

Blog Post

# California, The Gift That Keeps On Giving: An Overview of Recently Enacted Laws That Impact California Employers

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With 2023 coming to an end, now is the optimal time for employers to update their employee handbooks, policies, and procedures applicable to California workforces for the upcoming year. Here's a roundup of several recently enacted California laws, with the majority set to take effect January 1, 2024.

## WAGE & HOUR

### Minimum Wage in California

- ***State Minimum Wage.*** The *state* minimum wage will increase to \$16 per hour for all employers on January 1, 2024. Additionally, the minimum salary for exempt employees increases to \$66,560 per year. Note, the minimum wage requirement in some cities and counties in California is higher than the state rate.
- ***Fast Food.*** AB 1228 replaces the FAST Food Accountability and Standards Recovery Act with a \$20 per hour minimum wage for fast food workers, among other provisions. Beginning in April 1, 2024, this law increases the minimum wage for California fast food restaurant employees to \$20 per hour. This minimum wage will increase annually through 2029. AB 1228 also establishes a new Fast Food Council, which will

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make recommendations for new standards specific to the fast food industry and other work place conditions.

- **Healthcare Workers.** SB 525 establishes a comprehensive minimum wage schedule for “covered health care employees” who are employed by certain covered healthcare facilities. “Covered health care employee” covers a variety of employees, ranging from nurses and physicians to janitors and clerical workers. SB 525 outlines schedules depending on how a facility is classified, which is determined by facility size, type, location, and governmental payor mix percentage. Under this new law, “covered health facility” covers nearly all healthcare facilities except those owned, controlled, or operated by the California Department of State Hospitals, tribal clinics exempt from licensure, and outpatient settings operated by federally recognized tribes.

## EEO & OFF DUTY CONDUCT

**Cannabis Protection.** AB 2188 prohibits employers from discriminating against an applicant or employee in hiring, termination, or any term or condition of employment for *off duty* cannabis use. 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. This law is meant to encourage the use of tests to detect *THC*, as opposed to *metabolites*, which 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.

Additionally, SB 700 prohibits employers from requesting information from an applicant relating to their prior use of cannabis or using information about a person’s prior cannabis use obtained from

the person's criminal history, unless the employer meets certain qualified exceptions.

**Reproductive Loss Leave.** SB 848 requires employers with five or more employees to provide up to five days of protected time off to California employees (who have been employed for at least 30 days) for a "reproductive loss event." This law also applies to public employers of any size. A "reproductive loss event" is defined to mean a failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. Any employee who would have become a parent had they not experienced a reproductive loss event is entitled to time off. The five days of leave do not need to be taken consecutively. However, the leave must be completed within three months of the reproductive loss event.

**Paid Sick Leave.** SB 616 amends California's current paid sick leave law. The bill increases the minimum amount of sick leave time eligible employees must accrue each year from 24 hours (three days) to 40 hours (five days). The existing accrual rate still remains at one hour accrued for every 30 hours worked. However, employers may use a different accrual method as long as eligible employees accrue: (a) no less than 24 hours (or three days) of paid sick leave by the end of their 120th day of employment; and (b) no less than 40 hours (or five days) of paid sick leave by the end of their 200th day of employment. The total amount of paid sick leave that employers must allow employees to carry over to the next year has also increased to 80 hours (or 10 days). This law covers all employees who work at least 30 days for the same employer within a year in California, including part-time, per diem, and temporary employees.

**Post Me-Too Protection.** AB 933 extends the definition of a privileged communication in defamation actions to include communications made about an individual's own experience of sexual assault, sexual harassment, cyber sexual bullying,

and workplace harassment or discrimination. As a result, employees who are sued for defamation based on their own experiences as victims of sexual assault or misconduct may assert the privilege as a bar to liability. Prevailing defendants are also eligible to recover attorneys' fees and costs, as well as treble damages and punitive damages.

## **BUSINESS RESTRAINTS & RESTRUCTURING**

**Noncompete and Non-Solicit.** SB 699 has extended California's significant limitations on noncompetition agreements with employees. The new law establishes that noncompete agreements are void in California regardless of where the employee worked when the employee entered into the agreement or where the employee signed the agreement. An individual can bring a private right of action to enforce the new law and seek injunctive relief or recover actual damages, or both, and "reasonable attorney's fees and costs."

Additionally, AB 1076 requires employers to notify current employees and former employees who were employed after January 1, 2022, that any noncompete agreements they may have signed are void. Employers must notify employees of this change in writing by February 14, 2024.

**Rehiring of Displaced Workers.** SB 732 extends the recall rights for certain employees in the hospitality and service industry who were laid off as a result of the COVID-19 pandemic, by amending California Labor Code section 2810.8. Now, employees who were employed for at least six months and were laid off on or after March 4, 2020, due to a government shutdown order, lack of business, or any other economic, non-performance based reason, must now be offered any newly established position first. The employer must extend the offer in writing within five business days of establishing the position. Employees are required to respond within five business days. In the event more than one employee responds, the employer must award the

job by seniority. SB 732 makes this requirement permanent, and employers must comply in perpetuity.

## BURDEN OF PROOF & PROCEDURE

**Rebuttable Presumption of Retaliation.** In the event an employee faces disciplinary action or termination (adverse action) within 90 days of engaging in a protected activity, SB 497 now establishes a rebuttable presumption of retaliation. As a result, the burden of proof shifts to the employer to prove that the adverse action was non-retaliatory.

**Arbitration and the Elimination of Automatic Stays Upon Appeal.** Presently, trial court proceedings are automatically stayed until an appeal has been fully briefed and is ready to be heard by the appellate court. SB 365 amends California Code of Civil Procedure section 1294 to instruct that challenging a motion on appeal does not automatically stay the proceedings in trial court. This amendment effectively means that employers will be forced to continue litigating a matter in trial court, even while appealing a denial of their right to arbitration.

## CONCLUSION

Please note this is not an exhaustive list of all new California laws. Therefore, employers should work with their Akerman attorneys now, to ensure handbook policies and practices are compliant for the new year.

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