

Wrap-Up of California's 2023 Legislative Session: What Employers Need to Know

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California's 2023 legislative session ended on October 14, 2023, with a slew of new bills affecting employers. Governor Gavin Newsom signed more than 30 employment-related bills.

Highlights of the new laws affecting employers in California are summarized below. Most of the laws take effect January 1, 2024, unless otherwise indicated.

Increase in State Paid Sick Leave Mandate

Senate Bill (SB) 616 increases the amount of paid sick leave employers are required to provide to California employees.

Beginning on January 1, 2024, employers must increase the amount of sick leave provided to California employees from three days/24 hours to five days/40 hours.

The law also increases the use limits each year to five days/40 hours and increases accrual and carryover cap to 10 days/80 hours.

Reproductive Loss Leave

SB 848 requires employers with at least five employees to provide employees who have worked at least 30 days with up to five days of reproductive loss leave. It is unlawful for a covered employer to refuse to grant a covered employee five days of leave following a reproductive loss.

As defined by SB 848, a "reproductive loss" includes a miscarriage, failed surrogacy, stillbirth, unsuccessful "assisted reproduction" (such as artificial insemination or embryo transfer), or failed adoption.

In the event an employee suffers more than one reproductive loss within 12 months, the employer is not obligated to grant a total amount of leave in excess of 20 days within 12 months.

Applicant's Cannabis Use

SB 700 makes it unlawful under the Fair Employment and Housing Act (FEHA) for an employer to discriminate against a job applicant based on information regarding prior use of cannabis learned from the person's criminal history. SB 700 does not preempt state or federal laws requiring an applicant to be tested for controlled substances. It also does not prohibit an employer from asking about an applicant's criminal history, as long as it is in compliance with state law requirements.

Relatedly, last year, the California legislature passed **AB 2188**, making it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based on (1) a person's use of cannabis off-the-job and away from the workplace or (2) an employer-required drug screening test that has found the



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person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. AB 2188 also takes effect on January 1, 2024.

Workplace Violence Prevention Plans for All Employers

SB 553 requires employers to establish, implement, and maintain an effective workplace violence prevention plan (WVPP).

The WVPP will require the maintenance of a violent incident log, training on workplace violence hazards, and periodic reviews of the plan.

Many of the new law's requirements (including the development of the WVPP) take effect on July 1, 2024, and will be enforced by the Division of Occupational Safety and Health (DOSH or Cal/OSHA).

SB 553 also requires Cal/OSHA to propose standards for the WVPP by December 1, 2025, and the Standards Board to adopt such standards by December 31, 2026.

Fast Food Council Returns

AB 1228 completes the [agreement reached between business and labor](#) in early September regarding the FAST Recovery Act.

On September 11, 2023, a coalition of California businesses announced its agreement with labor unions to withdraw their referendum challenging [AB 257](#), which created the FAST Recovery Act, from next year's ballot.

AB 1228 repeals the FAST Recovery Act but establishes a modified version of the Fast Food Council until January 1, 2029. It further outlines the Council's objectives, responsibilities, and constraints in relation to setting an hourly minimum wage and overseeing the adoption and evaluation of health, safety, and employment standards for fast-food restaurant employees.

The new law also sets minimum wage increases for fast-food workers, with an increase to \$20.00 effective April 1, 2024. Thereafter, the minimum wage for fast-food workers will increase annually on January 1.

Raise for Healthcare Workers

SB 525 enacts a multi-tiered statewide minimum wage schedule for healthcare workers employed by certain covered healthcare facilities.

The new law establishes a comprehensive minimum wage schedule for "covered health care employees," outlining schedules depending on how a facility is classified. The law applies to "covered health care employee," which also encompasses a broad array of positions, from patient care roles, like nurses and physicians, to support positions, such as janitors and clerical workers.

The first wave of minimum wage increases will take effect June 1, 2024.

Prohibitions on Employee Restrictive Covenants

SB 699 buttresses current state law that voids contracts that restrain an employee from engaging in a lawful profession, trade, or business of any kind.

California's Business and Professions Code section 16600 states, "[E]very contract by which anyone is restrained from engaging in a lawful profession, trade, or business of

any kind is to that extent void.” This section has long been interpreted by California courts as prohibiting post-employment noncompetition, non-solicitation of customers, and non-solicitation of employee agreements, with few exceptions. The chapter exempts such restrictive covenants in the sale or dissolution of corporations, partnerships, and limited liability corporations.

SB 699 both reiterates existing law and goes a few steps further. Under SB 699, any contract that is void under section 16600 is unenforceable, regardless of where and when the contract was signed. In addition, an employer or former employer may not attempt to enforce a contract that restricts an employee’s ability to engage in a lawful profession, trade, or business, even if the contract was signed outside of California and the employment was maintained outside of California.

Moreover, SB 699 prohibits an employer from entering into a contract with an employee or prospective employee that includes non-compete clauses and other restrictive covenants that are void under section 16600. Employers who violate SB 699 could be liable for civil violations.

[AB 1076](#) adds a new subsection to the Business and Professions Code section 16600 that makes it unlawful to impose non-compete clauses on employees. AB 1076 codifies existing case law that construes non-compete provisions as void under section 16600. AB 1076 makes non-compete provisions not just void, but unlawful.

Under AB 1076, employers must notify current employees and former employees (employed after January 1, 2022) that any non-compete agreement or non-compete clause contained within an agreement the current or former employee signed is void, unless the agreement or clause falls within one of the statutory exceptions. Such notices must be provided by February 14, 2024.

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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