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Is Your Business Ready? Overview of Key California Workplace Laws Employers Must Comply with Starting January 2025

With California's legislative cycle coming to a close, California employers have just under three months to prepare themselves to comply with several new bills signed into law by Governor Newsom, which take effect on January 1, 2025 (unless stated otherwise below). In light of these changes, it is essential that employers with operations in the state reassess policies and practices to ensure compliance.

Changes to Jury, Court, and Victim Time Off Protections

Existing law in California provides accommodations and protects employees from discrimination or retaliation for taking time off for jury duty, court appearances, or when employees are victims of certain crimes or abuse. AB 2499 expands the list of crimes for which employees can take time off and allows employees to take protected time off to assist defined groups of family members who are victims of such crimes (in addition to taking time off in the event employees are themselves victims). The law also allows for the use of vacation / paid time off, personal leave, state-mandated paid sick leave or other available compensatory time off unless otherwise prohibited.

While current law requires employers to provide time off to victims of "crime or abuse" and / or "domestic violence, sexual assault or stalking," the new law replaces prior terminology with a new definition, "qualifying acts of violence." These include domestic violence; sexual assault; stalking; or any act, conduct, or pattern of conduct that includes (i) bodily injury or death to another; (ii) brandishing, exhibiting, or drawing a firearm or other dangerous weapon; or (iii) a perceived or actual threat to use force against another to cause physical injury or death. Qualifying acts of

violence do not presuppose arrest, prosecutions, or convictions in relation to underlying crimes.

The law also allows employers to limit the total time off to 12 weeks (if an employee is a victim of a qualifying act of violence) and to five days or, in certain circumstances, 10 days (if the victim is an employee's family member, with the exception of situations involving death of a family member, as defined under the law, in which case the law requires a longer duration of protected leave). Leave under this new law typically runs concurrently with any leave under the Family Medical Leave Act and the California Family Rights Act.

The new law also recategorizes existing victim, jury, and court related time off protections (currently codified under California's Labor Code) as unlawful employment practices under California's Fair Employment and Housing Act (FEHA), providing enforcement authority to California's Civil Rights Department (CRD). Practically, this means that employees now have a means of bringing civil actions with respect to underlying violations related to victims of violence leave laws, as opposed to the prior framework, which relied on agency-based enforcement through the Division of Labor Standards Enforcement.

Action Items:

- Employers must review their leave policies to ensure they comply with these new legal requirements, in addition to training front-line managers to identify instances in which employees may be eligible for expanded job protected leave.
- Employers should also consult with employment counsel to understand the nuances of this law (including revised terminology from existing law and notification requirements that will likely impact onboarding procedures) prior to implementation of any policy changes.

Elimination of Employers' Ability to Require Use of Vacation Before Receipt of State Paid Family Leave Benefits

Paid Family Leave (PFL) is a state-run program that provides wage replacement benefits to individuals taking time off to care for a seriously ill child, spouse, parent, or domestic partner; bond with a new minor child; or assist military family members on

active duty. Currently, employers can require employees to take up to two weeks of accrued or available vacation or paid time off before employees can use PFL benefits. AB 2123 eliminates an employers' ability to require employees to use accrued / available vacation or paid time off before they start receiving PFL benefits from the state or through an approved employer-sponsored voluntary plan.

Action Items:

- Employers must review their policies concerning leaves of absence, vacation, paid time off, and employee contributions for benefits to assess how the new law will impact leave coordination and continued health benefits for individuals on approved leaves.
- Employers should consult with employment counsel to understand the nuances of this law prior to implementation of any policy changes.

Expanded Sick Leave for Agricultural Employees

SB 1005 expands existing paid sick leave provisions to allow agricultural employees (as defined under Wage Orders, 8, 13, and 14) to use paid sick leave when they work outside and request sick leave to avoid smoke, heat, or flooding conditions created by a local or state emergency, including for preventive care due to their work or such conditions.

Action Items:

- Employers with workers covered by the above referenced Wage Orders must review the requirements under the new law and consult with employment counsel to ensure their leave policies are compliant.

Prohibition on Employer "Captive Audience" Meetings

SB 399, known as the "California Worker Freedom from Employer Intimidation Act," codified as Labor Code 1137, will subject employers to civil actions, enforcement actions by the Labor Commissioner, or penalties if they require employees to attend employer-sponsored meetings that discuss religious or political matters under threat of discharge, discipline, or some other adverse employment action (such as

discrimination and retaliation). "Political matters" are defined broadly under the law to include anything relating to elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization.

The statute does not prevent employers from communicating with employees about subjects that are legally required or necessary to perform duties. The statute also contains an additional list of narrow exceptions.

This law is in line with a trend across the country, with several other states enacting captive audience bans in recent years. Given that the National Labor Relations Act already prohibits employer interference with union organizing activity as well as other protected concerted activity, it remains to be seen whether this new law will become the subject of potential legal challenges.

Action Items:

- In addition to reviewing and revising handbooks and standalone policies to ensure they comply with the new law, employers should train managers regarding the new law's requirements.
- Additionally, employers should consult with employment counsel to ensure that communications with employees highlight the voluntary nature of workplace meetings that may fall within the new law and appropriately document the voluntary aspect of such communications.

Limits on Inquiries Pertaining to Driver's Licenses During Recruitment

SB 1100 prohibits employers from including statements during the recruitment process that applicants must have a valid driver's license unless two conditions are met: (i) the employer reasonably expects driving to be one of the job functions; and (ii) the employer reasonably believes that no alternative forms of transportation would be comparable in relation to the time and cost of driving. As phrased, the statute does not indicate that driving must be a major or essential job function, as is assessed in relation to reasonable accommodations under the FEHA.

Action Items:

- Employers should consult with employment counsel to review job descriptions to identify positions that require driving, in addition to tailoring hiring paperwork such as job applications, job announcements, and job advertisements to comply with the new law.

Expanded Protections for Freelance Workers

SB 988, the Freelance Worker Protection Act, imposes requirements on private employers who hire independent contractors rendering professional services (as set forth under California's AB 5, codified at Labor Code section 2778(b)), that are worth $250 or more. Specifically, such engagements will require written agreements that include, but are not limited to, the names and addresses of all parties, an itemized list of all services (including the value of the services and the method of compensation), the date by which the hiring party will provide payment, and the date by which the freelance worker will submit a list of rendered services. Under the new law, employers must also ensure that payment is made on the date specified in the written agreement, and no later than 30 days after the completion of services. The law prohibits discrimination and retaliation against individuals exercising rights under the law. Freelance workers can bring a lawsuit under the new law to recover up to $1,000 for failure to provide a written contract, up to twice the amount of unpaid payment, and additional damages.

Action Items:

- Employers should consult with employment counsel to review existing independent contractor and vendor / services agreements to identify individuals who may be covered under the new law to ensure compliance.
- Employers must also train managers and payroll to comply with the requirements under the new law, including payment timelines.

Expanded Discrimination Protections: Combined Characteristics

SB 1137 amends the FEHA and related laws pertaining to discrimination by combining protected categories to provide "intersectional" or "cross-sectional" protection. The

new law provides that protected categories include:

- any combination of protected characteristics;
- a perception that a person has a characteristic or characteristics within protected categories or a combination of those characteristics; and
- a perception that a person is associated with a person who has or is perceived to have a protected characteristic or combination of protected characteristics.

Action Items:

- Employers should consult with employment counsel to update handbooks and other standalone policies to ensure their "protected characteristic" definition complies with the expansive new law.
- Employers must additionally train managers to identify such intersectional protections, which will impact employers' ability to initiate interactive discussions with respect to potential workplace accommodations, among other considerations.

Local Enforcement of Anti-Discrimination Laws

SB 1340 expands current law by allowing local governments to enforce state anti-discrimination laws upon receipt of an employee's right-to-sue notice from the CRD. The new law also permits local governments to enforce local anti-discrimination laws, which may be more strict than state or federal counterparts. The new law also tolls the one-year statute of limitations for filing a complaint in superior court as long as the local entity enforcement proceedings continue.

Action Items:

- Employers will now find themselves defending against requirements that are more stringent than those under current state or federal law.
- Employers should consult with employment counsel and keep apprised of local anti-discrimination laws.
- Employers should also consult with employment counsel to ensure that their handbooks and standalone policies, as well as their employment practices, comply with local requirements to avoid dealing with lawsuits that may extend

for longer periods of time due to the new tolling provisions.

New Requirements for Voluntary Social Compliance Audits

Following the passing of AB 3234, California employers will need to share results of social compliance audits, which are defined as, "voluntary, nongovernmental inspection or assessment of an employer's operations or practices to evaluate whether the operations or practices are in compliance with state and federal labor laws, including, but not limited to, wage and hour and health and safety regulations, including those regarding child labor." Specifically, employers who complete such audits must post a clear and conspicuous link on their websites to a report containing findings of their compliance with child labor laws.

Action Items:

- If employers conduct such audits, they should consult with employment counsel to ensure compliance with the law's reporting requirements, in addition to ensuring that the reports generated from the audits comply with the requirements of the new law.

PAGA Exemption for Unionized Construction Industry Employers

Through AB 1034, the provisions under existing law exempting certain construction industry workers covered by collective bargaining agreements (CBAs) from lawsuits under California's Private Attorneys General Act (PAGA) is extended through January 1, 2038. However, this extension only applies if CBAs meet certain conditions and criteria, including containing an express PAGA waiver.

Action Items:

- Employers should consult with employment counsel and ensure that their relevant contracts satisfy the conditions required to meet the exemption under the law.

Minimum Wage Increases

Currently, California's statewide minimum wage will increase to $16.50 per hour effective January 1, 2025. However, in the event that Proposition 32 is approved during the November 2024 voting cycle, the minimum wage for employers with 26 or more employees will increase to $17.00 per hour during the remainder of 2024, and $18.00 per hour effective January 2025. Business with under 25 employees will need to pay their workers $17 per hour effective January 2025.

Effective October 16, 2024, minimum wages for certain healthcare workers will increase to either $18.00 per hour or $21.00 per hour, with workers at larger healthcare facilities receiving $23.00 per hour. The new law incorporates gradual increases to these minimum wage rates over time, with covered healthcare employees in the state eventually receiving $25.00 per hour as minimum wage (subject to inflation adjustments annually).

In addition to statewide minimum wage increases, employers should also keep in mind any applicable local minimum wage ordinances that increase on January 1, 2025.

Action Items:

- Employers should consult with employment counsel and review offer letters, job descriptions, and related documents to ensure compliance, in addition to ensuring that their payroll practices incorporate new minimum wage increases.

This blog was drafted by Elaisha Nandrajog, Jennifer Coleman, and Servando Sandoval, attorneys in the Spencer Fane San Jose, California, office. For more information, visit www.spencerfane.com.

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