California HR law update — what employers everywhere need to know

It's a new year with new rules. New laws and court rulings have changed the already complicated Human Resource landscape for California employers. Recent legislation signed into law by Governor Newsom has only further muddied the waters for employers trying to stay in compliance. These cover the gamut from paid sick leave and medical leave, occupational safety rules, and expanded coverage for more family members like parents-in-law. The California Department of Fair Employment and Housing will administer more rules on family leave, sexual harassment, and much more affecting even small employers. New pandemic rules will soon expand, or have already expanded, the California Family Rights Act (CFRA) to provide more medical conditions for paid sick leave and so on.

In addition, the legislature added a criminal penalty for California employers that intentionally withhold wages or gratuities owed, calling this wage theft. The offense now qualifies as grand theft with possible felony charges. Not paying independent contractors is also a covered criminal offense.

To help you keep up, we've broken down some of the most important new rules. Even if you don't do business in California, the trends set here could soon pop up in other states, so it's best to pay close attention.

Minimum wage

California has set a higher minimum wage than dictated by federal law. State law sets a different minimum wage based on the number of employees a California employer has on the payroll. For 2022, California's state minimum wage increased to $15 per hour for employers with 26 or more workers. Smaller employers — those with 25 or fewer employees — now must pay $14 per hour. Use these new rates to determine the regular rate of pay for calculating any overtime pay due to employees.

But it's not just the state law that controls minimum wage. Many California towns, cities, and counties have their own higher minimum wage requirements including Los Angeles, San Francisco, San Jose, and San Diego. Because of this, you'll need to ensure that you are familiar with both the state minimum wage laws, as well as those of the cities/counties you're in.

Warehouse rules

It's no secret that California has long sought to pass special wage and hour rules for certain operations such as warehouses. Beginning this year, California warehouse distribution centers have new rules for setting production quotas. The Labor Code Sections 2100-2112 now forbid warehouse operators from requiring a quota that interferes with the ability of warehouse workers to take meal or rest breaks as required by California wage and hour laws. Warehouse employees must also be able to meet their quotas while taking appropriate bathroom breaks, rest periods, and comply with other occupational health and safety laws.

What's more, all employees must receive detailed written documentation outlining any quotas the job requires. Warehouse employers can't punish employees for not meeting quotas unless they got the notice. If they don't

meet the quotas because they took required breaks to use the bathroom or eat, they can't be disciplined either.

Unionized janitorial workers

A new section of the Labor Code bars janitorial employees who are covered by a union collective bargaining agreement from separately filing wage and hour lawsuits against their employers. As long as the collective bargaining agreement covers wage and hour issues, working conditions, and premium wage rates for overtime pay, among other provisions. The exclusive remedy for alleged violations is through the collective bargaining agreements. This saves employers from having to respond to wage and hour claims in multiple forums.

California Family Rights Act (CFRA) changes

The California legislature also enacted a new provision that modifies the California Family Rights Act by adding parents-in-law to the list of family members that California employees can take protected CFRA leave from work to care for.

This provision followed an expansion of coverage under the CFRA in 2021. Those amendments expanded covered employers to include those with five or more workers, and provided leave for employees whose spouse, domestic partner, child, or parent is called to active duty military. The changes also added several different family members to coverage including siblings, grandparents, grandchildren, domestic partners, and adult children.

Unfortunately, the CFRA and the federal Family and Medical Leave Act (FMLA) no longer provide parallel coverage. That may mean that under some circumstances, a California employee may be entitled to more weeks of coverage than provided by the CFRA alone.

During the earlier days of the COVID-19 pandemic, California passed a law providing paid leave for COVID-related reasons. Now, it appears that the law, which expired late last year, is being reinstated. Governor Newsom reached an agreement with the legislature to reinstate the paid COVID pandemic leave. It will be retroactive to January 1, 2022 and continue until September 30, 2022. California employers with 26 or more employees will have to provide leave, but tax credits will reimburse those employers for the cost of paid leave. Full-time employees can't take 80 hours of paid sick leave to care for themselves or a family member.

Workplace whistleblowers

The California Supreme Court has made it far easier for so-called whistleblowers to win retaliation claims against their California employers. After the decision, a California employee who blows the whistle on his California employer for alleged illegal acts and is fired need only prove that his whistleblowing was a contributing factor to his discharge. The employee need only show by a preponderance of the evidence that his protected activities were a contributing factor to his discipline. The burden then shifts to the employer to show *by clear and convincing* evidence that it did not retaliate because of the whistleblower activity.

The case involved an employee who worked for PPG Architectural Finishes. He called the company's ethics hotline twice to anonymously report his supervisor's alleged illegal activity. After getting the tips, the company conducted an internal investigation. Meanwhile, the employee received counseling for alleged poor performance. PPG then terminated him and he sued under California Labor Code Section 1102.5, a California law that protects those who report employer conduct they reasonably believe to be illegal to either authorities or their employer. The employment law provides powerful protections.

Following the decision, employers who are preparing to discipline workers whom they know or believe to have engaged in whistleblowing should consult counsel first. It's imperative that the employer document that they would have taken action regardless of whistleblowing – ideally by showing the discipline was already in the

works and backing up the discipline with concrete examples of poor performance, rule breaking or other reasons for discipline. In the same vein, if an employee is engaged in whistleblower activity, then you should not retaliate against them for it. Only terminate such employees if you truly would have done so anyway, based on performance or other issues.

Cal/OSHA

The California Division of Occupational Safety and Health (Cal/OSHA) — the California agency responsible for assuring workplace safety — now has two new violation categories. These are "willful and egregious" and "enterprise-wide" violations. Citations under these new categories likely will carry larger penalties. Employers should expect more worksite inspections.

Cal/OSHA also put in place new provisions to guarantee employee rights to a safe working environment during the current COVID-19 pandemic. For example, California employers are still required to provide employees with appropriate masks. Plus, employers must now notify all employees who were at the worksite when a COVID-19 positive individual was present during an infectious period. More information on the latest COVID rules can be found in Cal/OSHA's frequently asked questions.