2023 Key Legislative Developments

Following is a summary of significant California employment legislation enacted into law in the 2022-2023 legislative session, and effective **Jan. 1, 2024** (unless otherwise noted):

01 Discrimination, Retaliation, and Harassment in Employment

Protected Employee Conduct (SB 497)

Amends Sections 98.6, 1102.5, and 1197.5 of the Labor Code, relating to employment

Existing law prohibits a person from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant engaged in protected conduct, as specified. Existing law prohibits an employer from prohibiting an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise these and other rights. Existing law prohibits an employer from discharging or discriminating or retaliating against an employee because of an action taken by the employee to invoke these and other provisions.

This new law creates a rebuttable presumption in favor of the employee's claim if an employer engages in any action prohibited by this provision within 90 days of the protected activity specified in this provision.

Existing law prohibits employers and their agents from making, adopting, or enforcing a rule, regulation, or policy preventing an employee from disclosing information to certain entities or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry if the employee has reasonable cause to believe that the information discloses a violation of a law, as specified. Existing law, in addition to other penalties, subjects an employer that is a corporation or limited liability company to a civil penalty not exceeding $10,000 for each violation of this provision.

This bill would instead establish that in addition to other remedies, an employer, which is not limited to a corporation or limited liability company, is liable for a civil penalty not exceeding $10,000 per employee for each violation of this provision, to be

awarded to the employee who was retaliated against. In assessing the penalty, the Labor Commissioner shall consider the nature and seriousness of the violation based on the evidence obtained during the course of the investigation.

Employment Discrimination: Cannabis Use (SB 700)

Amends Section 12954 of the Government Code, relating to employment discrimination

Existing law, the California Fair Employment and Housing Act, prohibits various forms of employment discrimination and empowers the Civil Rights Department to investigate and prosecute complaints alleging unlawful practices. Existing law, on and after **Jan. 1, 2024**, makes it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person because of the person's use of cannabis off the job and away from the workplace, except as specified.

This new law makes it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis, as specified. Under this new law, information about a person's prior cannabis use obtained from the person's criminal history would be exempt from the above-described existing law and the new law's provisions relating to prior cannabis use if the employer is permitted to consider or inquire about that information under a specified provision of the California Fair Employment and Housing Act or other state or federal law.

02 Leaves of Absence

Sick Days, Paid Sick Days Accrual and Use (SB 616)

Amends Sections 245.5, 246, and 246.5 of the Labor Code, relating to employment

Existing law entitles an employee to paid sick days for certain purposes if the employee works in California for the same employer for 30 or more days within a year from the commencement of employment, but excludes specified employees from its

provisions, including those covered by a valid collective bargaining agreement. Existing law requires the leave to be accrued at a rate of no less than one hour for every 30 hours worked, and to be available for use beginning on the 90th day of employment. Existing law allows an employer to satisfy the accrual requirements by providing not less than 24 hours (three days) of paid sick leave that is available to the employee to use by the completion of the employee's 120th day of employment. Existing law requires that accrued paid sick leave carry over from year to year, however, an employer may limit an employee's use of accrued paid sick leave to 24 hours (3 days) in each year.

This new law, effective **Jan. 1, 2024**, modifies the alternate sick leave accrual method to require no less than 40 hours (or five days) of accrued sick leave or paid time off by the 200th calendar day of employment (in addition to the 24 hours by 120th calendar day). Moreover, instead of allowing employers to cap carry-over sick leave at 24 hours (three days) per year, this bill requires employers to allow carryover sick leave of 40 hours (five days) each year. An employer's ability to cap total accrual of paid sick leave is increased from 48 hours (six days) to 80 hours (10 days). This bill also excludes railroad carrier employers and their employees from the acts provisions, and would require these railroad employers to allow their railroad employees to take at least seven days of unpaid sick leave annually. This bill also extends the procedural requirements on the use of paid sick days to employees covered by a CBA.

Leave for Reproductive Loss (SB 848)

Adds Section 12945.6 to the Government Code,

relating to employment

Existing law, the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer to refuse to grant a request by any employee to take up to five days of bereavement leave upon the death of a family member.

This new law makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to five days of reproductive loss leave following a reproductive loss event, as defined. The leave must be taken within three months of the event, except as described, and pursuant to any existing leave policy of the employer. If an employee experiences more than one reproductive loss event within a 12-month period, the employer is not obligated to grant a total amount of reproductive loss leave time in excess of 20 days within a 12-month period. In the absence of an existing policy, the reproductive loss leave may be unpaid. However, an employee may use certain other leave balances otherwise available to the

employee, including accrued and available paid sick leave. Leave under these provisions is a separate and distinct right from any right under the California Fair Employment and Housing Act.

This new law makes it an unlawful employment practice for an employer to retaliate against an individual, as described, because of the individual's exercise of the right to reproductive loss leave or the individual's giving of information or testimony as to reproductive loss leave, as described. This new law requires the employer to maintain employee confidentiality relating to reproductive loss leave, as specified.

03 Wage and Hour

Fast Food Restaurant Industry: Fast Food Council: Health, Safety, Employment, and Minimum Wage (AB 1228)

Repeals Part 4.5.5 (commencing with Section 1470) of, and
Adds Part 4.5.5 (commencing with Section 1474) to, the Labor Code

Existing law, which is suspended pursuant to a referendum petition, establishes, until **Jan. 1, 2029**, the Fast Food Council (council) within the Department of Industrial Relations and prescribes its powers. Existing law, among other things, prescribes the purposes, duties, and limitations of the council, including a requirement that the council promulgate minimum fast food restaurant employment standards. Existing law sets standards for any minimum wage the council establishes.

This new law repeals those existing provisions on **Jan. 1, 2024**, if a specified referendum is withdrawn by its proponents by that date.

If the referendum is withdrawn, in addition to its repeal, this new law establishes, until **Jan. 1, 2029**, or as otherwise provided, the Fast Food Council and prescribes the council's purposes, duties, and limitations, establishes an hourly minimum wage for fast food restaurant employees (at $20, effective **April 1, 2024**), authorizes the council to increase the hourly minimum wage pursuant to specified parameters, and sets forth requirements, limitations, and procedures for adopting and reviewing fast food restaurant health, safety, and employment standards.

Existing law prohibits an employer or any person acting on behalf of the employer from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, among other individuals and entities, if the employee has reasonable cause to believe that the information discloses specified violations of law, regardless of whether disclosing the information is part of the employee's job duties. Existing law imposes, in addition to other penalties, a civil penalty on certain employers for each violation of this provision, except as specified.

This new law also deems the council a governmental agency for purposes of the above-described prohibition. The new law prohibits a fast food restaurant operator from discharging or in any manner discriminating or retaliating against any employee due to the employee's participation in or testimony to any proceeding convened by the council.

This new law prohibits any city (including charter cities), county, or city and county from enacting or enforcing any ordinance or regulation applicable to fast food restaurant employees that sets the amount of wages or salaries for fast food restaurant employees, except as provided.

This new law requires the Labor Commissioner to enforce compliance with the minimum fast food restaurant employment standards and any other standards promulgated pursuant to the law's provisions and sets forth procedures for enforcing the standards.

Minimum Wage: Health Care Workers (SB 525)

Adds Sections 1182.14 and 1182.15 to the Labor Code, relating to employment

Existing law generally requires the minimum wage for all industries to not be less than specified amounts to be increased until it is $15 per hour commencing **Jan. 1, 2022**, for employers employing 26 or more employees, and commencing **Jan. 1, 2023**, for employers employing 25 or fewer employees. Existing law makes a violation of minimum wage requirements a misdemeanor.

This new law establishes five separate minimum wage schedules for covered health care employees, as defined, depending on the nature of the employer. This new law provides that the health care worker minimum wages constitute the state minimum wage for covered health care employment for all purposes under the Labor Code and the Wage Orders of the Industrial Welfare Commission. A health care worker minimum wage is enforceable by the Labor Commissioner or by a covered worker through a civil action, through the same means and with the same relief available for violation of any

other state minimum wage requirement. For covered health care employment where the employee is paid on a salary basis, the employee must earn a monthly salary equivalent to no less than 150 percent of the health care worker minimum wage or 200 percent of the applicable minimum wage, whichever is greater, for full-time employment in order to qualify as exempt from the payment of minimum wage and overtime.

This new law requires the Department of Health Care Access and Information to publish, on or before **Jan. 31, 2024**, and on the department's Website, specified information, including a list of hospitals that qualify under certain classifications. The new law provides, until **Jan. 31, 2025**, a process for hospitals excluded from that list to request classification.

This new law requires, by **March 1, 2024**, the Department of Industrial Relations, in collaboration with the State Department of Health Care Services and the Department of Health Care Access and Information, to develop a waiver program that allows a covered health care facility, as defined, to apply for and receive a temporary pause or alternative phase in schedule of the minimum wage requirements. In order to obtain a waiver, the new law requires a covered health care facility to demonstrate that compliance with the minimum wage requirements would raise doubts about the covered health care facility's ability to continue as a going concern under generally accepted accounting principles, as specified.

The new law prohibits any ordinance, regulation, or administrative action that is applicable to a covered health care facility and that establishes, requires, imposes, limits, or otherwise relates to wages or compensation for covered health care facility employees from being enacted or enforced in or by any city (including a charter city), county, or city and county, except as provided.

04 Occupational Safety and Health

Occupational Safety: Workplace Violence: Restraining Orders and Workplace Violence Prevention Plan (SB 553)

Amends Section 527.8 of the Code of Civil Procedure; amends Section 6401.7, and adds Section 6401.9 to the Labor Code; and Temporary restraining orders and protective orders: employee harassment (SB 428) – amends, repeals, and adds Section 527.8 to the Code of Civil Procedure

Existing law, the California Occupational Safety and Health Act of 1973, requires that employers establish, implement, and maintain an effective injury prevention program, and makes specified violations of these provisions a crime. The act is enforced by the Division of Occupational Safety and Health (division) within the Department of Industrial Relations, including the enforcement of standards adopted by the Occupational Safety and Health Standards board (standards board).

Effective **July 1, 2024**, this new law would require covered employers to establish, implement, and maintain (as part of their effective injury prevention program) an effective workplace violence prevention plan that conforms to the specific and numerous requirements of new Labor Code Section 6401.9. The new law will also require employers to:

- record information in a violent incident log for every workplace violence incident;
- provide effective training to employees on the workplace violence prevention plan, among other things, and provide additional training when a new or previously unrecognized workplace violence hazard has been identified and when changes are made to the plan;
- create and maintain specified records, including workplace violence hazard identification, evaluation, and correction and training records, as well as violent incident logs and workplace incident investigation records; and
- make available certain records to the division, employees, and employee representatives.

This law requires the division to propose, no later than **Dec. 1, 2025**, and the standards board to adopt, no later than **Dec. 31, 2026**, standards regarding the plan required by the new law. The standards shall include, at a minimum, the requirements specified in the new law and any additional requirements the division deems necessary and appropriate to protect the health and safety of employees.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual that can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an order after hearing on behalf of the employee and other employees at the workplace.

Effective **Jan. 1, 2025**, this new law expands the existing law to allow an employee's collective bargaining representative, in addition to that employee's employer, to petition for such a restraining order on behalf of an employee that person represents "in employment or labor matters at the employee's workplace." This new law also expands the law to permit a restraining order to be sought if an employee has

suffered harassment, which is defined as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress."

An employer or collective bargaining representative must first provide the employee for whom the restraining order is sought the opportunity to decline to be named in the temporary restraining order. Such a request will not prohibit the employer or collective bargaining representative from seeking the temporary restraining order on behalf of other employees at the workplace.

05 Employee Benefits

Employment: Benefits: Electronic Notice and Documents (AB 1355)

Amends, repeals, and adds Section 19853 of the Revenue and Taxation Code, and amends, repeals, and adds Section 1089 of the Unemployment Insurance Code, relating to employment

Existing law, the Earned Income Tax Credit Information Act, requires an employer, as defined, to notify all employees that they may be eligible for specified income tax filing assistance programs and state and federal antipoverty tax credits, including the federal and California earned income tax credits. Existing law requires that the employer hand specified documents directly to the employee or mail the specified documents to the employee's last known address twice annually, as provided. Existing law authorizes the second notification to be sent electronically.

This new law, until **Jan. 1, 2029**, authorizes the employer to provide the first above-described notification via email to an employee's email account instead of directly handing or mailing the document to the employee if the employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials. This new law prohibits the employer from discharging or taking other adverse action against an employee who does not opt into receipt of electronic statements or materials.

06 Public Employment

Days and Hours of Work: Religious or Cultural Observance (SB 461)

Adds Section 19853.2 to the Government Code

Existing law generally entitles a state employee to be given time off with pay for specified holidays and entitles a state employee to one personal holiday per fiscal year. Existing law also authorizes a state employee to elect to receive eight hours of holiday credit for certain holidays in lieu of receiving eight hours of personal holiday credit. Further, existing law grants state employees the right to form and join employee organizations for the purpose of representation of all matters of employer-employee relations. Existing law establishes procedures by which an agreement in the form of a written memorandum of understanding may be reached between the governor and the recognized employee organization, and presented, as appropriate, to the legislature for determination.

The new law authorizes an employee to elect to receive eight hours of holiday credit for observance of a holiday or ceremony of the state employee's religion, culture, or heritage in lieu of receiving eight hours of personal holiday credit. Further, under the new law, these provisions apply to a bargaining unit only after the bargaining unit meets and confers with the Department of Human Resources in the ordinary process and timeline for negotiating and renegotiating the bargaining unit's collective bargaining agreement, as specified.

07 Unfair Competition/Covenants Not to Compete

Contracts in Restraint of Trade (AB 1076)

Amends Section 16600 of, and to add Section 16600.1 to, the Business and Professions Code, relating to business;

Contracts in Restraint of Trade (SB 699)

Adds Section 16600.5 to the Business and Professions Code, relating to business

Existing law voids contractual provisions by which a person is restrained from engaging in a lawful profession, trade, or business of any kind, except as otherwise provided. Existing caselaw interprets this provision to void noncompete agreements in an employment context and noncomplete clauses within employment contracts, even if that agreement is narrowly tailored-unless an exception applies. Currently, the Unfair Competition Law makes various practices unlawful and makes a person who engages in unfair competition liable for a civil penalty, as specified. Existing law provides for enforcement of these provisions exclusively by the Attorney General or other specified local agency attorneys.

This new law codifies existing case law, *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, by specifying that the statutory provision voiding noncompete contracts is to be broadly construed to void the application of any noncompete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored, that does not satisfy specified exceptions. This new law is not limited to contracts where the person being restrained is a party to the contract.

This new law also makes it unlawful to include a noncompete clause in an employment contract, or to require an employee to enter a noncompete agreement, that does not satisfy specified exceptions. Employers are required to notify current and former employees who were employed after **Jan. 1, 2024** in writing, as specified, by **Feb. 14, 2024**, that the noncompete clause or agreement is void, and failure to do so is an act of unfair competition pursuant to the law.

This new law makes such contracts void and unenforceable regardless of where and when the contract was signed and provides that any employer, or former employer, who enters into such a contract or attempts to enforce such a contract commits a civil violation. The new law also creates a private right of action for an employee, former employee, or prospective employee to bring an action for injunctive relief or the recovery of actual damages, or both, and allows a prevailing employee to recover reasonable attorneys' fees and costs.

08 Arbitration and Mediation

Civil Procedure re. Arbitration (SB 365)

Amends Section 1294 of the Code of Civil Procedure, relating to civil procedure

Existing law authorizes a party to appeal an order dismissing or denying a petition to compel arbitration. Existing law generally stays proceedings in the trial court on the judgment or order appealed from when the appeal is perfected, subject to specified exceptions

This new law provides that, notwithstanding the general rule described above, trial court proceedings are not automatically stayed during the pendency of an appeal of an order dismissing or denying a petition to compel arbitration.

09 Miscellany

Labor Code: Alternative Enforcement (AB 594)

Amends Sections 218 and 226.8 of the Labor Code, adds Chapter 8 (commencing with Section 180) to Division 1 of the Labor Code, and repeals Section 181 of the Labor Code, relating to employment

Existing law authorizes the Division of Labor Standards Enforcement, the head of which is the Labor Commissioner, to enforce the Labor Code and all labor laws of the state the enforcement of which is not specifically vested in any other officer, board, or commission. Existing law relating to payment of wages for general occupations provides that nothing in those provisions limits the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations or to enforce those provisions independently and without specific direction of the Division of Labor Standards Enforcement.

This new law, until **Jan. 1, 2029**, authorizes a public prosecutor, as defined, to prosecute an action, either civil or criminal, within its geographic jurisdiction, except as specified, for a violation of specified provisions of the Labor Code or to enforce those provisions independently. The new law requires moneys recovered by public prosecutors under the Labor Code to be applied first to payments due to affected workers, and requires all civil penalties recovered pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified. In addition to any other remedies available, a public prosecutor is authorized to seek injunctive relief to prevent continued violations.

In any action initiated by a public prosecutor or the Labor Commissioner to enforce the Labor Code, any individual agreement between a worker and employer that purports to limit representative actions or to mandate private arbitration shall have no effect on the authority of the public prosecutor or the Labor Commissioner to enforce the code. Any subsequent appeal of the denial of any motion or other court filing to impose such restrictions on a public prosecutor, a division, or the Department of Justice shall not stay the trial court proceedings, notwithstanding specified law.

Existing law prohibits any person or employer from engaging in willful misclassification, as defined, of an individual as an independent contractor instead of an employee and in specified acts relating to the misclassified individual's compensation. Existing law, if the Labor and Workforce Development Agency or a court makes one of several prescribed determinations regarding the violation of those prohibitions, subjects the violator to specified civil penalties. Existing law also authorizes the Labor Commissioner to determine such a violation through investigation and informal hearing and, on making that determination, to issue a citation to assess those civil penalties pursuant to prescribed procedures for issuing, contesting, and enforcing judgments.

This new law authorizes the Labor Commissioner or a public prosecutor, as defined, to enforce these willful misclassification provisions through specified methods, including by filing a civil action. The new law also permits specified employees, the Labor Commissioner, or a public prosecutor to alternatively recover certain penalties as damages payable to the employee.

Employers: Agricultural Employees: Required Disclosures (AB 636)

Amends Section 2810.5 of the Labor Code, relating to employment

Existing law requires an employer to provide an agricultural employee, at the time of hiring, a written notice including specified information in the language that the employer normally uses to communicate employment-related information to the employee. Existing law requires the Labor Commissioner to prepare a template that

includes the information and to make the template available to employers in a manner as determined by the commissioner.

This new law requires an employer to include in the written notice information regarding the existence of a federal or state disaster declaration applicable to the county or counties in which the employee will be employed, as specified. This new law also requires an employer, beginning on **March 15, 2024**, to give an employee admitted pursuant to the federal H-2A agricultural visa, on the day that the H-2A employee begins work in the state additional information in a separate and distinct section of the notice described above, in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protection under California law, as specified. Employers who employ both H-2A and non-H-2A employees have the option to provide the notice to non-H-2A employees in English or Spanish, at the employee's request, or in the language that the employer normally uses to communicate employment-related information to non-H-2A employees. The new law requires the Labor Commissioner to create a template for the notice that complies with this requirement and to post the template on its internet website commencing **March 1, 2024.**

Existing law, for purposes of these provisions, excludes from the term "employee," among other persons, an employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate wage.

This new law further excludes an H-2A employee from the definition of "employee" if that employee is covered by an agreement that provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

Employment: Rehiring and Retention: Displaced Workers (SB 723)

Amends and repeals Section 2810.8 of the Labor Code, relating to employment

Existing law requires an employer, as defined, to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. Existing law defines the term "laid-off employee" to mean any employee who was employed by the employer for six months or more in the 12 months preceding **Jan. 1, 2020**, and whose most recent separation from active service was due to a reason related to the COVID-19

pandemic, including a public health directive, government shutdown order, lack of business, a reduction in force, or other economic, non-disciplinary reason related to the COVID-19 pandemic.

This new law extends the **Dec. 31, 2024**, repeal date until **Dec. 31, 2025**, and redefines "laid-off employee" to mean:

> Any employee who was employed by the employer for six months or more and whose most recent separation from active employment by the employer occurred on or after **March 4, 2020**, and was due to a reason related to the COVID-19 pandemic, including a public health directive, government shutdown order, lack of business, reduction in force, or other economic non-disciplinary reason due to the COVID-19 pandemic.

The new law also creates a presumption that a separation due to a lack of business, reduction in force, or other economic, non-disciplinary reason is related to the COVID-19 pandemic, unless the employer establishes otherwise by a preponderance of the evidence.

Grocery Workers (AB 647)

Amends Sections 2502, 2504, and 2512 of, and
Adds Sections 2509, 2510, and 2517 to, the Labor Code

Existing law, upon change in control of a grocery establishment, requires an incumbent grocery employer, within 15 days after the execution of the transfer document, to provide to the successor grocery employer a list of eligible grocery workers, as specified, and requires the successor grocery employer to maintain a preferential hiring list of eligible grocery workers, to hire from that list for 90 days after the grocery establishment is fully operational and open to the public under the successor grocery employer, and to retain each eligible grocery worker hired for at least 90 days after their commencement date, except as specified.

This new law also requires an incumbent grocery employer to provide the list of eligible grocery workers to any collective bargaining representatives, and revises the employee information an incumbent grocery employer is required to provide to the successor grocery employer. The new law authorizes a successor grocery employer to obtain the list of eligible grocery workers from a collective bargaining representative if the incumbent grocery employer does not provide the information within 15 days.

Existing law defines "grocery establishment" for purposes of these provisions as a retail store that is more than 15,000 square feet that meets specified requirements, and excludes from the definition a retail store that has ceased operations for six months or more.

This new law revises the definitions of various terms, including „grocery establishment,‰ which is now defined to include a distribution center owned and operated by a grocery establishment and used to distribute goods to or from its owned stores, regardless of the distribution centerÊs square footage, and increases the minimum period of non-operation for an excluded retail store from six months to 12 months.

Existing law also specifies that parties may, by collective bargaining agreement, provide that the collective bargaining agreement supersedes the provisions described above providing for employment protections for grocery workers.

This new law also would require that any applicable collective bargaining agreement that supersedes the requirements of this part, in whole or in part, explicitly set forth in clear and unambiguous terms the requirements that are superseded.

The new law prohibits an employer from taking adverse action against an employee for seeking to enforce their rights. The new law authorizes an employee or its representative to bring a civil action for specified remedies, including front pay or back pay and punitive damages, and authorizes the court to award reasonable attorneysÊ fees and costs to a prevailing employee. The new law authorizes the Labor Commissioner to enforce the provisions and establishes available remedies. The new law makes an employer, agent of any employer, or other person who violates or causes to be violated the provisions, subject to civil penalties and liquidated damages, and requires the liquidated damages to be deposited into the Labor and Workforce Development Fund and paid to the employee as compensatory damages.

This new law exempts certain incumbent grocery employers and successor grocery employers, based upon their total nationwide employment, from all of the above-described requirements.

10 Vetoed Legislation

Discrimination: Family Caregiver Status (AB 524)

VETOED. Would have amended Sections 12920, 12921, 12926, and 12940 of the Government Code, relating to employment

This vetoed bill would have prohibit employment discrimination on account of family caregiver status, as defined, and would recognize the opportunity to seek, obtain,

and hold employment without discrimination because of family caregiver status as a civil right, as specified.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Oct. 8, 2023**. In his veto message, Governor Newsom indicated that he vetoed the bill because it would have placed a large burden on employers, particularly small businesses, given the ambiguous nature of the language. Governor Newsom further stated that this bill would be difficult to implement and would lead to costly litigation for employers due to ambiguities regarding what types of acts would constitute unlawful discrimination and what types of acts would be lawful denials of "special accommodations." Accordingly, the bill will not become law at this time.

Relocations, Terminations, and Mass Layoffs (AB 1356)

VETOED. Would have amended Sections 1400.5, 1401, 1402, 1403 of the Labor Code, relating to employment

This vetoed bill would have increased the current notice requirement under CalWARN from 60 days to 75 days, as well as required that the season be complete for the seasonal employment exemption to apply. In addition, the vetoed bill would have included within the term "employer" a client employer of a labor contractor within the term "employee" a person employed by a labor contractor and performing labor with the client employer for at least six months of the 12 months and for at least 60 hours preceding the date on which notice is require. Lastly, the vetoed bill would have made any general release, waiver of claims, or non-disparagement or non-disclosure agreement that is made a condition of the payment of amounts for which the employer is liable void as a matter of law and against public policy.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Oct. 8, 2023**. In his veto message, Governor Newsome indicated that he vetoed the bill because while the inclusion of employees of labor contractors is laudable in its intent, it risks imposing on client employers who cannot reasonably be expected to know whether their actions will cause job loss for such employees and may not have the information necessary to provide the required notice. Governor Newsome further indicated that he vetoed the bill because expanding the definition of "covered establishment" to include a group of locations anywhere in the state will subject chain business to the law's requirements even where layoffs are unrelated and occur in geographically disparate regions of the state. Governor Newsome concluded that it is not clear that such changes are consistent with the purpose of the law. Accordingly, the bill will not become law at this time.

Discrimination on the Basis of Ancestry (SB 403)

VETOED. Would have amended Section 51 of the Civil Code, amends Sections 200 and 210.2 of, and would have added Section 210.4 to, the Education Code, and amends Section 12926 of the Government Code

This vetoed bill would have added, ancestry, defined to include, among other things, caste, as a protected characteristic under the Unruh Civil Rights Act and Fair Employment and Housing Act (FEHA). The vetoed bill would have also included ancestry as a protected characteristic under the policy ensuring equal rights in California public schools and would have defined ancestry and caste for purposes of those provisions. For purposes of the Unruh Civil Rights Act, Californias policy ensuring equal rights in public schools, and FEHA, the vetoed bill would have defined caste as an individuals perceived position in a system of social stratification on the basis of inherited status, which may be characterized by factors including inability or restricted ability to alter inherited status; socially enforced restrictions on marriage, private and public segregation, and discrimination; and social exclusion on the basis of perceived status.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Oct. 7, 2023**. In his veto message, Governor Newsome indicated that he vetoed the bill because he believes it is unnecessary as current laws already prohibit discrimination based on caste. The bill was returned to the Senate, which considered whether to override the Governor's veto upon the opening of the next legislative session on **Jan. 3, 2024**. After reviewing the bill and the Governor's veto, the Senate sustained the veto. Accordingly, the bill will not become law at this time.

Displaced Workers: Notice: Opportunity to Transfer (SB 627)

VETOED. Would have added Part 9.7 (commencing with Section 2550) to Division 2 of the Labor Code, relating to employment

This vetoed bill would have required a chain employer to provide each covered worker and their exclusive representative, if any, a displacement notice at least 60 days before the expected date of closure of a covered establishment. This vetoed bill would have required a chain employer, for a year after the closure of a covered establishment, to provide to all covered workers the opportunity to transfer to a location of the chain within 25 miles of the covered establishment subject to closure as positions become available. The vetoed bill would have required a covered worker who is offered a position to be given at least five business days, from the date of receipt, to accept or decline the offer. The vetoed bill would have required a chain employer to retain for a

minimum of three years prescribed records relating to the closure and offers of employment. The bill would prohibit a chain employer from taking adverse action against a covered worker for asserting their rights under the bill.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Oct. 8, 2023**. In his veto message, Governor Newsom indicated that he vetoed the bill because the new notice requirements, transfer rights, processes and criteria, and associated penalties would impose significant burdens on employers. Governor Newsom further stated that certain terms are arbitrary and overbroad, and that it creates vague processes and criteria that will lead to implementation and enforcement challenges. The bill was returned to the Senate, which considered whether to override the Governor's veto. After reviewing the bill and the Governor's veto, the Senate sustained the veto. Accordingly, the bill will not become law at this time.

Grocery Workers (SB 725)

VETOED. Would have amended Sections 2502 and 2512 of, and would have added Sections 2507 and 2517 to, the Labor Code

This vetoed bill would have required a successor grocery employer that, after a change in control, will own, control, or operate 20 or more grocery establishments, provide an eligible grocery employee an allowance equal to one week of pay for each full year of employment with the incumbent grocery employer if the successor grocery employer does not hire an eligible grocery worker following a change in control or does not retain an eligible grocery worker for at least 90 days following the change in control or the eligible grocery workers employment commencement date, except as specified. The rate of pay would have been calculated based on the employees average regular rate during the last three years of employment, or the final regular rate paid, whichever rate is higher.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Oct. 8, 2023**. In his veto message, Governor Newsom indicated that he vetoed the bill because while it is laudable to try to limit the disruptions essential grocery store workers and local communities caused by grocery mergers and acquisitions, existing laws provide protections for displaced workers. Governor Newsom believes the additional obligations in this bill are unduly prescriptive and overly burdensome. The bill was returned to the Senate, which considered whether to override the Governor's veto. After reviewing the bill and the Governor's veto, the Senate sustained the veto. Accordingly, the bill will not become law at this time.

Employment Discrimination: Unlawful Practices: Work From Home: Disability (SB 731)

VETOED. Would have added Section 12940.2 to the Government Code

Existing law requires an employer to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

This vetoed bill would have made it an unlawful employment practice for an employer to fail to provide to an employee who is working from home at least 30 calendar days advance notice before requiring the employee to return to work in person. The vetoed bill would have prohibited an employee from being required to return to work in person until the employer provides notice in accordance with the bill. The vetoed bill would have required that notice be written and sent by mail or email and include, at a minimum, prescribed text with information about the rights of an employee to reasonable accommodation for a disability.

While this bill passed the Legislature, Governor Gavin Newsom vetoed it on **Oct. 8, 2023**. In his veto message, Governor Gavin Newsom indicated that he vetoed the bill because it would impose an inflexible 30-day advance notice requirement that does not take into account the needs of the employer, and that this bill would be especially impractical for small businesses and "in times of critical need or emergencies". The bill was returned to the Senate, which considered whether to override the Governor's veto. After reviewing the bill and the Governor's veto, the Senate sustained the veto. Accordingly, the bill will not become law at this time.

Regulatory Updates

Modifications to Employment Regulations Regarding Criminal History

Amends California Code of Regulations Title 2, Section 11017.1

The California Office of Administrative Law finally approved the Civil Rights Council's amendments to regulations in the FEHA that govern employer inquiries into and consideration of a job applicant's criminal history. The revised language, which declaratory of existing law, are meant to clarify an employer's obligations by adding more context and examples. The revised regulations took effect on **Oct. 1, 2023**.

The amended regulations add a definition for the term "employer" that includes "any entity that evaluates the application's conviction history on behalf of an employer, or acts as an agent of an employer, directly or indirectly;" which commentators were quick to point out, could potentially implicate a background screener conducting a background check on behalf of an employer.

The regulations also add an expansive definition of the term "applicant", such that these prohibitions now apply to:

- New applicants;
- Existing employees who have applied for or indicated a specific desire to be considered for a different position;
- Existing employees subject to a review and consideration of criminal history because of a change in ownership, management, policy, or practice;
- An individual who can prove that he or she has been deterred from applying for a job by an employer's or other covered entity's alleged discriminatory practice.

The regulations also make clear that an employer cannot evade this section's requirements by having the applicant start working before the post-conditional offer review of criminal history.