2024 Key Legislative Developments

By: Blake Dillion, Jono Arjonilla, Taylor Brown, Lukas Kramer, Kathryn Querner, Scott Saylin, Brian Shaw, and Amy Patton

Following is a summary of significant California employment legislation enacted into law in the 2023-2024 legislative session, and effective **Jan. 1, 2025** (unless otherwise noted):

DISCRIMINATION AND HARASSMENT IN EMPLOYMENT

Unlawful Employment Practices: Discrimination for Time Off or Status as a Victim of Violence (AB 2499)

Amends Code of Civil Procedure Section 214, Edu. Code Section 48205, Labor Code Section 246.5, Penal Code Section 679.027, and Welfare & Institution Code Section 11320.31; Adds Gov. Code Section 12945.8; and Repeals Labor Code Sections 230 and 230.1; relating to employment.

Labor Code section 230 prohibits employers from discharging or discriminating against an employee because of the employee's status as a victim of "crime or abuse" or for taking time off for certain purposes, including to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding. Section 230 also requires employers to provide reasonable accommodations for a victim of domestic violence, sexual assault, or stalking, who requests an accommodation for the safety of the victim while at work. Labor Code section 230.1 imposes additional requirements and prohibitions on employers that have 25 or more employees, including that such employers cannot discharge, discriminate, or retaliate against an employee who is a victim for taking time off work to seek medical attention for injuries caused by crime or abuse, to obtain certain services as a result of the crime or abuse or related to an experience of crime or abuse, or to participate in safety planning and take other actions to increase safety from future crime or abuse. Code section 246.5 requires employers to provide paid sick days, upon an employee's request, for an employee who is a victim of domestic violence, sexual assault, or stalking and needs time off for the same purposes outlined above.

Effective **Jan. 1, 2025**, Labor Code sections 230 and 230.1 are repealed and recast as unlawful employment practices within the Fair Employment and Housing Act, at Gov. Code section 12945.8, which will make the laws enforceable by the Civil Rights Department. The terms "crime or abuse" used in existing law are replaced with "qualifying acts of violence," which is defined as: domestic violence; sexual assault; stalking; or any act, conduct, or pattern of conduct that includes: bodily injury or death to another; brandishing, exhibiting, or drawing a firearm or other dangerous weapon; or a perceived or actual threat to use force against another to cause physical injury or death.

Employers with 25 or more employees are additionally prohibited from discharging or discriminating against an employee who has a family member who is a victim of a "qualifying act of violence" for taking time off work for specified purposes, including those enumerated in the former section 230.1 of the Labor code.

An employer may limit the total leave time taken under the law. If the employee is the victim of the "qualifying act of violence," the limit is 12 weeks. If the employee's family member is the victim, the limit for the time taken to assist in relocation purposes is five days and the limit on the total leave taken is 10 days (except that employers cannot limit leave time taken to fewer than 12 weeks if the victim is deceased as a result of the qualifying act of violence). The Civil Rights Department will be publishing a form notice regarding employees' protections under the new law no later than July 1, 2025. Thereafter, employers must provide employees notice of their rights under the new law.

Discrimination: race: hairstyles (AB 1815)

Amends Section 51 of the Civil Code, Section 212.1 of the Education Code, and Section 12926 of the Government Code, relating to discrimination.

Discrimination claims: combination of characteristics (SB 1137)

Amends Section 51 of the Civil Code, Sections 200 and 210.2 of the Education Code, and Sections 12920 and 12926 of the Government Code, relating to discrimination.

Under the Unruh Civil Rights Act, Fair Employment and Housing Act, and the policy of the State of California, all persons within the jurisdiction of California are entitled to full and equal accommodations in all business establishments and protection from specified discriminatory employment and housing practices based on certain protected characteristics, including race. The California Fair Employment and Housing Act and public-school policy define the term "race" to include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles, as defined.

Effective **Jan. 1, 2025**, the term "historically" is removed from the definition of race, thereby broadening the scope to incorporate any traits associated with race (including hair texture and protective hairstyles) without limiting it to historical contexts. The above laws are amended to prohibit discrimination because of any combination of prescribed protected characteristics. These changes are declarative of existing law.

Discrimination: driver's license (SB 1100)

Amends Section 12940 of the Government Code, relating to discrimination.

The California Fair Employment and Housing Act prohibits various forms of employment and housing discrimination, including discrimination based on national origin, which includes discrimination on the basis of on driver's license status or origin. Under existing law, employers are permitted to include a statement in job postings that a driver's license is required for the position.

Effective **Jan. 1, 2025**, it is an unlawful employment practice for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license, unless (1) the employer reasonably expects driving to be one of the job functions, and (2) the employer reasonably believes that satisfying the job function using an alternative form of transportation, as defined, would not be comparable in travel time or cost to the employer.

Employer communications: intimidation (SB 399)

Adds Chapter 9 (commencing with Section 1137) to Part 3 of Division 2 of the Labor Code, relating to employment.

Existing Law prohibits employers from making, adopting, or enforcing rules, regulations, or policies that forbid or prevent employees from engaging or participating in politics or from becoming candidates for public office, and from controlling or directing, or tending to control or direct, the political activities or affiliations of employees.

Effective **Jan. 1, 2025**, an employer is prohibited from subjecting, or threatening to subject, an employee to adverse action because the employee declines to attend an employer-sponsored meeting (or affirmatively declines to participate in, receive, or listen to any communications with the employer) the purpose of which is to communicate the employer's opinion about religious or political matters. This new law (1) imposes a civil penalty of $500 on an employer who violates these provisions, (2) authorizes the Labor Commissioner to enforce the new law's provisions, and (3) authorizes any employee who has suffered a violation of this new law's provisions to bring a civil action and a petition for injunctive relief.

Labor Commissioner: whistleblower protections: model list of rights and responsibilities (AB 2299)

Amends Labor Code section 1102.8 and Adds Labor Code section 98.11, relating to employment.

Existing law prohibits employers from making, adopting, or enforcing a policy that prevents an employee from disclosing violations or noncompliance with laws or regulations to a government or law enforcement agency, or from retaliating against an employee who makes a disclosure. Existing law also requires an employer to prominently display a list of employees' rights and responsibilities under whistleblower laws, as specified.

Effective **Jan. 1, 2025**, the Labor Commission must develop a model list of employees' rights and responsibilities under the whistleblower laws which will satisfy the existing requirement to prominently display employees' rights and responsibilities under whistleblower laws.

Property service worker protection (AB 2364)

Amends Labor Code sections 1420 and 1429.5 of, and adds and repeals Section 1429.6 of, the Labor Code, relating to employment.

Existing law requires every employer of janitors to register annually with the Labor Commissioner and requires the Division of Labor Standards Enforcement to enforce the provisions relating to the registration of those employers. Existing law requires an employer to use a qualified organization, as specified, to provide sexual violence and harassment prevention training, and to pay the qualified organization $65 per participant, except as specified.

Effective **Jan. 1, 2025**, janitorial employers must pay the qualified organization $200 per participant for training sessions having less than 10 participants, and $80 per participant for training sessions with 10 or more participants, except as specified, until January 1, 2026. Each year thereafter, the employer would be required to increase the rate of payment, as specified. The Division must direct certain specified programs and departments of the University of California to conduct a study evaluating opportunities to improve worker safety and safeguard employment rights in the janitorial industry, and would require the entity or entities of the University of California to timely conduct the study. Employers must provide this entity or entities access to the place of employment, as specified.

LEAVES OF ABSENCE

Unlawful employment practices: small employer family leave mediation program: reproductive loss leave (AB 2011)

Amends Section 12945.21 of the Government Code, relating to employment.

The California Fair Employment and Housing Act establishes the Civil Rights Department within the Business, Consumer, and Housing Agency, and describes its powers and responsibilities as to the enforcement of civil rights laws with respect to housing and employment. The Department was required to create a small employer family leave mediation pilot program for resolution of alleged violations of family care and medical and bereavement leave laws, applicable to employers with between five and 19 employees. Existing law also describes the circumstances under which such mediation may occur and specifies the events that deem a mediation complete. Existing law repeals the pilot program on January 1, 2025.

Effective **Jan. 1, 2025**, this amendment extends the mediation program indefinitely, expands the small employer family leave mediation pilot program to include resolution of alleged violations of provisions on reproductive loss leave and adds to the events that deem a mediation complete the mediator's determination that the employer does not have between five and 19 employees, subject to exceptions.

Paid sick leave: agricultural employees: emergencies (SB 1105)

Amends Section 246.5 of the Labor Code, relating to paid sick leave.

The Healthy Workplaces, Healthy Families Act of 2014 entitles an employee who works in California for the same employer for 30 or more days within one year from the commencement of employment to paid sick days, for specified purposes. Employers are prohibited from denying employees the right to use accrued sick days, or to discharge or otherwise discriminate against employees for using or attempting to use sick days.

Effective **Jan. 1, 2025**, paid sick days must be provided to agricultural employees who are entitled to paid sick days to allow use for the avoidance of smoke, heat, or flooding conditions created by a local or state emergency. This amendment declares that these provisions represent existing law to the extent that sick days are necessary for preventative care.

Disability compensation: paid family leave (AB 2123)

Amends Section 3303.1 of the Unemployment Insurance Code, relating to paid family leave.

The paid family leave program provides for wage replacement benefits to workers who take time off for specified purposes, including time off to care for seriously ill family members, to bond with a minor child within one year of birth or placement, and to participate in a qualifying need related to the covered active duty of certain family members. Existing law authorizes an employer to require an employee to take up to two weeks of earned but unused vacation time before, and as a condition of, the employee receiving paid family leave during any 12-month period in which the employee is eligible for these benefits.

Effective **Jan. 1, 2025**, employers may not require employees to take unused vacation time before, and as a condition of, the employee receiving paid family leave.

WAGE AND HOUR

Employment: wages and hours: exemption for faculty at private institutions of higher education (AB 3105)

Amends Labor Code section 515.7, relating to employment.

Existing Law provides an exemption to employees from certain provisions governing wages, hours, and other protections if the employee meets certain requirements, including being employed to provide instruction for a course or laboratory at an independent institution of higher education.

Effective **Jan. 1, 2025**, the definition of an independent institution of higher education for purposes of the aforementioned exemption is expanded to include nonpublic institutions that were formed as a nonprofit corporation in a state other than California and excludes any such nonpublic institutions whose formation occurred on or after Jan. 1, 2023, whether or not in the state of California. These changes do not constitute a change in, but are declaratory of, existing law.

Labor Code Enforcement: Private Civil Actions (AB 2288)

Amends Section 2699 of the Labor Code, relating to employment.

The existing Private Attorneys General Act of 2004 (“PAGA”) permits an aggrieved employee to bring a civil action on behalf of herself and other current or former employees to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed by the Labor and Workforce Development Agency or any of its departments or divisions.

For any PAGA claims made on or after **June 19, 2024**, the amended law limits the claims that can be brought by a PAGA plaintiff. Specifically, PAGA plaintiffs can only bring claims for violations of the Labor Code on behalf of current or former employees against whom a violation of the same provision was committed. Stated differently, an aggrieved employee must have personally suffered each of the violations alleged.

The amended law also reduces civil penalties. If prior to receiving a notice of violation, or prior to receiving a request for records from the aggrieved employee or counsel, the employer has taken “all reasonable steps” to be in compliance with all provisions identified in the notice, the civil penalty that may be recovered is limited to no more than 15 percent of the penalty sought. If within 60 days after receiving a notice of violation, the employer has taken “all reasonable steps” to prospectively be in compliance with all provisions identified in the notice, the civil penalty that may be recovered is limited to no more than 30 percent of the penalty sought.

An employer who takes all “reasonable steps” and cures a violation is not required to pay a civil penalty for that violation. An employer cures a violation when it corrects the violation, is in compliance with the underlying statutes specified in the notice, and each aggrieved employee is made whole. An employee who is owed wages is made whole when the employee has received an amount sufficient to recover any owed unpaid wages due under the underlying statutes specified in the notice dating back three years from the date of the notice, plus 7 percent interest, any liquidated damages as required by statute, and reasonable lodestar attorney’s fees and costs to be determined by the agency or the court.

“All reasonable steps” may include any of the following: conducting periodic payroll audits and taking action in response to the results; disseminating lawful written policies (specific to the alleged violations if notice received); training supervisors on applicable Labor Code and wage order compliance; or taking appropriate corrective action with regard to supervisors. The existence of a violation, despite the steps taken, is insufficient to establish that an employer failed to take “all reasonable steps.”

Historically, PAGA penalties have been $100 for an initial violation and $200 for each subsequent violation. The amended statute sets the penalty at $100 for each aggrieved employee per pay period with two major exceptions. First, if the alleged violation is one related to an unlawful wage statement, the only civil penalty applicable is $25 for each employee per pay period if the employee could promptly and easily determine from the wage statement the

required information or the employee would not be confused or misled about the correct identity of her employer. Second, the civil penalty is $50 for each aggrieved employee per pay period if the alleged violation resulted from an isolated, non-recurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods.

The amended law also limits double recovery of derivative penalties. An employee can no longer collect a civil penalty for (1) violations of Labor Code sections 201, 202, or 203, (2) a violation of Labor Code section 204 that is neither willful or intentional, or (3) a violation of Labor Code section 226 that is neither knowing or intentional nor a failure to provide a wage statement that is in addition to the civil penalty collected for the underlying unpaid wage violation. Further, the amended law requires that penalties must be reduced by one-half if the employee's regular pay period is weekly (rather than biweekly or semimonthly).

The amended law includes a new civil penalty of $200 if (1) within the five years preceding the violation, there was a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful or (2) the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive.

Further, the amended law provides that an employee may be awarded injunctive relief in a civil action, and trial courts may limit the evidence to be presented at trial or otherwise limit the scope of any claim filed to ensure that the claim can be effectively tried.

The amended law applies to civil actions brought on or after June 19, 2024; it does not apply to a civil action with respect to which the required notice was filed before June 19, 2024.

Labor Code Private Attorneys General Act of 2004 (SB 92)

Amends Section 2699.5 of the Labor Code and Amends, Repeals, and Adds Section 2699.3 of the Labor Code, relating to employment.

Existing law permits an aggrieved employee to bring a civil action on behalf of herself and other current or former employees to enforce a violation of any provision of the Labor Code that provides for a civil penalty to be assessed by the Labor and Workforce Development Agency or any of its departments or divisions.

For any PAGA claims made on or after **June 19, 2024**, the amended law provides separate processes to cure violations of the Labor Code for large and small employers. An employer who employs at least 100 employees, upon being served with a summons and complaint (asserting a claim under subdivision (a) or (f) of Labor Code section 2699) may file a request for an early evaluation conference and a request for a stay of court proceedings. A request for an early evaluation by a defendant must include a statement regarding whether the defendant intends to cure any or all of the alleged violations, specify the alleged violations it will cure, and identify the allegations it disputes.

Upon the filing of a request for an early evaluation by a defendant and, if requested, a stay of proceedings, a court shall stay the proceedings and issue an order (absent good cause for denial) that (1) schedules a mandatory early evaluation conference as soon as possible but in no event later than 70 days after issuance of the order, (2) directs a defendant that has filed a statement that it intends to cure any or all alleged violations to submit confidentially to the neutral evaluator and serve on the plaintiff the employer's proposed plan to cure those violations, (3) directs a defendant that is disputing any alleged violations to submit to the neutral evaluator and serve on plaintiff a confidential statement that includes the basis and evidence for disputing those alleged violations, and (4) directs the plaintiff to submit to the neutral evaluator and serve on defendant a confidential statement that includes specifics of the alleged violations (for example, amount of penalties claimed, attorney's fees and costs incurred).

The conference shall include an evaluation of (1) whether any of the alleged violations occurred and, if so, whether the defendant cured the alleged violations, (2) the strengths and weaknesses of plaintiff's claims and defendant's defenses, (3) whether plaintiff's claims can be settled in whole or in part, and (4) whether the parties should share other information that may facilitate early evaluation and resolution.

For small employers (those employing fewer than 100 employees), within 33 days of receipt of notice sent by an aggrieved employee, the employer may submit to the agency a confidential proposal to cure one or more of the alleged violations. If the cure is sufficient or if a conference is necessary to determine if a sufficient cure is possible, the agency may set a conference with the parties to determine whether the proposed cure is sufficient, what additional information may be necessary to evaluate the sufficiency of the cure, and the deadline for the employer to complete the cure.

No employer shall avail itself of the notice and cure provisions of the amended law more than one time in a 12-month period for violations of the same provisions set forth in the notice. The amended law does not apply to a civil action with respect to which the notice was filed before June 19, 2024.

Labor Code Private Attorneys General Act of 2004: Exemption: Construction Industry Employees (AB 1034)

Amends Section 2699.6 of the Labor Code, relating to employment.

Existing law provides that PAGA does not apply to an employee in the construction industry with respect to work performed under a valid collective bargaining agreement that expressly provides for, among other things, the wages, hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate.

Effective **Jan. 1, 2025**, the expiration of the statute is extended from Jan. 1, 2028, to Jan. 1, 2038.

OCCUPATIONAL SAFETY AND HEALTH

Occupational Safety and Health: Definitions (SB 1350)

Amends Labor Code Section 6303, relating to private employment.

The California Occupational Safety and Health Act of 1973 defines various terms for purposes of the Act. Under existing law, the term "employment" excludes household domestic service. Under specified circumstances, a violation of the Act is a crime.

Effective **July 1, 2025**, the definition of "employment" is expanded to include "household domestic service performed on a permanent or temporary basis," except for specified household domestic service, including (1) those that are publicly funded, including publicly funded household domestic service provided to a recipient, client, or beneficiary with a share of cost in that service; (2) those in family daycare homes; and (3) those where an individual who, in their own residence, privately employs persons to perform ordinary domestic household tasks, including housecleaning, cooking, and caregiving.

Refinery and chemical plants (AB 3258)

Amends Sections 7851, 7852, 7853, 7855, 7856, 7872, and 7873 of the Labor Code, relating to safety in employment.

Existing law establishes that the California Refinery and Chemical Plant Worker Safety Act of 1990 requires the Occupational Safety and Health Standards Board to adopt Process Safety Management (PSM) standards for refineries, chemical plants, and other manufacturing facilities, as prescribed. Existing law requires, among other things, the PSM regulations be designed to protect petroleum refinery workers.

Effective **Jan. 1, 2025**, the scope of the California Refinery and Chemical Plant Worker Safety Act of 1990 is expanded to protect refinery workers who can be exposed to potential hazards of refineries, by revising the definition of "refinery" to mean an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel, as defined, through the processing of crude oil or alternative feedstock. References to petroleum refineries and petroleum refinery employers in the existing law are revised to refer to refineries and refinery employers to account for newer refining technologies and ensure the PSM framework encompasses the newer processes that utilize the same machinery. The Division of Occupational Safety and Health must propose, and the Occupational Safety and Health Standards Board must consider for adoption, regulations that implement PSM standards refineries by Jan. 1, 2026.

Labor Code: alternative enforcement: occupational safety (AB 2738)

Amends Sections 181, 9251, and 9252 of, and adds Section 9252.1 to, the Labor Code, relating to employment.

Labor Code section 181, until Jan. 1, 2029, authorizes a public prosecutor, as defined, to prosecute an action through alternative enforcement procedures for a violation of numerous provisions of the Labor Code or to enforce those provisions independently. Money recovered by public prosecutors under that code must be applied first to payments, such as wages, damages, and other penalties, due to affected workers. All civil penalties recovered by a public prosecutor pursuant to those provisions are to be paid to the General Fund of the state, unless otherwise specified. A court may award a prevailing plaintiff reasonable attorney's fees and costs in an action under those provisions, as specified.

Effective **Jan. 1, 2025**, Section 181 is amended to clarify that all remedies available for violations of the specified provisions of the Labor Code, including wages, liquidated damages, and civil penalties, may be recovered in an action by a public prosecutor under those alternative enforcement procedures. Any remedies recovered go first to workers to cover any unpaid wages, damages, or penalties owed to those workers, and any remaining civil penalties go to the General Fund of the state. Section 181 is further amended to require a court to award a prevailing plaintiff reasonable attorney's fees and costs in an action under those provisions, as specified.

Labor Code sections 9251 and 9252, requires a contracting entity, as defined, to require an entertainment events vendor to certify for its employees and employees of its subcontractors that those individuals have complied with specified training, certification, and workforce requirements.

Effective **Jan. 1, 2025**, Labor Code sections 9251 and 9252 are amended to require a covered contract to provide in writing that the entertainment events vendor will furnish, upon hiring for the live event pursuant to the contract, the contracting entity with specified information about the employees of those vendors and subcontractors and the trainings those employees have completed. The contracts are subject to a provision of the California Public Records Act that makes any executed contract for the purchase of goods or services by a state or local agency, including the price and terms of payment, a public record subject to disclosure under that act, as prescribed. The contracting entity may use or disclose to third parties the specified information for the purpose of carrying out the contracting entity's duties under the contract but prohibit the use or disclosure of the information for unrelated purposes. The categories of entities subject to penalties for a violation of these provisions are expanded to also include a public events venue or contracting entity. These provisions are added to those that may be enforced by a public prosecutor pursuant to the alternative enforcement procedures specified in Section 181, subject to certain additional conditions.

WORKERS' COMPENSATION

Notice to employees: legal services (AB 1870)

Amends Labor Code section 3550, relating to workers' compensation.

Existing law requires employers (who are subject to the workers compensation system) to post in a conspicuous location frequented by employees, a notice in both English and Spanish that is easily understandable by employees. The notice includes, among other information, the name of the employer's current workers' compensation insurance carrier, the kinds of events, injuries, and illnesses covered by workers' compensation, the rights of an employee to select and change a treating physician, to whom injuries should be reported, the existence of time limits for the employer to be notified of an occupational injury, and certain employee protections against discrimination. Existing law also requires the Administrative Director of the Division of Workers' Compensation to make the form and content of this notice available to self-insured employers and insurers.

Effective **Jan. 1, 2025**, this new law requires an employer's workers' compensation employee rights notice to include information concerning an employee's right to consult a licensed attorney to advise them of their rights under workers' compensation laws.

MISCELLANY

Employers: Social Compliance Audit (AB 3234)

Adds Chapter 1.5 (commencing with section 1250) to Part 4 of Division 2 of the Labor Code.

Effective **Jan. 1, 2025**, a "social compliance audit" is defined as an inspection of any production house, factory, farm, or packaging facility of a business to verify whether it complies with social and ethical responsibilities, health and safety regulations, and labor laws, including those regarding child labor. An employer who has voluntarily subjected its business to a social compliance audit must post a clear and conspicuous link to a report detailing the findings of its most recent social compliance audit on the Website for their business. The posting must include the date and time the audit was conducted, whether the business does or does not engage in, or support the use of, child labor, a copy of any written policies and procedures the business has regarding child employees, whether the employer exposed children to any working situations which were hazardous or unsafe to their mental health and development, whether children worked for the employer within or outside regular school hours or night hours, and a statement that the auditing company is not a government agency with authority to comply with state and federal labor laws.

Food and prescription access: grocery and pharmacy closures (SB 1089)

Adds Chapter 42 (commencing with Section 22949.92) to Division 8 of the Business and Professions Code, relating to food and prescription access.

Existing law regulates the employment of workers in grocery establishments and requires an incumbent grocery employer to post a public notice of any change in control at the location of the affected grocery establishment within five business days following the execution of the transfer document, as specified. Existing law also requires the notice to include, among other specified information, the name of the incumbent grocery employer, and to be posted in a conspicuous place at the grocery establishment in a manner where it can be readily viewed by specified persons, including eligible grocery workers.

Additionally, the currently existing Pharmacy Law provides for the licensure and regulation of pharmacies by the California State Board of Pharmacy. Existing law also authorizes a pharmacy to furnish prescription drugs only to certain entities, including specific health care entities, and individual patients or another pharmacy either pursuant to a prescription or as otherwise authorized by law. Existing law defines a pharmacy as an area, place, or premises licensed by the board in which the profession of pharmacy is practiced and where prescriptions are compounded.

Effective **Jan. 1, 2025**, a covered establishment, is defined to include a grocery establishment or a pharmacy establishment, must satisfy specified requirements no later than 45 days before its closure takes effect, including providing written notice of the closure to specified entities, including (1) the employees of the covered establishment affected by the closure and their authorized representatives if the covered establishment employs more than five employees, and (2) the Employment Development Department.

A covered establishment that employs five or fewer employees must provide written notice of a closure to the affected employees no later than 30 days before the closure of the covered establishment takes effect. Specified covered establishments, including a pharmacy owned by a person or entity who owns 15 or fewer pharmacies nationwide, are exempted from providing written notice to specified persons and entities or the Employment Development Department. A covered establishment is exempted from these requirements if the closure is necessitated by a physical calamity or an act of war or because of business circumstances that were not reasonably foreseeable at the time the notice would have been required.

Existing law authorizes an aggrieved employee of a grocery establishment or their representative, to bring an action for violations of the change of control provisions to recover, among other awards, reasonable attorney’s fees and costs, if specified requirements are met, including that the employee provided written notice to the employer of the violations. Existing law also authorizes a civil penalty not to exceed $100 against, among other specified entities, the grocery employer for each employee whose rights are violated under those provisions. Existing law also authorizes an additional amount of $100 per employee payable as liquidated damages for each day of the violation until the violation is cured, and authorizes that amount to be recovered by the Labor Commissioner and paid to the employee as compensatory damages.

There is a new civil penalty not to exceed $10,000 for each closure to be assessed and collected in a civil action against a covered establishment that violates the above-described written notice provisions. The new law requires the court, in assessing the amount of the civil penalty, to consider relevant circumstances, including the nature and severity of the misconduct, the number of violations, the length of time over which the misconduct occurred, the persistence of the misconduct, the willfulness of the misconduct, the defendant's assets, liabilities, and net worth, and the number of employees employed by the defendant. Courts must award a prevailing plaintiff reasonable attorney's fees and costs. An employee who does not receive the written notice is entitled to recover in a civil action an additional sum of $100 payable as liquidated damages per employee for each day of the violation until the violation is cured. These provisions do not preempt or alter any other rights or remedies, including any causes of action, available under any other federal or state law.

Existing law, the California Workforce Innovation and Opportunity Act, establishes local workforce development boards to perform duties related to the planning, oversight, and evaluation of local workforce investment, including identifying workforce training programs.

Now, counties, after receiving a written notice described above from any covered establishment, must provide the local workforce development board of the county in which the covered establishment is located with information about safety net programs, including the CalWORKs program, and would require a local workforce development board to provide the covered establishment with information about safety net programs and the availability of local workforce training services. A covered establishment that receives information from a county or a local workforce development board as described above is required to provide any of that information it receives to each of its employees no later than 30 days before its closure.

Existing law provides for various public social services programs in the state, which are administered by the State Department of Social Services, including the CalFresh program, under which supplemental nutrition assistance benefits allocated to the state by the federal government are distributed to eligible individuals by each county, and the California Work Opportunity and Responsibility to Kids (CalWORKs) program, under which each county provides cash assistance and other benefits to qualified low-income families and individuals.

Now the department, after receiving a written notice from a grocery establishment, must transmit information stating that the grocery establishment will be closing and the closing date to the Food and Nutrition Service of the United States Department of Agriculture.

Freelance Worker Protection Act (SB 988)

Adds Part 5 (commencing with Section 18100) to Division 7 of the Business and Professions Code, relating to independent contractors.

Existing law, with certain exceptions, requires a three-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission. Existing law also 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 the Labor Code and all labor laws of the state is not specifically vested in any other officer, board, or commission.

Commencing **Jan. 1, 2025**, contracts between a hiring party and a freelance worker who is hired or retained as an independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than $250 must comply with minimum requirements. A hiring party is defined as a person or organization in the State of California that retains a freelance worker to provide professional services, but does not include the United States Government, the State of California or any subdivision thereof, a foreign government, or an individual hiring services for the personal benefit of themselves, their family, or their homestead. A freelance worker is defined as a person or organization composed of no more than one person, whether or not incorporated or employing a trade name, that is hired or retained as an independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than $250, either by itself or when aggregated with all contracts for services between the same hiring party and independent contractor during the immediately preceding 120 days. Specifically, a hiring entity must pay a freelance worker the compensation specified by a contract for professional services on or before the date specified by the contract or, if the contract does not specify a date, no later than 30 days after completion of the freelance worker's services. A contract between a hiring party and a freelance worker must be in writing and would require a hiring party to retain a copy of the contract for no less than four years. A hiring party is prohibited from discriminating or taking adverse action against a freelance worker for taking specified actions relating to the enforcement of these provisions and would authorize an aggrieved freelance worker, the Labor Commissioner, or a public prosecutor to bring a civil action to enforce these provisions.

Contracts against public policy: personal or professional services: digital replicas (AB 2602)

Adds Labor Code section 927, relating to employment.

This new law limits how employers may use Artificial Intelligence ("AI"), on or after **Jan. 1, 2025**. Specifically, employers are not allowed to use AI-generated digital replicas in lieu of human performers under certain circumstances, including that employers are not allowed to use an AI version of a person's voice or likeness if such usage replaces work that the performer could have done in person and if the contract of employment does not specify how the digital replica will be used. "Digital replica" is defined as a "computer-generated, highly realistic electronic representation that is readily identifiable as the voice or visual likeness of an individual that is embodied in a [mode] in which the actual individual either did not actually perform or appear, or the actual individual did perform or appear, but the fundamental character of the performance or appearance has been materially altered.

VETOED LEGISLATION

Enforcement of Civil Rights (SB 1022)

Amends Sections 12926, 12960, 12965, 12980, and 12981 of the Government Code, relating to civil rights.

This bill would have added the term "group or class complaint" to the California Fair Employment and Housing Act (FEHA) to include any complaint alleging a pattern or practice and made certain filing deadlines inapplicable to such complaints where the alleged discriminatory practice is alleged to have occurred within a period of seven years or fewer before the date the complaint was filed. This bill would have applied specific tolling provisions for such complaints filed with the Civil Rights Department (CRD). This bill would have required certain deadlines under which a civil action shall be brought to be tolled during a dispute resolution proceeding. This bill would have amended the applicable tolling of the deadlines for filing a civil action during a dispute resolution proceeding as specified. This bill would have required the department to issue any right-to-sue notice in specified circumstances and would have required the deadlines related to issuing a right-to-sue notice to be tolled as specified.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Sept. 29, 2024**. In his veto message, Governor Newsome indicated that he vetoed the bill because he was concerned with the specific provisions in this bill that provide the CRD with a seven-year period to file a group or class complaint under the FEHA as this limitations period is significantly longer than the limitations period for similar civil matters, including class action litigation on behalf of employees. The bill has been returned to the Senate, which will consider whether to override the governor's veto upon the opening of the next legislative session on Jan. 6, 2025. Accordingly, the bill will not become law at this time.

Farmworkers: benefits (SB 1299)

Amends Section 62.5 of, and adds Section 3212.81 to, the Labor Code, relating to workers' compensation.

This bill would have established a disputable presumption that a heat-related injury that develops within a specified timeframe after working outdoors for an employer in the agriculture industry that fails to comply with the Division of Occupational Safety and Health (Cal/OSHA)'s heat illness prevention standards, as defined, arose out of and came in the course of employment. The bill would have specified that compensation awarded for heat-related injury to farmworkers is to include, among other things, medical treatment and disability. The bill would have established the Farmworker Climate Change Heat Injury and Death Fund that would consist of a one-time transfer of $5 million derived from nongeneral funds of the Workers' Compensation Administration Revolving Fund for the purpose of administrative costs associated with this presumption.

While this bill passed the Legislature, Governor Newsom vetoed this bill on **Sept. 28, 2024**. In his veto message, Governor Newsome indicated that his administration, Cal/OSHA, and the Labor and Workforce Development Agency, among others, continue to work to protect Californians from the periods of extreme heat, but conditioning a workers' compensation presumption on compliance with standards set and enforced by another regulatory provision is not an effective way to improve working conditions. The bill has been returned to the Senate, which will consider whether to override the governor's veto upon the opening of the next legislative session on Jan. 6, 2025. Accordingly, the bill will not become law at this time.