CALSHRM LEGISLATIVE REPORT – FEBRUARY 2019

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LEGISLATIVE SUMMARY

The first major deadline of the 2019-2020 California Legislative Session was reached with the expiration of the February 25th deadline for new proposed bills to be introduced. Hardly surprisingly, there were a significant number of proposed employment bills, many of which continued building upon last year's #MeToo-related developments and many others were bills that were vetoed by former Governor Jerry Brown. These include bills that would:

- Prohibit mandatory pre-employment arbitration provisions regarding Fair Employment and Housing Act (FEHA) and/or Labor Code violations (AB 51);
- Clarify that employees who received sexual harassment training in 2018 need not be re-trained in 2019 (SB 778);
- Amend the Labor Code to preclude discrimination or retaliation against sexual harassment victims and their family members (AB 171 and AB 628);
- Extend the statute of limitations for FEHA claims from one to three years (AB 9) and for Labor Code claims from six months to three years (AB 403);
- Expand CFRA leave to employers with 20 or more employees and eliminate the hours of service requirement (AB 1224);
- Further expand workplace lactation accommodation requirements (SB 142);
- Prohibit so-called "no rehire" provisions in employment-related settlement agreements (AB 749);
- Address the California Supreme Court's *Dynamex* ruling regarding independent contractors (AB 5 and AB 71);
- Encourage employers to assist employees with student loan repayment assistance (AB 152);
- Expand "paid family leave" wage replacement benefits (AB 196 and SB 135) and
- Require larger employers to submit annual "pay data reports" (SB 171).

There were also a number of so-called "spot bills" introduced on a wide range of employment subjects, suggesting this list may materially shortly.

Looking ahead, the next major deadlines are the April 26th deadline for bills to pass key policy committee votes and the May 31st deadline for bills to pass the first legislative chamber. Many of these bills will likely undergo significant amendments as these deadlines approach.

In the interim, below is an overview of the currently pending employment bills grouped

largely by subject matter, followed by a listing of the employment-related "spot bills" to also monitor.

PENDING BILLS

Clarification Proposed Regarding Sexual Harassment Training Deadlines (SB 778)

In 2018, California unanimously enacted SB 1343 which extended so-called AB1825 harassment training in two material respects: (1) it required employers with five or more employees (rather than 50 employees) to provide this training; and (2) it required employers to train both supervisors and non-supervisory employees. Although SB 1343 requires employers to provide this training by January 1, 2020, it was initially unclear whether employers would need to re-train employees who had received AB1825-compliant training in 2018, before SB1343 was enacted but within the two-year period for AB1825 training purposes. In late 2018, the Department of Fair Employment and Housing added to this confusion via published "Frequently Asked Questions" suggesting employers needed to retrain all employees in 2019, even those trained in 2018.

This bill would resolve this ambiguity by specifying that an employer who has provided this training after January 1, 2018 would not need to provide refresher training to the employee until after December 31, 2020.

This clarifying bill is proposed by the Senate's Committee on Labor, Public Employment and Retirement and appears very likely to be enacted and quickly.

Proposed Ban on Mandatory Arbitration for FEHA and Labor Code Claims Re-introduced (AB 51)

This bill responds to concerns that employers conceal sexual harassment through mandatory arbitration agreements and non-disparagement provisions. Accordingly, new Labor Code section 432.6 would preclude employers from requiring applicants, current employees or independent contractors to agree as a condition of employment, continued employment, or the receipt of any employment-related benefit to waive any right, forum, or procedure related to any violations of the Fair Employment and Housing Act (FEHA) and the Labor Code, including the right to file a claim with a state or law enforcement agency. It would also preclude employers from threatening, retaliating, or discriminating against any employee or applicant (including terminating their application for employment) who refuses to consent to the waivers prohibited under this section. Finally, it would specify that any agreement that requires an employee to opt out of a waiver or to take any affirmative action to preserve their rights will be considered a

condition of employment.

Although AB 51 does not mention arbitration specifically, the bill is clearly intended to essentially prohibit mandatory arbitration for not only FEHA claims, but also Labor Code claims. To escape a likely forthcoming preemption challenge, the bill's author states this bill does not preclude arbitration agreements for FEHA and Labor Code claims, but simply precludes employers from requiring them as a condition of employment, or retaliating against employees who choose not to agree to arbitration.

This prohibition would apply to any contracts for employment entered into, modified or extended on or after January 1, 2020. Further, prevailing plaintiffs who enforce their rights under this section would be entitled to recover their reasonable attorney's fees and injunctive relief (e.g., reinstatement, nullification of the improper contract provisions, etc.)

New Labor Code section 432.4 would also preclude employers from requiring as a condition of employment, continued employment or the receipt of any employment-related benefit that an applicant, employee or independent contractor agree to not disclose any instance of sexual harassment the employee or independent contractor suffers, witnesses, or discovers in the workplace or while performing a contract. Employers also could not require such individuals agree not to oppose any unlawful practice or from exercising any right or obligation or participating in any investigation or proceeding with respect to unlawful harassment or discrimination.

Lastly, new Government Code section 12953 would specify that it shall be an unlawful employment practice, thus implicating the FEHA, for an employer to violate proposed new Labor Code sections 432.4 and 432.6.

An identical bill (AB 3080) narrowly passed the Legislature but was vetoed by then-Governor Jerry Brown.

Extended Statute of Limitations for FEHA Complaints Re-introduced (AB 9)

Government Code section 12960 presently requires employees to file an administrative charge with the DFEH within one year from the date an unlawful employment practice has occurred. This bill would extend this deadline from one year to three years, but retain a one year limitations period for filing Unruh Act-related claims against business. It would also make conforming changes to the provision allowing employees an additional period up to 90 days if they first obtain knowledge of the facts of the alleged unlawful practice after the limitations period had expired. Finally, it would specify that this extended limitations period would not revive already lapsed claims.

An identical bill (AB 1870) passed the Legislature but was vetoed by then-Governor Jerry Brown.

Joint Responsibility for Labor Contractor Harassment (AB 170)

Labor Code section 2810.3 presently requires client employers and labor contractors to share civil liability for workers supplied by that contractor for certain violations (e.g., failure to pay wages or secure workers' compensation coverage). This bill would add a new FEHA provision (proposed Government Code section 12940.2) requiring such client employers and labor contractors to share responsibility for "harassment" (as defined in FEHA) by any workers supplied by a labor contractor. The client employer would be precluded from shifting any legal duties or liabilities under Division 5 of the Labor Code to the labor contractor.

A worker or their representative would need to provide at least 30 days' notice to the client employer prior to filing a civil action for violations covered by this new section. The client employer and the labor contractor would also be precluded from taking any "adverse action" against any worker for providing notice of any violations or for filing a claim or civil action.

Relatively similar changes were proposed as part of AB 3081 which then-Governor Jerry Brown vetoed in 2018.

Deleting FEHA's Preemption Provision? (SB 218)

Government Code section 12993(c) presently states the Legislature's intent that the FEHA is intended to occupy the entire field of regulation regarding discrimination in employment and housing, but that it also does not affect the application of the Unruh Act (Civil Code section 51) regarding discrimination in certain business relationships. This bill would delete this subsection, presumably to permit municipalities to also enact regulations regarding discrimination, harassment and retaliation.

Presumption of Post-Harassment Complaint Retaliation (AB 171)

Labor Code section 230 presently precludes all employers from discriminating or retaliating against victims of domestic violence, sexual assault or stalking, if the victim provides notice to the employer of the status or the employer has actual notice of this status.

This bill would amend this section to similarly preclude discrimination or retaliation against victims of "sexual harassment" (as defined by the Fair Employment and Housing Act in Government Code section 12940(j).) It would also create a rebuttable presumption of unlawful retaliation if, within 90 days of the employee providing notice of or the employer learning of their status as a victim of sexual assault, domestic violence, sexual assault or sexual harassment, the employer discharges, threatens to discharge, demotes, suspends or in any manner discriminates against the employee.

These changes were proposed as part of AB 3081 which then-Governor Jerry Brown vetoed in 2018.

Further Labor Code Protections for Sexual Harassment Victims (AB 628)

As with AB 171, this bill would amend Labor Code section 230 to preclude discrimination or

retaliation against victims of sexual harassment if the employer is aware of such status. It would also amend Labor Code section 230 to preclude discrimination or retaliation against victims of sexual harassment who take time off from work to obtain legal relief for the employee or their child, and would extend similar protections to "family members" who take time off work to provide assistance and support to the victim seeking relief. It would also impose new confidentiality requirements related to employees taking leave because the employee needed to appear in legal proceedings or needed to take time off related to legal proceedings due to being a victim of domestic violence, sexual assault, stalking or sexual harassment.

For purposes of this time off, it would define "family member" as (a) a child (including adopted children, step-children, legal wards or someone to whom the employee stands in loco parentis); (b) a parent (as defined, including legal guardians or someone who served as loco parentis when the employee was a minor child); (c) a spouse; (d) a registered domestic partner; (e) a grandparent; (f) a grandchild; or (g) a sibling.

For purposes of section 230, "employer" would include any person employing another under any appointment or contract for hire, and includes the state of California and the Legislature.

For purposes of section 230 only, it would also define "sexual harassment" very broadly, including beyond the workplace, and to include any leering, derogatory comments, blocking movements, etc.

This bill would additionally amend Labor Code section 230.1, which applies to employers with 25 or more employees. In this regard, while it presently precludes discrimination or retaliation against employees who take time off for specified purposes (e.g., medical attention, psychological counseling, and domestic violence centers) that are victims of domestic violence, sexual assault and stalking, it would add similar protections for victims of sexual harassment. It would similarly preclude discrimination or retaliation against "family members" who take time off from work to provide specific assistance and support to a victim of sexual assault, domestic violence, stalking or sexual harassment. "Family member," "sexual harassment" and "employer" would have the same definitions as discussed above regarding section 230.

A similar but broader bill (AB 3081) passed the legislature despite heavy opposition in 2018 but was vetoed by then-Governor Jerry Brown.

FEHA Amendments for "Protective Hairstyles" (SB 188)

This bill would amend the definition of "race" under FEHA to include "traits historically associated with race, including, but not limited to, hair texture and protective hairstyles." Protective hairstyles, in turn, would be defined as "including, but is not limited to, such hairstyles as braids, locks, and twists."

Economic Incentives Forthcoming to Combat Race and Gender Discrimination in

Restaurant Industry (AB 1526)

This bill states the Legislature's intent to address perceived race and gender disparities in management positions within the restaurant industry. If enacted, the Legislature would be tasked with foster workplace equity by providing economic incentives to "equitable employers" in the restaurant industry that complete specified training programs and contractually commit with the state to improve workplace equity by implementing standard and transparent hiring, promotion, training, and evaluation practices. The Legislature would also commit to enacting legislation publicly supporting these restaurant employer partners, including highlighting them during an annual state-sponsored restaurant week.

Harassment Training for Janitorial Service Workers (AB 547)

Known as the Janitor Survivor Empowerment Act, this bill would enact specific harassment training rules related to the janitorial service industry, including allowing peers to provide direct training on harassment prevention for janitors. It would also require employers, upon request, to provide a copy of all training materials used during the training and require employers to use a qualified organization from the list maintained by the Department of Industrial Relations.

It would also amend Labor Code section 1421 to require employers to maintain records for three years identifying the names and addresses of all employees engaged in rendering janitorial services for the employer.

A similar bill (AB 2079) passed the Legislature in 2018 but was vetoed by then-Governor Brown.

Harassment Poster Requirement for Educational Institutions (AB 543)

While the Education Code presently requires educational institutions to display its sexual harassment policy in a prominent location, this bill would expand these notice protections to include not only employees, but also students. Accordingly, it would require each educational institution to create and conspicuously display a poster notifying pupils of the institution's written policy on sexual harassment. As with many other poster requirements, this bill specifies many of the formatting requirements for this poster but otherwise directs that it contain "age appropriate" and "culturally relevant" information.

Targeting "Implicit Bias" in Certain Industries (AB 241-243)

These so-called "spot bills" have identified the Legislature's intent to amend the FEHA to address "implicit bias" within the healing arts professions (AB 241), the judicial branch (AB 242) and law enforcement (AB 243). The Legislature will likely flesh these details out in future amendments.

Sexual Harassment Settlements for Legislature Members (AB 1094)

This bill would preclude the Assembly and the Senate from paying any monies to compromise or settle any sexual harassment claim against a member of the Legislature.

CFRA Expansions (AB 1224)

California's Family Rights Act (CFRA) is the state law equivalent of the Family Medical Leave Act and allows eligible employees to take up to 12 workweeks of job-protected leave for certain specified reasons (e.g., to bond with a newborn child, to care for the serious health condition of the employee or family member). While the CFRA presently requires the employee work at least 1,250 hours in the 12 month period preceding such a leave (thus mirroring the FMLA), this bill would eliminate the 1,250 hours requirement, thus requiring only that the employee have 12 months of service with the employer. It would also drop from 50 employees to 20 employees the threshold number of employees for an employer to be subject to CFRA, and similarly drop from 50 employees to 20 employees the number of employees within 75 miles of the employee's worksite to entitle the employee to a CFRA leave.

It would similarly eliminate the 1,250 hours requirement for an employee to qualify for "new parent leave," which the Legislature added in 2017 (SB 63) thus requiring the employee need only have 12 months service with the employer.

Lastly, while California's Paid Family Leave presently allows an employee to receive up to a maximum of six weeks of wage replacement benefits within any 12-month period, this bill would eliminate this 12-month time limitation. Presumably then, a worker could qualify for up to six weeks wage replacement benefits for each qualifying "Paid Family Leave" occurrence within a 12-month period.

Annual Pay Data Reports (SB 171)

Evincing the ongoing feud between California and the federal government, this bill would essentially enact the proposed Obama administration regulations for revised EEO-1 reporting that the Trump Administration stopped in 2017. The bill's author states it is intended to force large California employers to undertake self-audits of their pay structures and then report these results to enable the state to monitor the overall progress toward achieving pay equity.

Accordingly, beginning March 31, 2021, and annually thereafter by this same deadline, private employers with 100 or more employees that are required to submit an annual EEO-1 will be required to submit "pay data reports" for the prior calendar year (i.e., the "Reporting Year") to the Department of Fair Employment and Housing (DFEH), who can also then share this report with the Division of Labor Standards Enforcement (DLSE) upon request. The pay data report would need to include very specific information enumerated in proposed new Government Code section 12999, including the number of employees by race, ethnicity, and sex in the following job categories: (a) executive or senior level officials and managers; (b) first or mid-level officials and managers; (c) professionals; (d) technicians; (e) sales workers; (f) administrative support workers; (g) craft workers; (h) operatives; (i) laborers and helpers; and (j) service workers.

Employers would also need to identify the number of employees, identified by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the United States Bureau of Labor Statistics in the Occupational Employment Statistics survey. For this particular purpose, the employer shall calculate the employee's earnings as shown on the IRS Form W-2 for each "snapshot" (i.e., during a single pay period of the employer's choice between October 1st and December 31st of the Reporting Year) and for the entire Reporting Year, regardless of whether the employee worked the entire calendar year.

For employers with multiple establishments, the employer shall submit a report for each establishment and a consolidated report that includes all employees.

This bill would permit, but not require, employers to include a section providing any "clarifying remarks" regarding any of the information provided. Employers required to file an EEO-1 report with the EEOC or other federal agency containing the same information may comply with this new reporting requirement by submitting the EEO-1 to the DFEH.

If the DFEH does not receive the required report, it may seek an order requiring employer compliance and shall be entitled to recover its enforcement costs (i.e., likely attorneys' fees).

The bill would require the department to maintain these pay data reports for at least 10 years. However, it would be unlawful for any DFEH officer or employee to publicize any "individually identifiable information" obtained through these reports prior to the initiation of any Equal Pay Act or FEHA claim. It would also contain a legislative declaration that information obtained through these reports would be considered confidential information and not subject to the California Public Records Act, but would permit the DFEH to develop and publicize aggregate reports via the information provided.

A very similar bill (SB 1284) passed the Senate but stalled in the Assembly in 2018.

Job Protections for Employees Using Medication-Assisted Treatment (AB 882)

Labor Code section 1025 presently requires employers with 25 or more employees to reasonably accommodate an employee who voluntarily participates in an alcohol or drug rehabilitation program, but does not preclude an employer from disciplining an employee whose current drug or alcohol usage renders them unable to perform their job duties. This bill would add new Labor Code section 1029 and apply to all employers, regardless of the number of employees, to preclude an employer from discharging an employee if the sole reason was because the employee tested positive on a drug test for a drug being used as a medication-assisted treatment under the care of a physician or pursuant to a licensed narcotics treatment program. This seemingly includes not only medical marijuana but also other lawful medicines (e.g., opioids) making it even broader than AB 2069, which stalled last year.

Dueling *Dynamex* Bills Proposed (AB 5 and AB 71)

In 2018, the California Supreme Court issued its landmark decision in *Dynamex Operations*

West, Inc. v. Superior Ct. (2018) 4 Cal. 5th 903 articulating a new legal test (the so-called "ABC Test") for determining whether someone is an independent contractor or an employee. Not surprisingly, there are two bills addressing the *Dynamex* decision albeit via very different approaches.

The first -AB 5- would state the Legislature's intent to codify the *Dynamex* decision, thus protecting it from legislative or judicial rollback.

The second -AB 71- would essentially jettison *Dynamex's* ABC Test and instead use the previously used multi-factor test set forth in *S.G. Borello & Sons v. Dept. of Industrial Relations* (1989) 48 Cal. 3d 341.

On February 26, 2019, the Assembly's Labor and Employment Committee convened a special meeting dedicated exclusively to *Dynamex*-related issues, confirming independent contractor classification will be a major legislative focus this session.

Extended Response Period to Allow Inspection of Employee Wage Records (AB 443)

This bill would amend Labor Code section 226 and extend from 21 days to 28 days the period of time for an employer to allow an employee to inspect or receive a copy of their payroll-related records.

Expanded Statute of Limitations and Attorneys' Fees Recovery for Labor Code Violations (AB 403)

This bill would amend two Labor Code provisions to make it easier or more enticing for plaintiffs to file suit. First, it would amend Labor Code section 98.7 to extend from six months to three years the period for a person to file a complaint with the Labor Commissioner.

Second, it would amend California's whistleblower statute (Labor Code section 1102.5) to allow a judge to award reasonable attorneys' fees to a prevailing plaintiff. Notably, in continuance of a recent trend, this amendment would specifically only identify a plaintiff as being able to recovery, presumably to preclude a prevailing defendant to recover even if the claims were frivolous.

Expanded Remedies for Wage-Related Penalties (AB 673)

Labor Code section 210 presently enumerates statutory penalties of $100 per violation per employee for various wage-related violations, but specifies that the Labor Commissioner shall recover that penalty with a percentage also being paid to the Labor and Workforce Development Agency. This bill would amend section 210 to specify that an "affected employee" (i.e., "the employee who was the subject of the violation") may bring a civil or an administrative action to recover the civil penalties presently available only to the Labor Commissioner.

Prohibition on "No Rehire" Provisions (AB 749)

Continuing the recent trend of legislatively limiting otherwise common settlement agreement provisions, this bill would prohibit any settlement agreement related to an employment dispute from preventing or restricting the "aggrieved person" from working for the employer against which the claim was filed, or any parent company, subsidiary, division, affiliate, or contractor of the employer. Any such provision in an agreement entered into or after January 1, 2020 shall be deemed void as a matter of law and against public policy.

Veterans' Hiring Preference for Private Employers (AB 160)

This bill attempts to address the higher-than-normal unemployment rate for returning veterans. Accordingly, new Government Code section 12958 would authorize employers to extend a preference during hiring decisions to veterans. "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 would be permitted to require a veteran to submit United States Department of Defense Form 214 to confirm eligibility for this preference. Section 12958 further specifies that such a preference shall 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.

Government Code section 12940(a)(4) presently provides that using veteran status in favor of Vietnam-era veterans shall not constitute sex discrimination under the FEHA. This bill would broaden this exemption by removing the references to "sex" and to "Vietnam-era veterans," and provide that FEHA's discrimination provisions would not affect an employer's ability to use veteran status as a factor in hiring decisions if the employer maintains a veterans' preference policy in accordance with new section 12958.

Similar bills (AB 1383 and AB 353) have unanimously passed the Assembly before stalling in the Senate's Judiciary Committee in 2016 and 2017, even though similar preferences have been enacted in nearly 40 states.

Student Loan Repayment Assistance (AB 152)

While California already has a tax provision essentially mirroring Internal Revenue Code section 127, which excludes from an employee's income certain amounts paid by the employer on behalf of an employee's current education, this bill would extend this benefit to include employer payments made to help satisfy pre-existing student loan debt. Specifically, this bill would modify California's Revenue and Taxation Code to exclude from an employee's gross income up to $5,250 per calendar year amounts paid or incurred by an employer to a lender relating to any

"qualified education loans," as defined in Internal Revenue Code section 221, incurred by the employee. This bill is intended to assist employers in employee recruitment/retention by allowing them to make payments on behalf of students to reduce the students' educational loan balance. If enacted, this exclusion would apply to payments made by employers beginning January 1, 2018 and before January 1, 2023.

A federal bill (HR 1043) would make a similar exclusion from federal gross income payments made by an employer to reduce an employee's educational loan balance. In 2018, a similar California bill (AB 2478) unanimously passed several committee votes before stalling.

Lactation Accommodation Requirements (SB 142)

Even though California just amended its lactation accommodation requirements in 2018 (AB 1976) to generally require employers provide a space other than a bathroom and providing guidelines for temporary lactation locations, the legislature has re-introduced a much broader bill that then-Governor Jerry Brown vetoed last year (SB 937).

Amongst other things, while Labor Code section 1030 presently requires employers to provide a reasonable amount of break time to express milk, this bill would specify the employer must provide a reasonable amount of break time each time the employee needs to express milk.

Secondly, while Labor Code section 1031 presently requires the employer provide a location "other than a bathroom" (following the adoption of AB 1976), this bill would specifically enumerate many physical requirements for this location, including adopting some specific requirements in the San Francisco Lactation Accommodation Ordinance, which took effect on January 1, 2018. For instance, it would reiterate that this location shall not be a bathroom and shall be in proximity to the employee's work area, shielded from view, and free from intrusion while the employee is lactating.

It would also require that the lactation room or location comply with all of the following requirements: (1) it be safe, clean, and free of toxic or hazardous materials; (2) contain a surface to place a breast pump and personal items; (3) contain a place to sit; and (4) have access to electricity. Employers would also need to provide access to a sink with running water and a refrigerator suitable for storing milk in close proximity to the employee's workspace. And it would also require that where the lactation room is a multipurpose room, the use for lactation purposes shall take precedence over other uses during the period it is in use for lactation purposes.

For employers in multi-tenant buildings who cannot provide a lactation room within its own workspace, they would be permitted to provide a shared space amongst multiple employers that otherwise complies with these requirements. Recognizing that some employers may not be able to meet these new requirements due to operational, financial or space limitations, it would allow employers to comply by designating a temporary lactation location, provided these temporary spaces are identified by signage, are free from intrusion while the employee is expressing milk,

and should remain lactation spaces for the time they are used for lactation purposes.

Employers with fewer than 50 employees may establish an exemption from these requirements if they can show the requirement would impose an undue hardship by causing the employer significant expense or operational difficulty when considered in relation to the size, financial resources, or structure of the employer's business.

New Labor Code section 1034 would also require employers to develop and implement a lactation accommodation policy including the following specific provisions: (1) notice of the employee's right to lactation accommodation; (2) identification of the process to request accommodation; (3) the employer's obligations to respond to such requests; and (4) the employee's right to file a complaint with the Labor Commissioner. Employers would be required to include this policy within their handbook or sets of policies made available to employees, and to distribute to employees upon hire or when an employee makes an inquiry about or requests parental leave.

Although employers would not need to respond to all lactation accommodation requests in writing, they would be required to respond in writing if unable to provide break time or a compliant location for lactation purposes. Employers would also be required to maintain requests for three years from the date of the request and allow the Labor Commissioner to access these records. And employees would be entitled to access these records in the same manner as accessing payroll-related records under Labor Code section 226. An employer who does not maintain adequate records, or does not allow the Labor Commissioner reasonable access to such records, shall be presumed to have violated these accommodation-related requirements absent clear and convincing evidence otherwise.

New Labor Code section 1035 would require the DLSE to develop and publish a model lactation accommodation policy and a model lactation accommodation request form that employers could use. The DLSE would also be required to establish lactation accommodation "best practices" that provide guidance to employers and a list of "optional but recommended amenities," but non-compliance with these "best practices" would not be deemed a violation of this chapter.

This bill would also add retaliation protections for employees who request lactation accommodation, and amended Labor Code section 1033 would specify that the denial of reasonable break time or adequate space to express milk shall be deemed a failure to provide a rest period in accordance with Labor Code section 226.7. While section 1033 presently authorizes a civil penalty of $100 for each violation, this bill would specify that the Labor Commissioner may award this penalty for each day an employee is denied reasonable break time or adequate space to express milk. Employees would also be entitled to file complaints with the Labor Commissioner or to file a civil action, in which case they could seek reinstatement, actual damages, and appropriate equitable relief. Continuing another legislative trend, the statute would allow the prevailing employee to recover their reasonable attorneys' fees, but not allow a prevailing employer to recover.

Lastly, for building owners and construction contractors, it would require newly constructed or remodeled non-residential buildings with at least 15,000 square feet of employee workspace to be constructed with lactations rooms, meeting the other requirements of this bill.

Advanced Authorization for Multiple Consumer Reports (AB 1008)

Both the federal Fair Credit Reporting Act (FRCA) and the California Investigative Consumer Reporting Agencies Act (ICRAA) detail various procedures before an employer may obtain an investigative report for employment purposes, including detailed advance disclosure requirements. However, while the FRCA expressly allows an employer to obtain a one-time blanket disclosure for obtaining these reports during the employment relationship, it is less clear whether employers can do so under the ICRAA or whether the employer needs to comply with the disclosure requirements each time they obtain such a report. This bill would clarify this ambiguity by expressly authorizing employers seeking investigative information for employment purposes to obtain a one-time authorization for single, multiple on ongoing disclosure of investigative consumer reports. As under current California law, the employer would still need to expressly disclose that it seeking either a one-time or a blanket authorization, and the employee would need to authorize in writing their approval for either the single report or the blanket authorization.

"Ban the Box" Exception for Criminal Justice Agencies (AB 1372)

Although California has enacted various laws limiting when employers may obtain criminal conviction information and how they may use it, there are also various statutorily-enumerated exceptions for particular industries (e.g., peace officers, etc.). This bill would make a minor amendment to include persons already employed as nonsworn members of a criminal justice agency as an exception to these general rules regarding criminal conviction information.

Increased Paid Family Leave Benefits (AB 196 and SB 135)

California's "paid family leave" is a state-sponsored insurance program within the state disability insurance program to provide wage replacement benefits for up to six weeks within a twelve-month period for certain purposes (e.g., time off to care for seriously ill family member or to bond with minor child). Currently the program provides benefits up to 70% of income for low income earners and 60% for middle and high income earners up to a maximum weekly benefit of $1,216.

Both legislative chambers have introduced so-called "spot bills" identifying the Legislature's intent to expand these benefits, with the details to be introduced later. In the Assembly, AB 196 expresses the Legislature's intent to expand the paid family leave program to provide a 100% wage replacement benefit for workers earning up to $100,000 annually. The Senate version (SB 135) expresses the legislative intent to provide job protections for workers taking paid family leave, to extend the time period for paid family leave (including up to six months to bond with a new born child) and to increase the wage replacement amount to encourage more workers to use

paid family leave.

A third bill (AB 406) would state the Legislature's intent to ensure that paid family leave-related forms are language-accessible to all families in California.

Paid Maternity Leave for School and Community College Employees (AB 500)

This bill would require the governing body for school districts, charter schools and community colleges to provide at least six weeks paid leave for a certificated employee or an academic employee due to pregnancy, miscarriage, childbirth and recovery from those conditions. This leave may begin before and continue after childbirth, if the employee is actually disabled by pregnancy, childbirth or related condition.

New Requirements for Emergency Ambulance Employees (AB 26 and AB 27)

These industry-specific bills would impose new requirements for emergency ambulance employees. The first -AB 26- would require emergency ambulance providers to provide each emergency ambulance employee, who drives or rides on the ambulance, with body armor and safety equipment to wear during the employee's work shift. The emergency ambulance employer would also be required to provide training to the emergency ambulance employee on the proper fitting and use of the body armor and safety equipment.

The second -AB 27- would require every current emergency ambulance employee, on or before July 1, 2020, and every new employee hired on or after January 1, 2020, within six months of being hired, to attend a six-hour training on violence prevention. After this initial six-hour training session, the employees would need to receive a one-hour refresher each calendar year thereafter. This training would need to be free of charge to the emergency ambulance employee, but they would need to be compensated at their base hourly rate of pay while participating in the training.

Protections for Public Employees Opting Out (AB 149)

Government Code section 3550 presently precludes public employers from deterring or discouraging public employees from becoming or remaining members of an employee organization. This bill would amend section 3550 to provide similar protections to public employees or applicants who decide to opt out of becoming or remaining a member of an employee organization. It would preclude a public employer from taking adverse action (including reducing the public employee's current level of pay or benefits) against a public employee or applicant to be a public employee who opts out of becoming or remaining a member of an employee organization.

Employing Infants in the Entertainment Industry (AB 267)

This bill would amend Labor Code section 1308.8 and extend its current requirements for infants under the age of one month working "on any motion picture set or location" to the

"entertainment industry" more broadly. Specifically, it would preclude infants under the age of one month from working in the entertainment industry absent certification from a physician or surgeon board certified in pediatrics as to the infant's medical ability to withstand the potential risks of such employment.

Whistleblower Protections Expansion to State or Local Contracting Agency (AB 333)

This bill would add new Labor Code section 1102.51, extending the protections in California's whistleblowing statute (Labor Code section 1102.5) to state and local independent contractors and contracted entities tasked with receiving and investigating complaints from facilities, services and programs operated by state and local government. It would also clarify that these retaliation prohibitions apply to the state or local contracting agency.

Union-Related Privilege (AB 418)

This bill would establish a privilege between a union agent and a represented employee to prevent the disclosure in any court or agency proceeding confidential communications made between the two while the agent was acting in the union agent's representative capacity. Under new Evidence Code section 1048, a represented or former represented employee would also have a privilege to prevent another from disclosing such confidential communications. This privilege would not preclude the disclosure of such communications in an action against the union agent or the union, or if the bargaining unit member consented after appropriate disclosures.

Legislative Employee Union Organizing (AB 969)

Entitled the Legislature Employer-Employee Relations Act, this bill would permit Legislature employees (including some supervisory and managerial employees) to form, join and participate in union-related activities. It would also extend similar protections (e.g., against retaliation etc.) afforded to state and public employee organizations contained within the Ralph C. Dills Act.

"Informal" Review Hearings with the Labor Commissioner (SB 229)

This bill would make several minor changes to the procedure to challenge a citation issued by the Labor Commissioner. First, Labor Code section 98.74 presently provides that a person issued a citation by the Labor Commissioner may obtain review of the citation by making a written request for a hearing. This bill would specify that this hearing shall be "an informal hearing." Second, while section 98.74 presently provides that a person may obtain review of the decision by filing a writ of mandate, this bill would clarify that the writ of mandate is to obtain review of the "written" decision and "order" of the Labor Commissioner.

Precluding Employer Voter Intimidation (AB 17

Entitled the Voter Protection Act, this bill would add new Election Code section 14002 to preclude employers from requiring or requesting that an employee bring their vote by mail ballot to work or vote their vote by mail ballot at work. The Secretary of State or any public prosecutor

with jurisdiction may seek civil fines up to $10,000 against any employer who violates these protections.

Preventing "Document Servitude" (AB 589)

To combat so-called "document servitude," this bill would prohibit employers from knowingly destroying, concealing, removing, confiscating or possessing an employee's passport, immigration document, or other actual or purported government identification document, for the purposes of committing trafficking, peonage, slavery, involuntary servitude, or a coercive labor practice. While federal law already prohibits employers from withholding or destroying immigration or identification documents for trafficking purposes, new Labor Code section 1019.3 would create a state law equivalent with new penalties and requirements. Accordingly, it would provide that violations of this prohibition would be a misdemeanor and subject the employer to a $10,000 penalty, in addition to any otherwise available civil or criminal penalty. The Labor Commissioner would also be authorized to issue a citation if it determines a violation has occurred.

Employers would need to post a notice concerning these new protections conspicuously at the place of work if practicable, or otherwise where it can be seen as employees come and go to their places of work, or at the office or nearest agency for payment kept by the employer. This notice shall specify the rights of an employee to maintain custody and control of the employee's own immigration documents, and that the withholding of immigration documents by an employer is a crime. The notice shall also include the following specific language: "If your employer or anyone is controlling your movement, documents, or wages, by using direct or implied threats against you or your family, or both, you have the right to call local or federal authorities, or the National Human Trafficking Hotline at 888-373-7888."

New Labor Code section 1019.5 would also require the DLSE to develop and make available to employers by July 1, 2020 the "Worker's Bill of Rights" containing the following information: (1) the employee's right to retain their immigration and identification documents and the employer's inability to take these documents except for employment eligibility verification purposes; (2) the employee's right to be paid the mandatory minimum wage established by law or agreed to in an employment contract, whichever is higher; (3) the right to live where the employee chooses and that the employee does not have to live at any place designated by the employer; (4) the right not to be subject to debt bondage in lieu of being paid wages owed to the employee; and (5) the right to call local or federal authorities, or the national Human Trafficking Hotline at 888-373-7888 if the employer or anyone else is controlling the employee's movement, documents or wages, or using direct or implied threats against the employee or the employee's family. The DLSE will make this notice available in English and the 12 languages most commonly spoken in California by non-English speaking people or people with limited English language proficiency.

The employer would be required to provide copies of the Worker's Bill of Rights to all

employees, with the timing of this delivery depending on whether the employee is hired before or after July 1, 2020. For employees hired on or after July 1, 2020, employers must provide this notice prior to verifying an employee's employment authorization. For employees hired before July 1, 2020, employers must provide the document to each employee after the DLSE makes it available.

Employers would be required to provide a copy in the language understood by the employee, and to obtain and retain for three years the employee's signature confirming receipt of this notice, and to provide a copy of the signed document to the employee. The employer may comply with the language requirement either by providing the document in the language understood by the employee or, if the DFEH has not made available a version in the language understood by the employee, by having the document interpreted for the employee in the language the employee understands

A similar bill (AB 2732) passed the Legislature with some bi-partisan support but was vetoed by then-Governor Brown.

Threshold Wage Levels for Personal Service Contracts (AB 790)

This bill attempts to address the perceived wage gap between the highest and lowest earning wage earners in California by specifying certain minimum wage levels for certain professions. Accordingly, beginning by January 2021, the Department of Industrial Relations (DIR) would be required to develop (and annually update) a list of "eligible employers" valued at least one billion dollars. Such "eligible employers" that enter into a "personal services contract" after January 1, 2021, would be required to include a contractual provision requiring the employer to pay a specific but presently unspecified wage level. "Personal service contracts" would include janitorial and housekeeping services, custodial services, food service workers, laundry services, window cleaning services, bus driving services, or security guard services, as well as any similar services the DIR determines should also be covered.

Employer Notices Regarding Dependent Care Assistance Program (AB 1554)

Internal Revenue Code section 129 allows employers to provide "dependent care assistance benefits" for their employees on a tax-free basis (so-called Dependent Care Assistance Programs [DCAPs]). These include allowing employees to make pre-tax contributions through a cafeteria plan up to certain annual limits, and which remain tax-free if used for particular purposes (e.g., caring for a minor child under age 13, etc.). This bill would require an employer to notify an employee who participates in an employer-provided DCAP, via a dependent care flexible spending account, of any deadlines to withdraw funds before the plan year ends. This notice shall be by two different forms, one of which may be electronic.

Prevailing Wage Expansion (AB 520)

California's prevailing wage laws require that workers performed on certain public works (as

defined) be paid not less than the general prevailing wage for work of a similar character "in the location in which public work is performed. In turn, Labor Code section 1724 defines "locality in which public work is performed" as either the county in which the contract is awarded in some instances, and as the limits of the political subdivision in other instances. This bill would eliminate that distinction and instead define "locality in which public work is performed" as the county in which the public work is done.

Respirators for Outdoor Workers (AB 1124)

This bill would require the Occupational Safety and Health Standards Board to adopt by July 13, 2019, emergency regulations requiring employers to make respirators available to outdoor workers on any day the outdoor worker could reasonably be expected to be exposed to harmful levels of smoke from wildfires or burning structures due to a wildfire, while working. If enacted, it would take effect immediately.

Tax Credit to Close Skills Gap (AB 1542)

This bill would state the Legislature's intent to enact future legislation to address the skills gap between the needs of California industries and the skills of California's workforce. This would include a Worker Training Tax Credit to encourage businesses to invest in training their low and middle-income workers in the skills needed for the 21st century economy.

"Spot Bills" to Watch

The Legislature has also introduced other various so-called "spot bills" (i.e., bills initially referencing only "technical and non-substantive" changes that are subsequently materially amended later in the proceedings.) These "spot bills" include AB 555 (paid sick leave), AB 440 (Private Attorneys General Act), AB 674 (DLSE subpoenas), AB 758 (hiring replacements during strikes), AB 789 (DLSE field enforcement unit), AB 1002 (public employee union organizing), AB 1007 (OSHA penalties), AB 1066 (unemployment insurance), AB 1454 (Labor Code section 2810 regarding labor contracts), AB 1548 (definition of "volunteer"), AB 1661 (Labor Code section 1771), AB 1677 (Labor Code section 2804 regarding contractual waivers) AB 1756 (state contracting discrimination protections), SB 238 (amending Labor Code section 2750.2 and the presumption of employment), SB 649 (DLSE personnel records), SB 671 (Labor Commissioner enforcement) SB 672 (Labor Code retaliation protections), SB 702 (DIR enforcement), SB 707 (remedies for employer breaches of arbitration agreement), SB 734 (working hours), SB 755 (employment agencies and job listing services).