

Blog Post

California is Spooky — California’s Recently Enacted Laws Provide Further Fright (aka Legal Obligations) to California Employers

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Just in time for Halloween and employee handbook update season, the California Legislature has passed an onslaught of new employment legislation sure to give employers compliance nightmares. From expanding the concept of “family” for leaves of absence, to more time to take that supplemental paid COVID-19 leave, protection against discrimination for cannabis use and reproductive health decision-making, pay transparency, and enhanced workplace safety rights, failure of a California employer to keep up on these changes can be scary! Here’s what employers need to know now to avoid a horror show in the future.

Leaves of Absence

Expanding Who Qualifies For Kin Care. The continually expanding California Family Rights Act (CFRA) allows, among other things, an employee to take a protected leave of absence to care for a sick family member. Recent amendments to CFRA have expanded this definition to include grandparents, grandchildren, siblings, children of any age, and parents-in-law. **AB 1404** takes CFRA a step further by expanding its scope to include a “designated person,” meaning any individual related by blood or whose

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association with the employee is the equivalent of a family relationship.

AB 1404 also expands the definition of “family member” under California’s paid sick leave law, the Healthy Workplaces, Healthy Families Act of 2014, to include a “designated person.” The definition of “designated person” is broad and includes anyone whom the employee identifies at the time the employee requests paid sick days.

Bereavement Leave. AB 1494 also amends CFRA by providing eligible employees at least 5 days of unpaid leave related to the death of a family member. “Family member” for purposes of this law means a spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. An employer may not require such leave to be taken consecutively, but may require the leave be completed within three months of the date of the death of the family member.

COVID Supplemental Paid Leave Rights Extended (Effective September 29, 2022)

AB 152 extends an employee’s right to take COVID-19 supplemental paid leave (which would have otherwise expired on September 30, 2022) through December 31, 2022. This law does not require employers to provide new paid leave beyond the amount of COVID-19 supplemental paid leave previously required, but simply extends the time by which an employee may use such paid time off.

Discrimination in Employment

Cannabis protection. AB 2188, which takes effect January 1, 2024, prohibits employers from discriminating against an applicant or employee for the use of cannabis off duty and away from the workplace. Additionally, the law prohibits employers from taking action against an employee based on a drug test that detected non-psychoactive cannabis *metabolites*. Such action is now

discrimination in violation of the Fair Employment and Housing Act (FEHA). This law is meant to encourage the use of tests to detect *THC* (which can indicate impairment) as opposed to *metabolites* (which do not indicate impairment, and can remain in an individual's system for weeks). The law does not apply to employees in the building or construction trades or in positions that require a federal government background investigation or security clearance.

Reproductive Health

SB 523 makes it unlawful under FEHA to discriminate against an applicant or employee based on their reproductive health decision-making. "Reproductive health decision-making" includes a decision to use or access a particular drug, device, product, or medical service for reproductive health. The definition of "sex" under FEHA may include reproductive health decision-making. An employer may not require an employee or applicant to disclose information relating to their reproductive health decision-making.

SB 523 also amends the California Government Code to require, effective January 1, 2024, that health benefit plans or contracts to provide coverage for 1) contraceptives and related services consistent with the requirements under Section 1367.25 of the Health and Safety Code and Section 10123.196 of the Insurance Code; and 2) vasectomies and related services consistent with the requirements under Section 1367.255 of the Health and Safety Code and Section 10123.1945 of the Insurance Code.

Pay Transparency/Pay Data and Equity

Current California law requires an employer to provide a position's pay scale to an applicant upon request. As discussed on our blog [last week](#), **SB 1162** expands current law to require an employer to provide such information to an employee for the position the employee holds, among other new obligations. An aggrieved employee may file a

complaint with the Labor Commissioner or file a civil action.

Workplace Safety

SB 1044 prohibits employers from taking or threatening adverse action against an employee for refusing to report to, or leaving, the workplace due to a “reasonable belief” that the workplace is unsafe due to an “emergency condition.” SB 1044 also prohibits an employer from preventing an employee from accessing the employee’s mobile device or other communication device for seeking emergency assistance, assessing the safety of the situation, or communicating with a person to verify their safety. “Emergency condition” means the existence of: (i) Conditions of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act; or (ii) An order to evacuate a workplace, a worksite, a worker’s home, or the school of a worker’s child due to natural disaster or a criminal act. “Emergency condition” does not include a health pandemic. An employee’s belief is “reasonable” if a reasonable person, under the circumstances known to the employee at the time, would conclude there is a real danger of death or serious injury if that person enters or remains on the workplace premises. Though a violation of this law could be the basis of a Private Attorneys General Act (PAGA) action, the legislation specifically provides an employer the right to cure under Labor Code Section 2699.3.

Take note: this is just a scary glimpse of the new legislation affecting California employers, not an exhaustive summary. Employers should work with their Akerman attorneys to ensure policies and practices are up to date and compliant with these new laws.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and

administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.