

Wrap Up of California's 2022 Legislative Session – What Employers Need to Know

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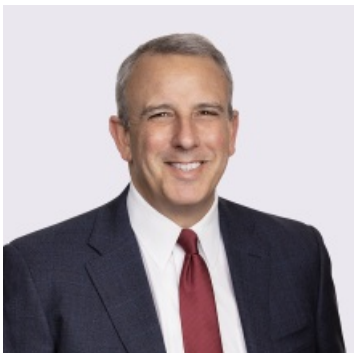


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California's 2022 legislative session ended with numerous bills affecting employers and employment practices and procedures in the Golden State. Governor Gavin Newsom signed more than 30 of those bills into law, including bills on pay transparency, cannabis use, and COVID-19.

Some of the new laws affecting the day-to-day operations of employers in California are discussed below. They take effect January 1, 2023, unless otherwise indicated.

Pay Transparency

Senate Bill (SB) 1162 requires certain employers to provide more pay transparency regarding pay scales and expands pay data reporting obligations for other employers. Employers with at least 15 employees must include the pay scale for a position in any job posting. Employers also must provide current employees with the pay scale for their current position upon request.

SB 1162 also adds an annual report requirement for California employers with at least 100 employees. Previously, California employers could submit an EEO-1 report to comply with state demographic reporting obligations. Beginning in 2023, employers must submit a report to the California Civil Rights Department that includes:

1. Separate pay data report for employees hired through labor contractors (*i.e.*, covering temporary staffing agencies) that discloses the "ownership names of all labor contractors used to supply employees"; and
2. The median and mean hourly rate for each combination of race, ethnicity, and sex for each job category for both traditional employees and those hired through labor contractors.

The report will be due annually on the second Tuesday in May.

Cannabis Use

Effective January 1, 2024, **Assembly Bill (AB) 2188** makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based upon:

1. A person's use of cannabis off the job and away from the workplace, except for pre-employment drug screenings; or
2. An employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

The bill does not permit an employee to possess, be impaired, or use cannabis on the job; nor does it affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace. Additionally, the bill does not preempt state or federal laws

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requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

Workplace Safety

COVID-19 continues to be a topic for legislation. [AB 2693](#) amends and extends COVID-19 workplace notice requirements until January 1, 2024.

Under existing law ([AB 685](#)), if an employer receives notice of potential exposure to COVID-19, the employer must provide written notice of the potential exposure within one business day to all employees who were at the worksite. Originally, this notification requirement was set to expire on January 1, 2023.

AB 2693 extends the reporting requirement to January 1, 2024, and gives employers another option for complying with these notification requirements. The employer may either post a notice to all employees with the required information or provide written notice directly to each employee with the required information.

In the event of an emergency condition, [SB 1044](#) prohibits an employer from taking or threatening adverse action against any employee for refusing to report to or leave a workplace or worksite within the affected areas because the employee has a reasonable belief that the workplace or worksite is unsafe.

An emergency condition is defined as:

- Conditions of disaster or extreme peril to the safety of persons or property caused by natural forces or a criminal act.
- An order to evacuate a workplace, worksite, or worker's home, or the school of a worker's child due to a natural disaster or a criminal act.

SB 1044 specifies that an emergency condition does not include a health pandemic.

Leaves of Absences

Effective immediately, [AB 152](#) extends the statewide [COVID-19 Supplemental Paid Sick Leave \(SPSL\)](#) for three months, through December 31, 2022. AB 152 does not provide additional leave time to employees who have already used SPSL leave this year. AB 152 also establishes a grant program for non-profits and small businesses to offset the costs of providing SPSL to employees.

[AB 1949](#) amends the California Family Rights Act (CFRA) to require covered employers to provide eligible employees with up to five days of bereavement leave for the death of a family member to be taken within three months of the date of death. AB 1949 applies to employers with at least five employees nationwide. Employees must be employed for at least 30 days to be eligible to take bereavement leave. Bereavement leave may be unpaid, but employees are permitted to use available vacation, personal leave, sick leave, or other paid time off that is regularly offered by an employer.

[AB 1041](#) expands the reasons for using state paid sick leave or leave under the CFRA to include time off to care for a "designated person." A designated person is defined as any individual related by blood or whose association with the employee is equivalent to a family relationship. An employee can designate this person at the time

they request leave. An employer can limit an employee to one designated person in a 12-month period.

Disability Insurance Benefits

[SB 951](#) increases the benefits available to those who receive wage replacement under the state Paid Family Leave (PFL) program and State Disability Insurance (SDI) programs. Starting in 2025, workers making less than the state's average wage may be eligible to receive 90 percent of their regular wages under the PFL and SDI programs, while other workers may be eligible to receive up to 70 percent of their regular wages.

Industry Specific

In addition to the above laws that affect all employers, California passed an industry-specific bill that may have broader implications or signal a future trend.

[AB 257](#) (the Fast Food Accountability and Standards Recovery Act or the "FAST Recovery Act") establishes a Fast Food Council comprised of fast food employees, worker advocates, franchisors, franchisees, and government officials within the Department of Industrial Relations. The Council will be responsible for setting industry-wide standards for wages, working hours, and other working conditions related to the health and safety of fast food employees working for a Fast Food Restaurant that is part of a Fast Food Chain. Fast Food Chain is defined as a set of restaurants consisting of at least 100 establishments nationally that share a common brand or are characterized by standardized options for decor, marketing, packaging, products, and services. Fast Food Restaurant is defined as any establishment in the state that is part of a Fast Food Chain and that, in its regular business operations, primarily provides food or beverages in the following manner:

1. For immediate consumption either on or off the premises;
2. To customers who order or select items and pay before eating;
3. With items prepared in advance, including items that may be prepared in bulk and kept hot, or with items prepared or heated quickly;
4. With limited or no table service. Table service does not include orders placed by a customer on an electronic device.

Other laws were passed this session that may affect employers, including the [expansion of mandated retirement plans](#) and [extensions to filing work share plans](#).

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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