

End of California 2021 Legislative Session Brings New Laws Affecting California Employers

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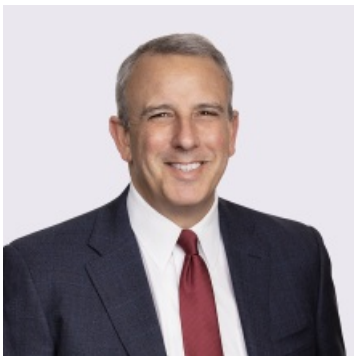
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The California legislature has passed and Governor Gavin Newsom has signed a number of bills that address wage and hour practices and other issues affecting California employers. All bills take effect January 1, 2022, unless otherwise specified.

Wage and Hour Bills

The Governor signed several bills that address wage and hour practices in certain industries. For example, [Assembly Bill \(AB\) 286](#), which amends the Fair Food Delivery Act of 2020, prohibits food delivery platforms from retaining any amount designated as tips or gratuity and requires that those tips and gratuities are paid, in full, to the person doing the delivery.

[Assembly Bill 701](#) regulates the use of quotas at warehouse distribution centers in California. AB 701 requires employers with large warehouse distributions centers to disclose quotas and pace-of-work standards to each employee upon hire or within 30 days of the law going into effect. Employers must provide “a written description of each quota to which the employee is subject to, including the quantified number of tasks to be performed or materials to be produced or handled, within a defined period of time, and any potential adverse employment action that may result from failure to meet the quota.”

[Senate Bill \(SB\) 62](#) changes how employees may be paid in the garment manufacturing industry. The bill prohibits employers from paying employees engaged in the performance of garment manufacturing by the piece or unit, or by piece rate, except for workplaces covered by a collective bargaining agreement; instead, those employees must be paid no less than the applicable minimum wage. Garment manufacturers and contractors may be subject to statutory damages per employee for each pay period during which an employee is paid by the piece or unit. SB 62 also expands the definition of the garment manufacturing industry for purposes of wage claim enforcement to include brand guarantors, which is a person who contracts for the performance of garment manufacturing.

Finally, [Assembly Bill 1003](#) creates a new type of grand theft for the intentional theft of wages in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from two or more employees in any consecutive 12-month period. Following the trend of other recently passed laws broadening the scope of legal protections for workers, this legislation includes independent contractors within the meaning of employee. Therefore, hiring entities of independent contractors could face the same penalties or jail time for engaging in wage theft.

Leave and Accommodation

In addition to 2020’s [significant expansion to the California Family Rights Act](#), [Assembly Bill 1033](#) adds “parent-in-laws” to the list of individuals with serious health conditions for whom eligible employees can take leave to care for under the California Family Rights

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Act (CFRA). Employers will need to review and update their policies to reflect this expansion of CFRA leave.

The bill also modifies procedural aspects of the Department of Fair Employment and Housing's pilot program for mediating family leave disputes between small businesses and their employees.

Workplace Safety

Workplace safety has been at the forefront during the last year as a result of the COVID-19 pandemic. However, California also has concerns about the impact of increasing wildfires on workplace safety. Effect immediately, [Assembly Bill 73](#) amends a law that was passed 2020 requiring the State Department of Public Health and Office of Emergency Services to establish a stockpile of personal protective equipment to address pandemics and other health emergencies. AB 73 broadens the scope of the existing law to specify that wildfire smoke events are considered health emergencies for these purposes. In addition, the definition of an "essential worker" was expanded to include agricultural workers. The bill also requires the Division of Occupational Safety and Health to review and update the wildfire smoke training requirements that employers must follow. Critically, the employee training must be provided in a language and manner that is readily understandable by employees. Updates to these training requirements will be posted on the Division's website.

As expected, California revised some of the reporting requirements for COVID-19 with [Assembly Bill 654](#), expanding the types of employers who are exempt from COVID-19 outbreak reporting requirements. Under AB 654, community clinics, adult day health centers, community care facilities, and child daycare facilities are exempt from the COVID-19 outbreak reporting required under [Assembly Bill 685](#) passed in 2020. AB 654 also clarifies and revises some of the reporting requirements of AB 685.

Harassment, Discrimination, Retaliation

California employers will need to update their settlement agreements, non-disparagement agreements, separation agreements, and other applicable employment agreements in light of [Senate Bill 331](#). California law currently prohibits settlement agreements from preventing the disclosure of factual information regarding a claim in a civil or administrative action alleging sexual assault, sexual harassment, or an act of workplace harassment or discrimination based on sex. SB 331 expands this prohibition to include other acts of workplace harassment, discrimination, or retaliation that are not based on sex. The bill also requires that any non-disparagement agreement, separation agreement, or other contractual provision that restricts an employee's ability to disclose information related to the conditions of the workplace must include specific language related to the employee's right to disclose information about unlawful acts in the workplace. Separation agreements with such provisions must also notify the employee that the employee has a right to consult an attorney and will have at least five days to do so.

These are just a sampling of the employment-related bills signed by the Governor this session; other bills address [compensation and representation for collegiate athletes](#) and further amend existing legislation [regulating independent contractors](#).

Jackson Lewis attorneys are available to provide more information on the complexities

of California employment law. Subscribe to our [California Workplace Law Blog](#) to keep updated on developments.

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