

California Governor Approves Multiple New Employment Laws

Labor & Employment Law Update

By Peter Hansen on October 12, 2022

California Governor Gavin Newsom recently signed into law a number of new bills impacting employers operating in California, who must remain vigilant with these developments as they are quickly going forward. Below are the key changes that California Employers need to be aware of:

Cannabis Testing Prohibitions: AB 2188 amends the California Fair Employment and Housing Act as of January 1, 2024 to prohibit employers from taking action against an employee or applicant on the basis of either (1) the use of cannabis off the job and away from the workplace, or (2) a drug screen that identifies “nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.” (Employers can, however, continue to discipline employees “based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.”) However, the bill specifically excludes certain employees and applicants from coverage, including those in the building and construction trade and those requiring a federal background investigation or security clearance.

Job Posting Pay Disclosures, Pay Data Reporting, and Requests for Pay Scale Data: SB 1162 includes several new obligations, each of which become effective January 1, 2023. First, it requires employers with 15 or more employees to include the pay scale for a position in any job posting, and requires employers of all sizes to maintain records of each employee’s job title and wage rate history “for the duration of the employment plus three years after the end of the employment.”

The bill also amends California’s already-existing pay data reporting requirements for employers with 100 or more employees to include the median and mean hourly rate for each combination of race, ethnicity, and sex within each job category, beginning with the reports covering the 2022 calendar year. The pay data report, however, will now be due “on or before the second Wednesday of May” as opposed to March 31 of each year.

Finally, the bill requires employers of all sizes to provide employees with the pay scale for their current position – but only upon request. The bill does not specify how the employee must request the pay scale data, so a verbal request would

presumably suffice. The bill also fails to include a timeframe by which the employer must respond to the request, but it's safe to assume there will be additional guidance on this in the coming weeks or months.

Leave Law Expansion: AB 1041 impacts both the California Family Rights Act, which requires most California employers to allow up to 12 work weeks per year for family care and medical leave, and the California Healthy Workplaces, Healthy Families Act, which requires most California employers provide paid sick leave. The bill expands the definition of “family member” under both Acts to include a “designated person” who California employees can use protected leave to care for.

- Under the California Family Rights Act, a “designated person” is “any individual related by blood or whose association with the employee is the equivalent of a family relationship.”
- Under the California Healthy Workplaces, Healthy Families Act, a “designated person” is “a person identified by the employee at the time the employee requests paid sick days.”

The above changes become effective January 1, 2023.

Bereavement Leave: AB 1949 also amends the California Family Rights Act, to require employers to grant at least 5 days of unpaid bereavement leave upon the death of a family member to employees who have employed for at least 30 days. The bill defines family member as “spouse or a child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law.”

Additionally, bereavement leave need not be consecutive, but instead must be completed within 3 months of the date of death of family member. Lastly, although the bereavement leave may be unpaid, AB 1949 authorizes employees to use “vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee.”

Takeaway:

In light of these new developments, employers with employees performing services in California should reach out to Labor and Employment Counsel to ensure compliance and familiarization with the rapidly changing California laws.

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