify the preference's protections for those hiring decisions. The DFEH would be required to report to the Legislature the number of any discrimination claims it receives under this preference policy.

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.

This new preference provision would expire on January 1, 2028.

This bill has unanimously passed the Legislature and similar preference laws have been enacted in nearly 40 states, and seems likely to be enacted.

FEHA Enforcement Changes, Including Four-Year Retention Period for Employment Records (SB 807)

This bill would amend several provisions related to the FEHA and the Department of Fair Employment and Housing Act's enforcement provisions. For instance, it would increase from two years to four years the period that employers must retain the employment records identified in Government Code section 12946 (e.g., applications, personnel, and employment referral records) after the records are created or received, or after an employment action is taken. It would also specify that upon the filing of any verified complaint under the FEHA, the employer would be required to preserve any records and files until the later of (1) the first date after the period for filing a civil action has expired; or (2) the first date after the complaint has been fully disposed of and all administrative proceedings, civil actions, appeals, or related proceedings have terminated.

BILLS SENT TO GOVERNOR NEWSOM

It would also amend FEHA's venue provision to allow actions involving class or group allegations on behalf of the DFEH to be filed in any county within California.

While the statute of limitations to file an initial charge with the DFEH for FEHA-related claims was recently extended to three years, this bill would amend the statute of limitations for filing other types of charges (e.g., Unruh Act, Equal Pay Act claims, etc.). It would also specify that the statute of limitations for filing a civil action is tolled upon the filing of a DFEH charge until the DFEH either files a civil action or one year after the DFEH notifies the complainant it is closing its investigation. This tolling provision would apply retroactively, but would not revive already-lapsed claims.

Presently, the DFEH may enforce the FEHA by petitioning a superior court to compel compliance with the DFEH's investigation of certain employment complaints. This bill would permit the DFEH to appeal superior court decisions to the appellate courts. Continuing a trend, it would also enable a prevailing party to recover their fees and costs but limit an employer's ability to recover its fees and costs (even if a CCP 998 offer was issued) only if it proves the DFEH's appeal was frivolous or unreasonable when brought or if litigated after it became so.

While the DFEH presently may convene a dispute resolution conference, this bill would require the DFEH to do so before filing a civil action, which would also potentially toll the deadline to file a civil action.

It would also identify new procedures and deadlines related to class actions related to FEHA allegations.

This bill passed the Legislature with overwhelming support and appears likely to be enacted.

Leaves of Absence/Time off/Accommodation Requirements.

CFRA-Expansion to Allow Time-Off to Care for Parents-in-Law (AB 1033)

In 2020, California enacted SB 1383 materially expanding the California Family Rights Act (CFRA) both in terms of covered employers (i.e., to employers with five or more employees instead of the prior 50 or more employees) and the definition of "family care and medical leave" (i.e., adding grandparents, grandchildren, and siblings for whom leave may be taken to provide care). This bill cleans up or clarifies a couple of the ambiguities from last year's amendment.

For instance, while SB 1383 had included a definition for "parent-in-law," it had not otherwise included any substantive provisions related to "parents-in-law," leaving it unclear whether they were intended to be included in this new expanded definition of "family care and medical leave." AB 1033 resolves any such ambiguity by including "parent-in-law" within the definition of "parent," meaning eligible employees at covered employers may take statutorily protected leave to care for a "parent-in-law" with a serious health condition.

A second bill (AB 1867) had enacted until January 1, 2024, a pilot program allowing small employers (i.e., between five and 19 employees) to request mediation through the Department of Fair Employment and Housing (DFEH) for any alleged CFRA-related violations. This bill would recast this program in several respects, including deleting the authorization to request mediation. Instead, it would require the DFEH, when an employee requests an immediate right to sue alleging a CFRA violation, to notify the employee of the requirement for mediation prior to filing a civil

action if mediation is requested by the employee or employer. The bill would also identify various deadlines by which mediation-related activities would need to occur, including a 30-day period for a party to request mediation, and a 60-day period for the DFEH to initiate mediation following a request. The mediator would also be required to notify the employee of their ability to request information from the employer under Labor Code sections 226 (wage statements) and 1198.5 (personnel files), and to help facilitate "reasonable requests" for information to assist with mediation.

Once mediation is deemed unsuccessful or "complete" (as defined) or if mediation did not occur within 60 days, the employee could initiate a civil suit, with the statute of limitations period tolled during the pendency of these mediation efforts.

Since many DFEH charges allege multiple violations, this bill would also clarify that when a right to sue notice is issued for other violations, this pilot program would apply only to the CFRA allegations unless the parties voluntarily choose to mediate all alleged violations.

This bill unanimously passed the Legislature and seems likely to be enacted.

Human Resources/Workplace Policies

Expansion of Prohibitions on Confidentiality and Non-Disparagement Provisions, Including to Separation Agreements (SB 331)

A primary legislative focus of the #MeToo movement has been on non-disparagement provisions or so-called "secret settlements" that opponents contend allow the unlawful conduct to continue. Entitled the Silenced No More Act, this bill expands upon two recent California laws regarding confidentiality and non-disparagement provisions, and enacts various changes to severance or separation agreements.

For instance, in 2018, California enacted SB 820, which codified then-new Code of Civil Procedure section 1001 to preclude settlement agreement provisions restricting the disclosure of factual information related to claims of workplace harassment or discrimination based on sex. This bill would expand this prohibition on settlement agreement confidentiality provisions to include all types of workplace harassment or discrimination precluded by the FEHA, not just based on sex. While section 1001 currently only prohibits confidentiality provisions in FEHA retaliation cases where the person reported harassment or discrimination, this bill would also prohibit them in FEHA retaliation cases where someone has opposed this conduct, thus more closely tracking the current language of the FEHA's retaliation provision. These expansions would apply to settlement agreements entered into on or after January 1, 2022.

Also in 2018, California enacted SB 1300, which codified then-new Government Code section 12964.5 restricting the use of non-disparagement provisions or other documents that would preclude employee—in exchange for a raise or bonus, or as a condition of employment or continued employment—from disclosing information about unlawful acts in the workplace. Concerned that non-disparagement provisions regarding other types of conduct may confuse employees into believing they cannot report unlawful conduct, this bill would require employers who use non-

disparagement or other contractual provisions restricting the disclosure of workplace conditions, to include language expressly informing employees they are not precluded from reporting unlawful acts in the workplace. Accordingly, employers seeking to limit the disclosure about workplace conditions would need to include the following language: "Nothing in this agreement restricts you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you believe to be unlawful."

Another concern about the scope of SB 1300 was that its focus upon non-disparagement provisions "as a condition of employment or continued employment" allowed employers to include broad non-disparagement provisions in separation or severance agreements. This bill seeks to close that loophole regarding non-disparagement provisions in the separation agreement context. Accordingly, it would preclude non-disparagement provisions in separation agreements that prohibit the disclosure of information about unlawful acts in the workplace, and any such provisions would be deemed against public policy and unenforceable.

As with other non-disparagement provisions in the continued employee context regarding workplace conditions, non-disparagement or contractual provisions in separation agreements limiting the disclosure of workplace conditions would need to contain the same affirmation specifying these provisions do not preclude the disclosure of unlawful acts. Specifically, a non-disparagement provision regarding workplace conditions in the separation agreement context would need to include the following language: "Nothing in this agreement restricts you from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that you believe to be unlawful."

However, these prohibitions would not preclude the inclusion of a general release or waiver of all claims in an employment separation agreement, provided that the release or waiver is otherwise lawful and valid. Similar to the confidentiality limitations in Code of Civil Procedure section 1001 regarding settlement of pending lawsuits or claims, these separation agreement provisions would not preclude confidentiality regarding the amount paid in the separation agreement, nor prohibit employers from protecting trade secrets or confidential information that does not involve unlawful acts in the workplace.

Lastly, and seemingly unrelated to the #MeToo concerns regarding the above changes, this bill would also require additional agreement provisions to be included in separation agreements. For instance, employment separation agreements would need to notify the employee that they have the right to consult an attorney and provide the employee with a reasonable period (but not less than five business days) in which to do so. Employees would be permitted to sign the release prior to the expiration of this review period, provided their decision to do so was not induced by either (a) employer fraud, misrepresentations, or a threat to withdraw or alter the offer prior to the expiration of the reasonable time period, or (b) by the employer offering different terms to employees who sign such an agreement before the review period expiration.

This bill passed the Legislature with some bi-partisan support, and considering the prior confidentiality prohibitions, it seems likely to be enacted.

BILLS SENT TO GOVERNOR NEWSOM

COVID-19 Notices and Reporting (AB 654)

In 2020, California enacted AB 685, which, amongst other things, imposed various notice obligations upon employers related to COVID-19, including providing written notice to employees of a potential COVID-19 exposure, and reporting specified information to the local public health department if an "outbreak" (as defined) has occurred. In turn, the State Department of Public Health is required to make this workplace industry information received from local public health departments available on its internet website to allow the public to track the number and frequency of COVID-19 cases and outbreaks by industry.

This clean-up bill would amend both requirements, including to provide statutory consistency in terms of what information employers must provide to the employees. For instance, AB 685 had required employers to provide notices of potential exposure to employees "who were on the premises," but had required employers to provide notices of available COVID-19 benefits to employees who "may have been exposed" and to provide information regarding its disinfection plan to "all employees," seemingly regardless of whether they were on the premises or may have been exposed. AB 654 will harmonize these three provisions to clarify all three types of required employer notices must be provided to "employees who were on the premises at the same worksite as the qualifying individual within the infectious period."

Similarly, while AB 685 had required employers to provide written notice to the employees' exclusive representative, if any, for "employees" on the same worksite as a qualifying individual (as defined), this bill would limit this written notice to representatives of qualifying individuals and employees "who had close contact" with these qualifying individuals. "Close contact" would be defined as "being within six feet of a COVID-19 case for a cumulative period of 15 minutes or greater in any 24-hour period within or overlapping with the high-risk exposure period" (as defined) and would apply regardless of the use of face coverings.

AB 685 had defined "worksite" for purposes of these notice requirements, including stating that term did not apply to locations the employee did not enter, but was ambiguous whether it applied to an employee's personal residence or alternative work locations. This bill would amend the definition of "worksite" to provide that it also does not apply to "locations where the employee worked by themselves without exposure to other employees, or to a worker's residence or alternative work location chosen by the worker when working remotely."

Currently, employers are provided to notify the local public health agency of an "outbreak" within "48 hours," which was potentially problematic or ambiguous to the extent it involved periods where employers may not be open (e.g., weekends). This bill would clarify employers must provide this notice to the local public health agency within 48 hours or one business day, whichever is later.

This bill would also expand the employers exempt from the COVID-19 outbreak reporting requirement to various licensed facilities, including community clinics, adult day health centers, community care facilities, and childcare facilities.

This urgency statute would take effect immediately if enacted, but would be repealed on January 1, 2023.

This clarification bill overwhelmingly passed the Legislature and seems likely to be enacted.

Written Disclosure Requirements of "Quotas" for Warehouse Distribution Center Employees (AB 701)

Citing concerns that "quota" requirements in large warehouses pose safety issues, this bill would require "warehouse distribution centers" (as defined) to provide to nonexempt employees, upon hire, or within 30 days of this bill's enactment, a written description of each quota applicable to the employee. These notices will need to identify the quantified number of tasks to be performed, or materials to be produced or handled, within the quantified period and any adverse employment action that could result from not meeting the quota.

Employers would not be permitted to maintain a quota that prevents compliance with meal or rest periods, use of bathroom facilities, or occupational health and safety laws. An employer would also be prohibited from taking any adverse action against an employee for failing to meet a quota that precludes compliance with meal or rest periods, health or safety standards, or that was not disclosed. Any time spent by an employee complying with health and safety laws would be considered time on task and productive time under the quota system.

If a current or former employee believes a quota caused a violation of meal/rest periods or health/safety laws, they may request a written description of each quota applicable to them as well as their most recent 90 days of personal work speed data. Employers would need to provide this requested information within 21 calendar days from the date of the request.

As with many recent new laws, this bill would create a rebuttable presumption of retaliation for any adverse employment action taken within 90 days of an employee (a) making the first request in a calendar year for quota or personal work speed data discussed above; or (b) making complaint related to a quota alleging a violation of these provisions to the Labor Commissioner, any local or state agency, or the employer.

This bill would require the Labor Commissioner to enforce these provisions by engaging in coordinated and strategic enforcement efforts with the Department of Industrial Relations, including the Division of Occupational Safety and Health and the Division of Workers' Compensation. Amongst other things, it would permit information sharing amongst these state agencies, including employee injury data and the identity of uninsured employers. If a particular worksite or employer has an actual employee injury rate of at least 1.5 times higher than the warehousing industry's average annual injury rate, these agencies must notify the Labor Commissioner to determine whether investigation and further coordinated enforcement is needed.

Upon receiving a complaint, a state or local government entity may request or subpoena records regarding these quotas and employee work speed data. A current or former employee may also bring an action for injunctive relief to obtain compliance with these requirements and, if successful, recover costs and attorneys' fees. If the employee alleges the applicable quota precluded compliance with Cal-OSHA regulations, the employee may seek injunctive relief limited to suspension of the quota and any adverse action resulting from the quota's enforcement. For any potential PAGA actions, the employer would have the right to cure alleged violations.

Lastly, and also similar with some other recent new laws, this bill would expressly provide that it does not preempt any city or county ordinance providing equal or greater protection.

This bill is heavily opposed and a related bill by this same author (AB 3056) stalled in 2020.

Expansion of Displaced Janitor Opportunity Act Retention Rights to Hotel Workers (AB 1074)

Another recent legislative focus at both the state and municipal level has been on requiring successor employers to retain the workers of terminated contractors (see e.g., Labor Code section 2500 (grocery industry retention rights)). For example, California's Displaced Janitor Opportunity Act (Labor Code section 1060 *et seq.*) requires successor contractors and subcontractors for janitorial or building maintenance services to retain for a period of 60 days certain employees who were employed at that site by the previous contactor/subcontractor and to offer continued employment if the retained employees' performance is satisfactory. This bill would change this Act's name to be the Displaced Janitor and Hotel Worker Opportunity Act and essentially extend these protections to certain hotel workers. In this regard, if the hotel retains a new subcontractor, the successor contractor must retain the previously subcontracted employees for 60 days and offer continued employment if their performance is satisfactory during the 60 days.

For those purposes, it would expand the current definition of "awarding authority" to also include "guest services, food and beverage services or cleaning services." "Guest services" would be defined to include contracted work, for which a majority of the employee work hours are executed on hotel premises. Such "guest services" include front desk, bell, in-house mail delivery, telephone operation, concierge, spa, valet, maintenance, landscaping, housekeeping, laundry, room services, and other turndown services, or other substantially similar positions or services, provided by hotel service employees.

This bill narrowly passed the Legislature and is heavily opposed. In 2020, Governor Newsom vetoed a similar but broader bill (AB 3216) that would have provided both recall and retention rights to workers in various industries (including hotels), but with the enactment of SB 93 earlier this year establishing recall rights for hotel workers, this bill focuses only on retention rights.

<u>Wage and Hour</u>

Wage Deprivation as "Grand Theft" (AB 1003)

Labor Code sections 215 and 216 presently specify that certain wage-related violations may constitute a misdemeanor. However, to address concerns that some employers are intentionally keeping tips otherwise intended for employees, this bill would add new Penal Code section 487m providing that the intentional theft of wages (including gratuities) in an amount greater than $950 from any one employee or $2,350 in the aggregate from two or more employees in any consecutive 12-month period may be punished as grand theft. It would define "theft of wages" to be the intentional deprivation of wages (as defined by the Labor Code), benefits or other compensation, by unlawful means, with the knowledge that the wages, benefits or other compensation is due to the employee. For

purposes of this new Penal Code section, independent contractors would be included within the definition of "employee," and hiring entities of independent contractors would be included within the definition of "employer."

Wages, benefits, or other compensation that are the subject of a prosecution under this new section may be recovered as restitution under the Penal Code, and employees and the Labor Commissioner would also be permitted to file a civil action to recover Labor Code remedies for acts prohibited by this new section.

This bill unanimously passed the Legislature and seems likely to be enacted.

Labor Commissioner Liens on Real Property (SB 572)

While California law presently authorizes the Labor Commissioner to obtain a lien on real property owned by the debtor/employer to help recover amounts owed in favor of an employee, this bill would authorize the Labor Commissioner to obtain a real property lien to secure amounts due to the Commissioner under any final citation, hearing, or decision. This lien would exist for up to ten years, and the Labor Commissioner would be required to release the lien upon payment of the amount owed, including any interests and costs that lawfully accrued on the original amount owed.

This bill overwhelmingly passed the Legislature and seems likely to be enacted.

Phaseout of the Sub-Minimum Wage for Employees with Developmental Disabilities (SB 639)

While California and federal labor laws presently authorize employers to pay employees with certain disabilities lower wages than other employees, including amounts below the otherwise applicable minimum wage, this bill would phase out this exemption under California law. Citing concern the unemployment rates with people with disabilities remains disproportionally high, it will require a general phaseout of this subminimum wage exemption in California. Amongst other things, it will require the State Council on Developmental Disabilities to work with stakeholders and relevant state agencies to develop and implement a plan by January 1, 2023 to phase out the subminimum wage certification program.

Beginning January 1, 2022, California law would preclude any new special licenses from being issued to authorize the payment of lower wages. Beginning on the later of January 1, 2025 or when the state's multiyear phaseout plan is released, it would also prohibit employers from paying employees with disabilities less than the higher of the state or applicable local minimum wage.

While Labor Code section 1191.5 presently authorizes the Industrial Welfare Commission to issue special licenses for nonprofit organizations and authorizes a special minimum wage for covered employees, this bill would repeal this provision effective January 1, 2025.

Additional Wage and Hour Protections in the Garment Manufacturing Industry (SB 62)

In 1999, California enacted AB 633 to target wage theft in the garment industry and to create access to justice for victims. Citing concerns some manufacturers have attempted to frustrate the purpose of AB 633, including by adding layers of subcontracting, this bill is intended to strengthen the protections for garment workers.

Accordingly, it would expand the definition of garment manufacturing generally, including to add certain garment manufacturing processes such as dyeing, altering a garment's design, and affixing a label.

Citing a concern that piece rate payments ensure workers receive less than the state-mandated minimum wage, this bill would prohibit employees engaged in garment manufacturing from being paid by the piece or unit, or by a piece-rate, except in certain specified circumstances. It would also impose statutory damages of $200 per employee payable to the employee for each pay period in which each employee is paid by the piece-rate.

It would also define and include "brand guarantors" for purposes of these provisions, regardless of whether the brand guarantor performs the manufacturing or simply contracts with others. It would also specify that garment manufacturers, contractors, or brand guarantors will share joint and several liability with any contractor or manufacturer who violates these protections. It would also make garment manufacturers and contractors liable for the full amount of any violation.

It would also expand the period that garment manufacturers must retain certain business records from three years to four years, and it would create certain rebuttable presumptions in the employee's favor for claims filed with the Labor Commissioner.

Expanded Joint and Several for Customers of Port Drayage Drivers (SB 338)

The California legislature has recently been focused upon wage and hour/labor code violations amongst "port drayage" drivers who transport cargo by road to and from ports to warehouses distribution centers and railyards. For instance, in 2018, California enacted SB 1402 to impose joint and several liability on businesses that hire port drayage carriers to transport their goods if those port drayage carriers have failed to pay judgments for labor violations or have not provided unemployment insurance. Joint and several liability lasts as long as a carrier is listed on the Division of Labor Standards Enforcement (DLSE) website for failing to pay outstanding judgments.

This bill is intended to address concerns that port drayage carriers are continuing to skirt these enforcement measures. Accordingly, it would expand a customer's joint and several liability to the state for port drayage services obtained after the date the motor carrier appeared on the state's prior offender list. In this regard, it would add potential responsibility and liability to include a port drayage motor carrier's employment tax assessments and failure to comply with health and safety laws.

Secondly, citing a concern that port drayage carriers are essentially buying their removal from the DLSE website by simply exerting settlement pressure over vulnerable drivers, this bill would enact new procedures related to how a motor carrier can be removed from the DLSE's offender list. These would include requiring the DLSE to determine there has been full payment or settlement of an unsatisfied judgment or other financial liabilities, and requiring the carrier to submit sworn certification and "sufficient documentation" (to be defined) that all identified violations have been remedied or abated.

BILLS SENT TO GOVERNOR NEWSOM

AB 5 Exemptions Proposed for Certain Industries and Professions (AB 1561)

In 2019 and 2020, various laws were enacted to exempt specific industries from AB 5's "ABC Test" for worker classification purposes. Continuing this trend, AB 1561 would extend the current licensed manicurists' exemption to January 1, 2025, and extend the current exemption for certain construction industry subcontractors also to January 1, 2025. It would also expand the exemption for individuals licensed by the Department of Insurance to include claims adjusting or third-party administration and modify the exemption in the data-aggregating context.

This bill unanimously passed the Legislature and seems likely to be enacted.

PAGA Exemption for Janitorial Employees (SB 646)

This bill would create a new Labor Code section 2699.8 and exempt from the Private Attorneys General Act janitorial employees (as defined) with respect to work performed under a valid collective bargaining agreement in effect before July 1, 2024, that governs wages, hours of work, and working conditions and contains specified other provisions (including an explicit PAGA waiver and a grievance procedure to address wage and hour issues that otherwise might invoke PAGA). This exception would expire upon the earlier of the CBA expiration or on July 1, 2028.

This bill will not preclude janitorial employees from pursuing a PAGA action if a court or administrative agency of competent jurisdiction has concluded the labor organization breached its duty of fair representation in relation to a potential PAGA claim.

The bill's author notes that it is intended to increase unionization of janitorial employees, thus ending a "race to the bottom" involving unscrupulous employers who attempt to cut labor costs. It also continues a recent trend of labor groups to obtain limited exemptions for employees working under a collective bargaining agreement. (E.g., AB 1654 (2019) [exempting certain CBA-covered employees in the construction industry].)

State-Provided Benefits

Notice Requirement for Disqualification of Unemployment Insurance Benefits (AB 397)

Presently, an individual may be disqualified for unemployment compensation benefits if the individual willfully made false statements or representations to obtain unemployment insurance benefits. This bill would require the Employment Development Department (EDD) to provide advance written notice and an opportunity to the alleged false representations before disqualifying the individual from being eligible for unemployment compensation benefits.

Increased Paid Family Leave Benefits (AB 123)

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 revise the formulas to increase the weekly benefits available under the program. From January 1, 2023 until January 1, 2025, these amounts would increase from the current 60% to either 65% or 75% of the employee's wages based upon the Fund's formulas. Beginning on January 1,

2025, these wage replacement amounts would increase to 70% or 90% of an employee's wages (subject to certain caps).

Miscellaneous

Extensions of Fee Deadlines in Employment Arbitration Proceedings (SB 762)

In 2019, California enacted SB 707 requiring employers to pay arbitrator fees within thirty days of invoicing or risk allowing employees the option to return to court proceedings. This bill would require the arbitrator to provide to all parties an invoice for the full amount owed, and, absent an express contractual provision identifying a specific number of days for fee payment, require the invoice fees be paid as due upon receipt. It would also require an extension of the due date to be agreed upon by all parties, presumably to avoid having the arbitrator provide the employer an extension without the employee being aware of the delay or extension.

Increased Cal-OSHA Enforcement of Safety Issues (SB 606)

Citing concerns CalOSHA protections proved inadequate during the COVID-19 pandemic, this bill would expand CalOSHA's enforcement power in several respects that will likely continue well beyond the pandemic. First, it would authorize Cal-OSHA to issue a citation to an "egregious employer" (as defined) for each willful violation, with each employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties. This change would track similar powers given to the federal OSHA to stack penalties and encourage workplace safety rather than issuing a single blanket violation by such employers.

Second, regarding employers with separate places of employment, it would create a rebuttable presumption the employer has committed an enterprise-wide violation if either of the following are true: (1) the employer has a written policy or procedure (except as specified) that violates Health and Safety Code section 25910 or any standard, rule, order or regulation; or (2) Cal-OSHA has evidence of a pattern or practice of the same violation or violations at more than one of the employer's location. If the employer failed to rebut this presumption, Cal-OSHA would be permitted to issue an enterprise-wide citation requiring enterprise-wide abatement based upon that written policy or procedure. Enterprise-wide violations would also be subject to the same penalty provision as willful or serious violations.

This bill passed the Legislature on party-line votes and is heavily opposed.

Multi-threat Protective Gear for Emergency Ambulance Employees (AB 7)

This bill would require emergency ambulance providers to provide multi-threat body protective gear to an emergency ambulance employee upon their request and to make the protective gear readily available for the requesting employee when responding to an emergency call.

Agricultural Worker Protections for Wildfire Smoke (AB 73)

California law presently requires the State Department of Public health to implement various public health programs, including the establishment of a personal protective equipment (PPE) stockpile for healthcare workers and essential workers (as defined) during a 90-day pandemic or other health emergency. This bill would include wildfire smoke

events among health emergencies for these purposes and include agricultural workers in the definition of essential workers.

It would also require the agency to review and update its wildfire smoke protection training and post it on its internet website. The employer training of its agricultural employees would need to be in a language and manner readily understandable by these employees, considering their ethnic and cultural backgrounds and education levels, including potentially using pictograms as needed.

This bill would also modify the composition of the Personal Protective Equipment Advisory Committee, including increasing the representation of labor organizations representing health care workers and essential workers (as defined).

Public Works Disclosures by Contractors/Subcontractors (AB 1023)

Presently, Labor Code section 1771.4 requires contractors and subcontractors working on "public works" (as defined) to furnish payroll records to the Labor Commissioner at least monthly or more frequently if specified in the applicable contract. This bill would revise this requirement to clarify that "monthly" means at least once every 30 days work is being performed on the project and within 30 days after the final day of work is performed on the project. It would also require these records be submitted in an electronic format in the manner prescribed by the Labor Commissioner.

This bill would make a contractor or subcontractor who fails to furnish these records related to its employees liable for a penalty of $100 per day, but not to exceed $5,000 per project, to be deposited in the State Public Works Enforcement Fund. The Labor Commissioner would not be able to levy these penalties until 14 days after the deadline for furnishing records and would need to ensure these penalties accrue to the actual contractor or subcontractor that failed to provide these records.

Advisory Committee Proposed Regarding Cal-OSHA Protections Extended to Most Household Domestic Service Employees (SB 321)

This bill would require the California Division of Occupational Safety and Health to convene an advisory committee to make recommendations to Cal-OSHA or the California Legislature to ensure the safety of household domestic service employees, and to develop voluntary industry-specific occupational health and safety guidance to educate household domestic service employees and employers. These recommendations would need to be publicly posted and submitted to the California Legislature by January 1, 2023.

<u>Public Sector/Labor Relations</u>

Proposed Changes for Selecting Agricultural Labor Representatives (AB 616)

While agricultural employees presently may select their collective bargaining representatives through secret ballot election, this bill would permit these employees to also select their labor representatives by submitting a petition to the board supported by representation ballot cards signed by a majority of employees in the bargaining unit (i.e., a "card check" election). The bill's author says it is intended to overcome the significant hurdles agricultural workers

face to form a union, and to allow agricultural employees to select union representatives in the same manner as state and local government employees in California.

Secondly, while a party may presently appeal a final order regarding an unfair labor practice, this bill would require an employer who appeals orders involving make-whole, backpay, or other monetary awards to employees to post an appeal bond for the entire economic value of the order.

Public Employer Health Coverage During Strikes (AB 237)

Entitled the Public Employee Health Protection Act, this bill would require "covered" public employers (i.e., those that provide health/medical benefits for non-occupational illnesses) to maintain or pay an enrolled employee's health care/medical coverage during an authorized strike at the same level as if the employee had continued to work. It would also make it an unlawful practice for the covered employer to fail to collect and remit the employee's contributions to this coverage, or to maintain any policy violating these provisions or that otherwise threaten an employee's or their dependents' continued access to health or medical care during the employee's participation in a strike. The Public Employment Relations Board would be responsible for adjudicating any alleged violations of these protections.

Employee Information in Public Employment Context (SB 270)

Presently, certain California public employers must provide labor representatives with the names and home addresses of newly hired employees, as well as certain work information (e.g., job title, department, contact information) within 30 days of hire, and must also provide this information for all employees in a bargaining unit at least every 120 days. To address concerns public employers are not providing this information, this bill would, commencing July 1, 2022, authorize an exclusive representative to file an unfair labor practice charge provided certain conditions are first met (e.g., written notice of a violation and an opportunity to cure certain violations).