

HR COMPLIANCE BULLETIN

California Employment Laws Effective Jan. 1, 2021

In general, once approved by both the state legislature and the state governor, a new bill in California becomes effective on January 1 of the following year (some exceptions are possible for emergency measures and when the bills specifically appoint a different effective date).

This Compliance Bulletin provides an overview of labor and employment laws California adopted throughout 2020. Specific labor and employment updates include:

- Discrimination;
- Employee leave;
- Employee wages;
- Worker classification;
- Workplace safety; and
- Youth employment.

Action Steps

Employers should review these laws and update their employment policies, practices and procedures to remain in compliance. Employers should seek the advice of a knowledgeable legal professional for specific situations and counsel on how to implement required changes.

As usual, employers should also continue to monitor California's Department of Industrial Relations communications for updates on these, and additional labor and employment, topics. Please contact JP Griffin Group for more information on these updates and other labor and employment issues.

Important Updates

Employee Leave

Updates to employee leave expanded the California Family Rights Act and victim leave and clarified the use of sick leave and paid family leave.

Employee Wages

The state increased the threshold to qualify for the physician, surgeon and computer professional overtime exemptions. State pay data reporting requirements also became effective.

Worker Classification

California clarified how the ABC independent contractor test applies to newspaper carriers and app-based drivers.

Youth Employment

HR personnel and some supervisors for employers with five or more employees became mandatory sexual abuse reporters for employees under the age of 18.



JP Griffin Group



Discrimination

Diversifying the Board of Directors (AB 979): The law requires corporations that have a principal office in California to add individuals from underrepresented communities to their boards of directors by the end of 2021. “Individuals from underrepresented communities” is defined as individuals who self-identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian or Alaska Native, or who self-identify as gay, lesbian, bisexual, or transgender.

In addition, by the end of 2022, affected corporations must meet the specified quotas, based on the size of their board of directors.

Extending Filing Deadlines for Discrimination Claims (AB 1947): This new law extends the filing deadline for discrimination claims from six months to one year after the occurrence of the violation. The law also strengthens the enforcement of state whistleblower employee protections.

No-rehire Provisions (AB 2143): California law allows employers and their employees to reach settlement agreements for harassment, sexual assault and criminal conduct. While the law generally prohibits employers from using no-rehire provisions in these types of dispute settlement agreements, no-rehire provisions are permissible when there is a good faith determination that employees engages in sexual harassment or assault. Employers must document this determination before the aggrieved party files a claim.

Employee Leave

Expanding the California Family Rights Act (CFRA) (SB 1383): Expands the law by requiring employers with five or more employees to allow employees to take up to 12 workweeks of unpaid protected leave during any 12-month period to bond with a new child of the employee or to care for themselves or a child, parent, grandparent, grandchild, sibling, spouse or domestic partner.

Paid Family Leave Clarifications (AB 2399): The new law reviews the definitions of “care recipient,” “care provider,” “family member” and “military member” for the qualifying exigency provision. The new law also clarifies the documentation requirements for qualifying exigencies.

Sick Leave Use Clarification (AB 2017): State law requires employers that provides sick leave to permit employees to use their accrued and available sick leave to attend to the illness of a family member. The new law clarifies that employees have sole discretion to designate the type of sick leave they are taking.

Expansion of Victim Leave (AB 2992): State law prohibits employers from retaliating against employees who use victim leave. This type of leave is available to individuals who are victims of domestic violence, sexual assault or stalking. The new law expands the definition of “victim” to include victims of any crime that caused either physical injury, or mental injury with a threat of physical injury. The new law also expands coverage to immediate family members of people who die as the direct result of a crime. Under the new law, “crime” includes crimes or public offenses, regardless of whether any person is convicted, prosecuted or arrested. Finally, the new law provides that in addition to previously acceptable certification forms, employees may submit a signed, written statement certifying that the absence was for an authorized purpose.

HR COMPLIANCE BULLETIN



Employee Wages

Overtime Exemption Threshold Increases: The minimum rate to qualify for the computer software employee overtime exemption has increased to \$47.48 per hour (\$8,242.32 monthly or \$98,907.70 per year). Similarly, the minimum rate to qualify for the licensed physician or surgeon overtime exemption has increased to \$86.49 per hour.

Wage Enforcement (AB 3075): This new law clarifies that local jurisdictions have the authority to enforce local wage payment standards. Please note that in some cases, city, county or other local standards may provide greater employee benefits or protections than state standards.

Pay Data Reports (SB 973): Among other things, this new law requires that employers file an annual pay data report to the California Department of Fair Employment and Housing by March 31, 2021, and each year thereafter. The requirement applies to private employers with 100 or more employees that are already required to file an annual Employer Information Report under federal law

Worker Classification

State law creates a presumption that a worker who performs services for a hirer is an employee for purposes of wage claims and benefits arising under wage orders issued by the Industrial Welfare Commission. Employers are required to use a three-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for those purposes.

Independent Worker Classification Test for Newspaper Carriers (AB 323): The new law expands the exemption applicable to newspaper carriers by deleting the condition that a newspaper carrier must work under contract with either a newspaper publisher or newspaper distributor. This amended exemption will be valid until January 1, 2022.

Independent Worker Classification Test for App-Based Drivers (Ballot Measure): This adopted measure establishes that app-based drivers are independent contractors if certain conditions are met. The law also limits how many hours app-based drivers may work in a 24-hour period. Finally, under this measure, employers hiring app-based drivers must develop anti-discrimination and harassment policies.

Workplace Safety

COVID-19 Stop-Work Orders and Exposure Notices (AB 685): The new law authorizes the California Division of Occupational Safety and Health to issue stop-work orders for facilities or operations that pose an imminent COVID-19 hazard to workers. The new law also requires employers to notify workers when they have potentially been exposed to the coronavirus in the workplace and notify local public health agencies when a worksite has a COVID-19 outbreak.

Youth Employment

HR Personnel and Supervisors Become Mandatory Reporters (AB 1963): The new law amends existing child abuse reporting law to add human resource personnel and adult supervisors (who are in direct contact with, and supervise, minors) to the list of mandatory sexual abuse reporters. The requirement applies to employers with five or more employees that employ minors.

This Compliance Bulletin is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. ©2021 Zywave, Inc. All rights reserved.