

New Minimum-Wage Rate Starts January 1

- Reports the [San Francisco Chronicle](#), “California’s \$15 minimum wage will expand to nearly all employees, **including those working for small businesses** ... It’s the final step in a seven-year plan to phase in a statewide \$15 minimum wage, which extended to employees of larger businesses in 2022. Legislators approved the wage increases with SB3 in 2016, by then-Sen. Mark Leno, D-San Francisco. Many cities in the Bay Area have ordinances that require a higher base wage.”

Job Postings Will Now Require Pay Scales

- Also from the above Chronicle article, “California employers with more than 15 employees will need to **start including pay scales in their job postings in 2023**. SB1162 by Sen. Monique Limón, D-Santa Barbara, also requires employers to give workers the pay scale for their jobs and maintain job title and wage history data for each employee. That data will be subject to inspection by the state labor commissioner, who could impose fines of up to \$10,000 for violations.”
- NFIB opposed [Senate Bill 1162](#), supporting Cal Chamber’s argument, “After only one year of this reporting requirement, SB 1162 seeks to publicize all of this data identifiable by individual companies under the pretense that it would reveal gender and race-based pay disparities ... this data was never designed to show such disparities. Publicizing the data to target employers is **a cynical and disingenuous manipulation of what the EEOC itself has acknowledged is not a reliable measure** of pay disparities between similarly situated employees.”
- Action Item: Employers should be ready to include pay scales in job advertisements.
- Also, SB 1162 requires employers with 100 or more employees to report to the California Civil Rights Department (CRD) (formerly the Department of Fair Employment and Housing), among others, the mean and median pay of their employees by race, ethnicity, and gender on or before the second Wednesday of May 2023 and for each year thereafter on or before the second Wednesday of May.

COVID-19 Supplemental Paid Sick Leave: SB 114

- Effective Date: Retroactive to January 1, 2022.
- In February 2022, SB 114 provided 80 hours of COVID-19 supplemental paid sick leave for employees from January 1, 2022, until September 30, 2022. On September 29, 2022, AB 152 extended the COVID-19 Supplemental Paid Sick Leave law until December 31, 2022.

Extension of COVID-19 Supplemental Paid Sick Leave: AB 152

- Effective Date: Immediately.
- AB 152 extends California's 2022 COVID-19 Supplemental Paid Sick Leave law until December 31, 2022, but does not provide additional leave time if an employee has already taken supplemental paid sick leave this year. AB 152 also establishes the California Small Business and Nonprofit COVID-19 Relief Grant Program to assist qualified entities that incur costs for COVID-19 supplemental paid sick leave and expands permissible employer-required diagnostic testing of employees. Now, when an employee uses COVID-19 supplemental paid sick leave, the employer may require testing on the fifth day following an employee's first COVID-19-positive test. If the test on the fifth day is still positive, an employer may require the employee to submit a second test after 24 hours. An employer is not required to give additional leave to an employee when an employee does not provide a test result five days after the initial positive COVID-19 test or does not comply with an employer's request for a test.

Workers' Compensation for COVID-19: AB 1751

- Effective Date: Extends the law through January 1, 2024.
- Existing law includes a rebuttable presumption for workers' compensation when workers contract COVID-19 under specified circumstances. The law was set to expire on January 1, 2023. AB 1751 extends the presumption until January 1, 2024.
- Action Items: Employers should continue monitoring federal, state, and local guidance regarding COVID-19. Moreover, employers must continue to report positive COVID-19 cases to their claims administrator, as the applicable law provides.

COVID-19 Notification Requirements: AB 2693

- Effective Date: Amends and extends the law through January 1, 2024.
- Existing law requires employers who receive notification of potential exposure to COVID-19 to provide written notice of potential exposure within one business day to all employees at the worksite. The notification requirement was set to expire on January 1, 2023. AB 2693 extends some notification requirements until January 1, 2024.

- AB 2693 also amends the duties of an employer when notified by an employee of potential exposure to COVID-19. Employers are no longer required to report COVID-19 cases to the local public health department. Employers may elect to either provide written notifications of potential COVID-19 exposures or utilize a worksite posting with the required information.
- Action Items: Employers should review the new notification requirements and determine the notification plan that is best for their organization. If employers decide to use worksite postings, they should ensure that all required information is included.

Rights of Workers in Emergencies: SB 1044

- Effective Date: January 1, 2023.
- SB 1044 prohibits an employer, in the event of a state of emergency or an emergency condition, from taking or threatening adverse action against an employee who refuses to report to, or leave, a workplace within the affected area because the employee has a “reasonable belief” that the workplace or worksite is unsafe. The law also prevents an employer from prohibiting any employee from accessing their mobile device or other communications device to seek emergency assistance, assess the safety of the situation, or communicate with another person to confirm their safety. Notably, under this legislation, an “emergency condition” does not include a health pandemic.
- Action Item: Employers should review their policies to ensure compliance.

Fair Employment and Housing Act (FEHA)

- Prohibition of Discrimination for Off-Duty Marijuana Use: AB 2188
- Effective Date: January 1, 2024.
- SB 2188 amends the FEHA to prohibit discrimination against an employee based on an employee’s use of cannabis off the job and away from the workplace or if a preemployment drug test finds non-psychoactive cannabis metabolites in an applicant’s hair, blood, urine, or other bodily fluids. The law exempts employees who are hired for positions that are required by federal agencies to conduct a federal government background investigation or security clearance. Also, the law does not preempt state or federal law that requires employees to be tested for controlled substances as a condition of employment, to receive federal funding, or to enter a

federal contract. There is also an exemption for the building and construction trades.

- Action Items: Employers should update policies to ensure compliance by January 1, 2024.

CFRA Leave, Sick Leave, and Bereavement Leave

- California Family Rights Act (CFRA) and Healthy Workplaces, Healthy Families Act of 2014: AB 1041
 - Effective Date: January 1, 2023.
 - This legislation allows employees to take leave to care for a “designated person.” AB 1041 defines a designated person as any individual related by blood or whose association with the employee is the equivalent of a family relationship. The change applies to both CFRA leave and sick leave related to a family member. Employers are allowed to limit an employee to one designated person per 12-month period.
 - Action Items: Employers should review their leave policies to allow employees to take leave to care for a designated person. Employers should consider creating a procedure for employees to designate a designated person.
- Bereavement Leave: AB 1949
 - Effective Date: January 1, 2023.
 - AB 1949 makes it an unlawful employment practice for employers to refuse an eligible employee’s request to take up to five days of unpaid bereavement leave upon the death of a family member as described in the statute. While the leave can be unpaid, the employer must allow the employee to “use vacation, personal leave, accrued and available sick leave or compensatory time off that is otherwise available to the employee.”
 - Action Items: Employers should update their leave policies to include at least five days of unpaid bereavement leave.

Workplace Safety: Cal/OSHA

- Employee Notification Requirements After Citations: AB 2068
- Effective Date: January 1, 2023.

- AB 2068 amends the California Labor Code to provide that when the Division issues a citation or special order or action, in addition to preexisting posting requirements, employers must also post an employee notification containing specified information. The law also requires the Division to make the employee notification available in English as well as the top seven non-English languages spoken by limited-English-proficient adults in California, as determined by the American Community Survey, including Punjabi, if it is not listed. The law makes a violation of the posting requirements enforceable by a civil penalty.
- Action Items: Employers must properly post employee notifications as required by applicable law.

Statute of Limitations

- Sexual Assault Statute of Limitations: AB 2777
- Effective Date: January 1, 2023.
- AB 2777 revives certain civil actions seeking the recovery of damages due to sexual assault where the applicable statute of limitations would have barred the complaint. The law revives such claims so long as the action is commenced by December 31, 2026, the underlying conduct occurred on or after January 1, 2009, and the statute of limitations would have been the sole bar to the action. The legislation also revives certain other sexual assault claims that would have been barred solely due to the statute of limitations before January 1, 2023, where an entity or entities (who are legally responsible for damages arising from the sexual assault) engaged in a “cover-up.” Such actions may proceed if pending in court on January 1, 2023, or are initiated between January 1, 2023, and December 31, 2023.
- Action Items: In light of this new legislation, businesses should consider retaining necessary documentation to the extent they need to defend themselves based on the revival of previously lapsed sexual assault claims.

Facility Access

- Restroom Access for Individuals with Medical Conditions: AB 1632
- Effective Date: January 1, 2023.
- Under AB 1632, a business that is open to the general public for the sale of goods and has a toilet facility for its employees must permit any individual who is lawfully on the premises and has an eligible medical condition to use the toilet facility during

normal business hours so long as the conditions set forth in the law are satisfied.

- Action Item: Employers who are open to the public and have employee restroom facilities should be aware of this requirement and permit the use of their restroom facilities under specified circumstances.

Employee Tracking

- Motor Vehicle Tracking: AB 984
- Effective Date: January 1, 2023.
- AB 984, among other matters, requires the Department of Motor Vehicles (DMV) to establish a program that authorizes an entity to issue devices as alternatives to traditional vehicle stickers, tabs, license plates, and registration cards under specific conditions. These so-called “alternative devices” may not include vehicle location technology except for vehicles that are registered as “fleet vehicles,” “commercial vehicles,” and those operating under an “occupational license.” Further, employers may not use an alternative device to monitor employees (i.e., to locate, track, watch, listen to, or otherwise surveil employees) “except during working hours, and only if strictly necessary for the performance of the employee’s duties.” Before conducting any monitoring with an alternative device, employers must notify the employee that monitoring will occur. The notification must include specified elements. Employers cannot retaliate against employees for disabling or removing monitoring capabilities from the alternative device during nonworking hours.
- Action Items: Employers who utilize alternative devices equipped with monitoring technology must ensure such monitoring is necessary for the employee’s job. Employers should also provide the appropriate notification to employees prior to conducting any monitoring during work hours.

Fast Food Workers

- FAST Recovery Act: AB 257
- Effective Date: January 1, 2023, and will become inoperative on January 1, 2029.
- The Fast Food Accountability and Standards Recovery Act (FAST Recovery Act) created the Fast Food Council, which is responsible for establishing minimum standards for fast-food industry employees, including minimum wages, working hours, and other working conditions related to health and safety in the fast-food

industry. The law could be placed on hold pending verification of signatures for a referendum on the law.

Farm Labor

- Farm Workers Voting by Mail in a Union Election: AB 2183
- Effective Date: January 1, 2023, and to be repealed on January 1, 2028.
- This legislation allows farmworkers to vote by mail in a union election or to utilize authorization cards to be submitted to the California Agricultural Labor Relations Board (ALRB). Previously, elections were only allowed to be held in person.
- Action Items: Employers in the agricultural industry should allow for mail-in ballots and authorization cards in elections.