

CALIFORNIA EMPLOYMENT LAW YEAR IN REVIEW

NEW CALIFORNIA EMPLOYMENT LEGISLATION

Jennifer Zargarof, Karen Cho, Nancy Nguyen, and
Zachary Shine

December 7, 2023



Presenters



Jennifer Zargarof



Karen Cho



Nancy Nguyen



Zachary Shine



Leaves and Accommodations



SB 616: Amendments to Sick Leave Law

- Amends California's Healthy Workplaces, Healthy Families Act of 2014 by increasing the amount of paid sick leave employers must provide to eligible California employees.
- Effective January 1, 2024, employers must comply with the increased paid sick leave entitlements as well as changes to usage restrictions. The amended statute also requires that employers comply with new timing requirements for issuing paid sick leave when using an alternative accrual method.
- Certain employees covered under a valid collective bargaining agreement, previously exempted from the paid sick leave statute, are now entitled to use employer-provided leave for qualifying paid sick leave reasons under Labor Code Section 246.5 and are eligible for the protections provided therein.

SB 616: Key Takeaways

Topic	Existing	Effective Jan. 1, 2024
Frontloading at beginning of each year of employment, calendar year, or 12-month period	24 hours or 3 days	40 hours or 5 days
Continuous accrual cap (Note: Once employees use time to fall below the accrual cap, employees will start accruing again up to the cap)	48 hours or 6 days	80 hours or 10 days
Alternative accrual method timing	<i>Regular Basis Accrual:</i> 24 hours by the 120 th day of employment, calendar year, or 12-month period <i>Non-regular Basis Accrual:</i> 24 hours or 3 days by the 120 th day of employment	<i>Regular Basis Accrual:</i> 24 hours by the 120 th day of employment, calendar year, or 12-month period <i>and</i> 40 hours by the 200 th day of employment, calendar year, or 12-month period <i>Non-regular Basis Accrual:</i> 24 hours or 3 days by the 120 th day <i>and</i> 40 hours or 5 days by the 200 th day of employment

SB 616: Key Takeaways (cont'd)

Topic	Existing	Effective Jan. 1, 2024
Use caps each year of employment, calendar year, or 12-month period	24 hours or 3 days	40 hours or 5 days
Non-construction unionized employees	Excluded from current paid sick leave law so long as the collective bargaining agreement (CBA) expressly provided for (1) certain wage and hour provisions, (2) final and binding arbitration of paid sick day disputes, (3) regular hourly rate or pay of at least 30% more than the state minimum wage, and (4) paid sick leave or other paid time off that could be used for paid sick leave reasons.	Partially excluded from amended paid sick leave law. Non-construction unionized employees will be entitled to the benefits under Labor Code 246.5, which means they are now entitled to (1) use CBA-provided leave intended for sick leave use for specific qualifying reasons, (2) not be required to find a replacement to take sick leave, and (3) be free from discrimination or retaliation for using such leave or engaging in other protected activity.
Employees covered by the Federal Railroad Unemployment Insurance Act (RUIA)	Covered under current paid sick leave law	Not covered under amended paid sick leave law. This change reflects the outcome of the Ninth Circuit's decision in National Railroad Passenger Corp. v. Su (2022) , which held that the RUIA preempted California law.

SB 848: Leave for Reproductive Loss Event

- Senate Bill 848 adds Section 12945.6 to the Government Code.
- Effective January 1, 2024, requires covered employers to provide eligible employees with up to five days of reproductive loss leave following a “reproductive loss event.”
 - A “reproductive loss event” is defined as “the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.”
 - Leave generally must be taken within 3 months of the reproductive loss event, and may be taken on non-consecutive days.
 - Leave is unpaid unless the employer has an existing policy that provides for paid leave that would cover reproductive loss leave, or the employee elects to use another source of accrued paid leave.
- The law caps the amount of reproductive loss leave to a maximum of 20 days within a 12-month period. Thus, where an employee may experience multiple reproductive loss events, an employer is not required to provide more than 20 days of reproductive loss leave.
- Prohibits retaliation against an employee who uses this leave or shares information about it.

Noncompete Agreements



SB 699: No Enforcement for Out of State Noncompetes

- Adds Section 16600.5 to the Business and Professions Code, effective January 1, 2024.
- Makes it unlawful for employers to attempt to enforce agreements that are otherwise unenforceable under California Business and Professions Code Section 16600 regardless of the state where the employee signed the agreement or worked when signing.
- Purpose of the law is to protect against the restraint of trade when an employee seeks employment in California.
- The law includes penalty provisions, allowing a current, former, or prospective employee to bring a private action for injunctive relief, damages, and attorneys' fees.

AB 1076: Broadens Noncompete Prohibitions

- Adds Section 16600.1 and amends Section 16600 to the Business and Professions Code, effective January 1, 2024.
- Codifies the holding in *Edwards v. Arthur Anderson LLP*, 44 Cal. 4th 937 (2008) that any noncompete, however “narrowly tailored”, is void.
- Makes unlawful the inclusion of a noncompete clause in an employment contract unless an express exception under Section 16600 applies.
- Imposes notification requirements on employers:
 - Requires written notice by February 14, 2024, to current and former employees employed after January 1, 2022 that any noncomplete agreements/clauses the employee previously signed are void.
 - Each written notice must be individualized to the employee or former employee and delivered to the person’s last known address and email address.
- States that violation of these provisions is a per se act of unfair competition under the UCL of Section 17200 et seq.

Discrimination, Harassment, and Retaliation



SB 497: Retaliation Rebuttable Presumption

- Existing law prohibits an employer from discharging, discriminating, retaliating, or taking any adverse action against an employee or applicant engaged in protected activity.
- Establishes a rebuttable presumption in favor of an employee under Labor Code sections 98.6, 1102.5, and 1197.5 if an employer takes any adverse action within 90 days of an employee's protected activity.
- Establishes a rebuttable presumption in favor of an employee if the employer took any adverse action within 90 days of the employee exercising his or her rights under the Equal Pay Act.
 - Protected activity may include complaints or claims regarding rights under the jurisdiction of the Labor Commissioner; unpaid wages; Equal Pay Act violations; or encouraging other employees to exercise their rights and make such complaints.
- Increases civil penalty imposed on employer under section 1102.5 from \$10,000 generally to \$10,000 per employee per violation.
- Effective January 1, 2024.

SB 700: Expansion of Marijuana-Use Protections

- SB 700 expands AB 2188 (passed last year) and with some exceptions prohibits discrimination in hiring, terminating, or any other term of employment on the basis of:
 - (1) an employee or applicant's use of cannabis off-the-job and away from the workplace;
 - (2) an employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.
 - Note: Employers may still conduct scientifically valid pre-employment drug screening through methods that do not screen for nonpsychoactive cannabis metabolites.
- Clarifies employers are prohibited from requesting information from an employee or applicant based on prior use of cannabis.
- Makes it unlawful to discriminate against a job applicant based on information regarding prior use of cannabis that is learned from a criminal history report unless authorized by other state or federal law.
- Effective January 1, 2024.

AB 933: Defamation Privilege – Sexual Harrassment

- Extends the definition of privileged communication in defamation actions to expressly include an individual's communications made without malice regarding an incident of sexual assault, harassment, or discrimination experienced by that individual.
- Broadly defines "communication" to include any factual information regarding an incident of sexual assault, harassment, or discrimination, and cyberbullying as defined by California's Education Code, experienced by the individual making the communication as defined.
- This privilege protects only individuals who have had a reasonable basis to file a complaint, meaning the individual who actually experienced the underlying conduct, regardless if filed or not.
- The bill also authorizes a prevailing defendant in any action for making such a privileged communication to recover their reasonable attorney's fees and costs, treble damages, and punitive damages.
- This bill adds section 47.1 to the Civil Code.

Workplace Safety



SB 553: Prevention of Workplace Violence

- Amends Labor Code Section 6401.7.
 - Requires that the employer's Injury Prevention Program to include a workplace violence prevention plan.
- Adds Labor Code Section 6401.9.
 - Establishes standards for the workplace violence prevention plan.
- Adds Code of Civil Procedure Section 527.8.
 - Authorizes a collective bargaining representative to seek workplace violence restraining orders on behalf of the union's members.

Wage/Hour & Other Labor Code Bills



Minimum Wage Increase

- Effective January 1, 2024 for all employers, regardless of size:
 - Minimum wage for non-exempt employees increase to \$16/hour from \$15.50/hour.
 - Increase of 3.5% as determined by the California Director of Finance.
 - Impacts salary for white collar exemptions (professional, executive, administrative) as well increasing the minimum to \$66,560.
- 2024 Election: Ballot Initiative 21-0043 proposes increasing the minimum wage to \$18.00 per hour by January 1, 2025 for employers with 26 or more workers, with annual increases thereafter based on the CPI-W.

Increase of Computer Professionals Compensation

- Minimum compensation is adjusted annually to account for inflation according to the California Consumer Price Index (CPI).
- Effective January 1, 2024, for exempt computer professionals:
 - The salary minimum will be \$115,763.35 annually (\$9,646.96 monthly) or an hourly wage of \$55.58 to qualify for the California computer professional exemption.
 - Compensation threshold increases by 3.3% per the California Department of Industrial Relations.
- Duties test set forth under Labor Code Section 515.5 remains unchanged.

AB 594: Private Enforcement of Labor Code Violations

- Directed at “widespread” “wage theft” in California, particularly as to lower wage workers, harming them and fair competition in the state.
- Makes unlawful:
 - Willfull misclassification of an individual as an independent contractor
 - Charging a willfully misclassified individual a fee or making deductions where such acts would have violated the law if individual not misclassified
- Amends Labor Code sections 218 and 226.8 to authorize a public prosecutor to prosecute a civil or criminal action for a violation of specified provisions of the Labor Code or to enforce those provisions independently until January 1, 2029.
 - Attorney General, district attorney, city attorney, county counsel, other city/county prosecutor
 - Excludes PAGA

AB 594 (cont'd)

- Willfull is defined as voluntarily and knowingly
- Penalties
 - \$5,000 - \$15,000 per violation (\$10,000 - \$25,000 per violation for pattern/practice)
 - In addition to any other penalties provided by law
 - Contractors' State License Board disciplinary action
- Provides that in any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the Labor Code
- DLSE gets 14-day pre-filing notice notice and intervention rights (2029 sunset)

Industry-Specific Bills



SB 525: Minimum Wage Increase for Health Care Workers

- Increases minimum wage for almost all hourly health care workers to \$25 depending on employer category.
- Prohibits local governments from enacting local laws relating to wages or compensation for health care facility employees.
- Includes contractors and subcontractors who provide healthcare services; does not include outside sales, delivery, or waste handling.

Note: The salary test for overtime exemption is 1.5 x health care worker minimum wage, or 2x state minimum wage, whichever is greater.

Employer Category

Category determines the increase schedule, but almost all employers will be subject to SB 525.

Schedule

Effective June 1 of each year.

Hospitals or systems with more than 10,000 employees

\$23 in 2024
\$24 in 2025
\$25 in 2026

Rural, county-owned, and high government payer hospitals

\$18 in 2024
\$25 in 2023

Free clinics which are not government-owned

\$21 in 2024
\$22 in 2026
\$25 in 2027

Certain licensed skilled nursing facilities

\$21 in 2024
\$23 in 2026
\$25 in 2028

All other covered facilities

\$21 in 2024
\$23 in 2026
\$25 in 2028

AB 647: Right of Recall for Grocery Employees

- Significantly expands the recall rights for grocery workers when there is a change of control in a grocery establishment.
 - Under existing law, when there is a change of control at a grocery establishment, the incumbent is required to provide a list of eligible workers to the successor within 15 days of the transfer document.
 - AB 647 amends this to:
 - 1) Include distribution centers owned/operated by “grocery establishments” and used to distribute goods to or from its owned stores, regardless of square footage;
 - 2) Require the incumbent to provide the list of eligible workers to any collective bargaining representative in addition to the successor; and
 - 3) Exclude retail facilities closed for 12 months or more.
- Prohibits retaliation and adds private right of action for employees to include reinstatement, front pay, back pay, value of benefits, and attorney’s fees.
- Effective January 1, 2024.

SB 41: Break Exemption for Unionized Cabin Crews

- Add section 512.2 to the Labor Code, exempting airline cabin crew employees covered by CBAs with valid meal and rest break provisions are expressly exempt by virtue of new Labor Code section 512.2 from California's meal and rest period requirements.
- Effective March 23, 2023.

SB 723: COVID-19 Right of Recall Extended

- In 2021, California enacted a law requiring that certain employers in the hospitality and service industries recall employees who were laid-off because of COVID-19. It was set to sunset December 31, 2024.
- SB 723 extends the current law to December 31, 2025.
- Expands recall rights to anyone who was employed by an employer for at least six months and whose most recent separation by the employer occurred after March 4, 2020 related to the COVID-19 pandemic.
- Adds a presumption that a separation due to a lack of business, reduction in force, or other economic, non-disciplinary reasons is due to a reason related to the COVID-19 pandemic, putting the burden on the employer to establish otherwise.

AB 1228 & SB 476: Fast Food-Industry Changes

AB 1228

- A compromise between the fast-food industry and labor groups.
- Creates \$20 minimum wage effective April 1, 2024.
- Applies to “National Fast-Food Chains.”
 - 60 establishments nationally
 - Limited-service restaurants
 - Bakeries and restaurants within grocery stores exempt
- No joint liability for franchisors.
- Establishes new Fast-Food Council.

SB 476

- Requires an employer treat the time it takes to complete the food handler training and exam as compensable “hours worked.”
- Requires the employer to pay costs associated with an employee obtaining a food handler card.
- Prohibits an employer from conditioning employment on an applicant or employee having an existing food handler card.
- Effective Jan. 1, 2024.

Notice Requirements



AB 636: Changes to Wage Theft Notice Requirements

- Labor Code section 2810.5 requires a Wage Theft Notice to new hires, and when information changes.
- Starting January 1, 2024, new Wage Theft Notices must include information on **“the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee is to be employed, and that was issued within 30 days before the employee’s first day of employment, that may affect their health and safety during their employment.”**
- Beginning March 14, 2024, the bill requires employers with employees on a federal H-2A visa to include an additional section on the Wage Theft Notice to those employees (in Spanish, or in English if requested) describing the employee’s additional rights and protections under California law.
- And remember to update the sick leave section!

Other Bills



SB 365: No Automatic Stay When Appealing Denial of Motion to Compel Arbitration

- Amends Code of Civil Procedure Section 1294.
- States that appeal of an order dismissing or denying a petition to compel arbitration does not automatically stay proceedings in the trial court.

SB 799: Veto of UI Benefits for Striking Employees

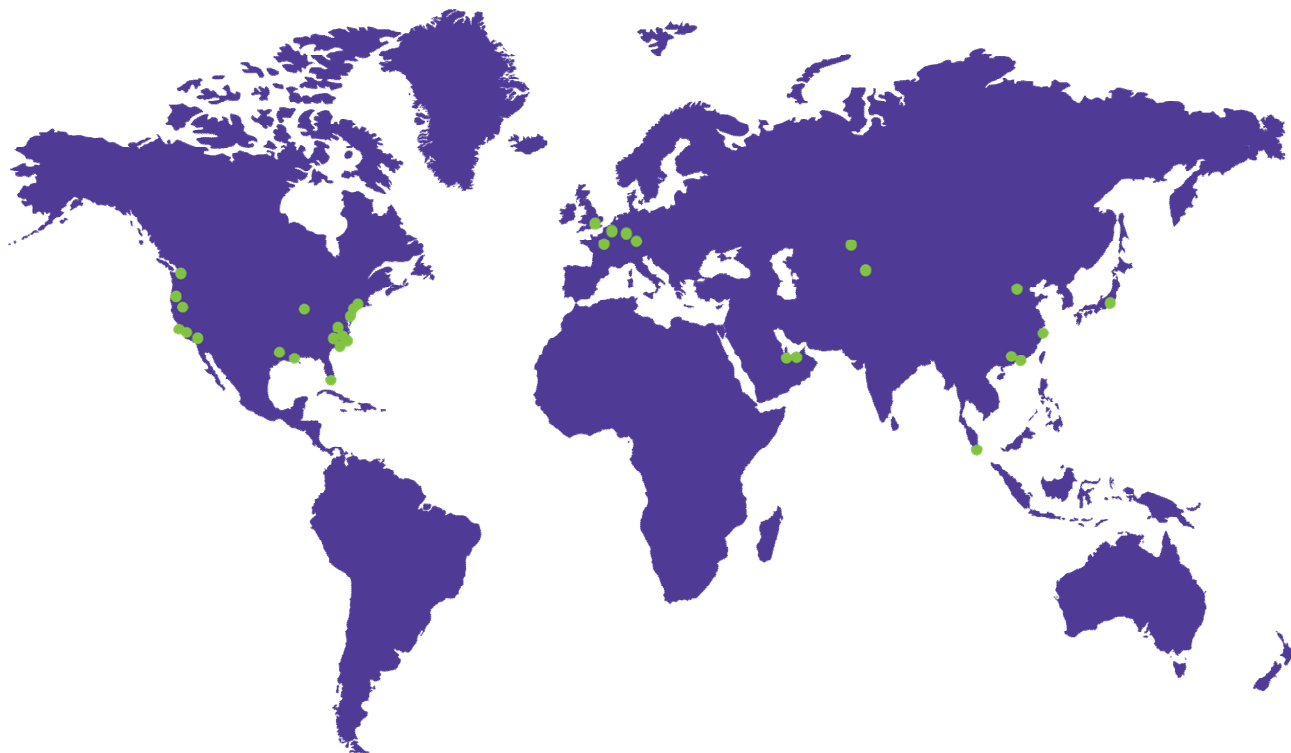
- This bill *would have* made striking employees eligible for unemployment insurance (UI) benefits after a strike has continued for more than two weeks.
- Veto ensures that status quo remains:
 - Employees are ineligible for unemployment insurance (UI) benefits if they leave work because of a trade dispute; and
 - Ineligibility continues for the duration of the trade dispute.
 - If the employer locks out the employees, then they are eligible for UI benefits.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Abu Dhabi
Almaty
Astana
Beijing
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong
Houston
London
Los Angeles
Miami
Munich
New York
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Seattle
Shanghai
Shenzhen
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



Morgan Lewis



Our Beijing, Shanghai, and Shenzhen offices operate as representative offices of Morgan, Lewis & Bockius LLP.
In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong.

THANK YOU

© 2023 Morgan Lewis

Morgan, Lewis & Bockius LLP, a Pennsylvania limited liability partnership

Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing, Shanghai, and Shenzhen offices operate as representative offices of Morgan, Lewis & Bockius LLP.

In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship.

Prior results do not guarantee similar outcomes. Attorney Advertising.