

NEW EMPLOYMENT LAWS FOR 2021

*PRESENTED BY KELLY O. SCOTT, ESQ.
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Families First Coronavirus Response Act

- **500 < employees and 30 days of employment, may be eligible for FFCRA Emergency Paid Sick Leave or Emergency Family and Medical Leave:**
 - 1. Employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;**
 - 2. Employee has been advised by a health care provider to self-quarantine related to COVID-19;**
 - 3. Employee is experiencing COVID-19 symptoms and is seeking a medical diagnosis;**
 - 4. Employee is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);**
 - 5. Employee is caring for a child whose school or place of care is closed (or childcare provider is unavailable) for reasons related to COVID-19; or**
 - 6. Employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.**



Families First Coronavirus Response Act *(cont.)*

- Provides emergency paid sick leave for work “on average, over a two-week period” up to 80 hours
- Up to \$511 per day for 1-3, up to \$200 per day 4-6
- Reason no. 5 provides an additional 10-weeks leave, for a total of up to 12-weeks
- Can opt to use accrued available paid time off to stay home but cannot stack benefits
- May not be forced to use PTO during a FFCRA leave
- 500 > employees must consider city or county required paid leave benefits similar to FFCRA (Los Angeles, San Jose and San Francisco) and also food sector employers
- Must have posted and informed employees of rights
- Expired December 31, 2020
- Extended on optional basis until March 31, 2021



Cal-OSHA Adopts COVID-19 Workplace Regulations

(Adds Title 8 §§ 3205, 3205.1, 3205.2, 3205.3, and 3205.4 to the California Code of Regulations)

- November 30, 2020 regulations apply to most employees
- Written COVID-19 Prevention Programs (CPP) must include numerous items including:
 - Communication system to inform employees of prevention procedures, employee training, hazard identification, investigation system, response to cases including notice to exposed within 1 business day, system to correct hazards, physical distancing, face masks, site-specific exposure methods, case recording, removal of workers exposed to or positive for COVID-19, testing requirements, return to work criteria & infection prevention in employer-provided housing and transportation to and from work
- Must continue earnings, seniority and other rights/benefits for workers excluded due to workplace exposure or positive case, if able and available to work
 - Employer may consider public benefits, or use employer sick leave or FFCRA, when not covered by Workers' Compensation



Cal-OSHA Adopts COVID-19 Workplace Regulations

(Adds Title 8 §§ 3205, 3205.1, 3205.2, 3205.3, and 3205.4 to the California Code of Regulations) *(cont.)*

- If workplace outbreak of 3 or more cases in 14-day period, must notify health department, provide free testing during work hours immediately after outbreak, 1 week after and again until clear for 14 days
- Must also
 - Investigate outbreak, review policies and controls
 - Take corrective action
- Cannot require negative test to return to work
- Additional measures, inc. 2x testing, required for major outbreak (20 or more cases in 30 days)
- Serious and willful claim, fines and citations may result from violations
- Expire October 2, 2021, unless extended



SB 1159 Extends Workers' Compensation Benefits to COVID-19 Victims

(Adds § 77.8, adds and repeals § 3212.86, 3212.87 and 3212.88 to the Labor Code)

- Commission will study impact of COVID-19 claims on WC system
- Codifies and expands Executive Order N-62-20
 - Presumption of COVID-19 injury if
 1. Diagnosed within 14 days of work
 2. At place of employment (not home)
 3. At direction of employer
 4. On or between March 19, 2020 and July 5, 2020
 - Must use Paid Sick Leave
 - Temporary disability possible on or after May 6, 2020
 - Must recertify every 15 days
 - Rebuttable presumption
 - 30-day window to reject claim



SB 1159 Extends Workers' Compensation Benefits to COVID-19 Victims

(Adds § 77.8, adds and repeals § 3212.86, 3212.87 and 3212.88 to the Labor Code) *(cont.)*

- Provides WC benefits for first responders and healthcare workers
- Provides rebuttable presumption for WC benefits for employees who test positive within 14 days of a worksite outbreak on or after July 6, 2020
 - “Outbreak” exists if closed by state or local health officials due to COVID-19 risks, or is defined by the number of employees who test positive at a specific worksite within 14 days as follows:
 1. If the employer has 100 employees or fewer, 4 employees
 2. If the employer has more than 100 employees, 4%
- Presumption disputed with evidence of measures in place to reduce potential transmission of COVID-19 and evidence of employee’s non-occupation risk of infection
- Effective on September 17, 2020
- Expires on January 1, 2023



AB 1867 Adds Paid Sick Leave Benefits, Requires Handwashing Breaks for Food Sector Employees, and Provides Family Leave Mediation

(Adds and repeals Gov't Code § 12945.21; adds Health & Safety Code § 113963; amends § 248.5 and adds § 248 and § 248.1 to the Labor Code)

- Food sector employees must be permitted to wash their hands every 30 minutes and additionally as needed
- Handwashing time must be paid
- Extends FFCRA-like benefits for >500 employers to full time workers in the food sector, and to healthcare workers and first responders
- Supplemental paid sick leave expires on December 31, 2020 unless federal extension of FFCRA, but can complete leaves in progress
- Creates a DFEH pilot mediation program for employers with 5-19 employees for family leave disputes until January 1, 2024
- Effective September 9, 2020



Additional Urgency Legislation

- **AB 1577** excluded PPP loans forgiven through the federal CARES Act from state tax liability
- **AB 276** raises the amount employees can borrow from employer-sponsored retirement accounts from \$50,000 to \$100,000 if impacted by COVID-19
- **SB 1447** allows qualified small business employees to obtain hiring tax credits of up to \$100,000
- **Effective immediately**



AB 685 Requires Employers to Report COVID-19 Workplace Exposure and Expands Cal/OSHA Powers to Cite and Shut Down Employers with COVID-19 Outbreaks

(Amends, repeals & adds § § 6325 and 6432, adds and repeals § 6409.6, of the Labor Code)

- Effective January 1, 2021
- Within 1 business day of becoming aware of a workplace COVID-19 exposure, employers must notify in writing all employees & contractors on the premises at same worksite during the infectious period
 - Union representatives must also be notified
- Infectious period as defined by CA Dept. of Health
- Written notice must include:
 - Information regarding COVID-19 benefits under state and federal law, workers' compensation rights, legally mandated & employer-provided sick leave options, as well as anti-discrimination & anti-retaliation protections
 - Information about the employer's disinfection & safety plan that the employer will implement & complete per CDC guidelines



AB 685 Requires Employers to Report COVID-19 Workplace Exposure and Expands Cal/OSHA Powers to Cite and Shut Down Employers with COVID-19 Outbreaks

(Amends, repeals & adds § § 6325 and 6432, adds and repeals § 6409.6, of the Labor Code) *(cont.)*

- **Additional notice requirements:**
 - **Must be written in English and in the language understood by majority of workers**
 - **Must be kept for at least 3 years**
- **Notice requirements will expire on January 1, 2023**
- **Workplaces with COVID-19 outbreak as defined by CA Dept. of Public Health (currently defined as 3 or more cases within 14 days) must also provide info to public health agencies within 48 hours including:**
 - **Names, number, occupation and worksite of all persons with lab-confirmed COVID-19, a positive COVID-19 diagnosis from a licensed health care provider, a COVID-19-related order to isolate provided by a public health official, or who have died due to COVID-19**

AB 685 Requires Employers to Report COVID-19 Workplace Exposure and Expands Cal/OSHA Powers to Cite and Shut Down Employers with COVID-19 Outbreaks

(Amends, repeals & adds § § 6325 and 6432, adds and repeals § 6409.6, of the Labor Code) *(cont.)*

- **Workplaces with COVID-19 outbreak as defined by CA Dept. of Public Health (currently defined as 3 or more cases within 14 days) must also provide info to public health agencies within 48 hours including:**
 - **Business address and North American Classification System (NAICS) code of the worksite where the qualifying individuals work**
 - **Same information required in a Cal/OSHA Form 300 incident report regardless of whether employer is required to maintain a Cal/OSHA Form 300 injury and illness log**
- **Subsequent confirmed cases must also be reported to local health dept.**
- **Health facilities are excluded from reporting requirements**

AB 685 Requires Employers to Report COVID-19 Workplace Exposure and Expands Cal/OSHA Powers to Cite and Shut Down Employers with COVID-19 Outbreaks

(Amends, repeals & adds § § 6325 and 6432, adds and repeals § 6409.6, of the Labor Code) *(cont.)*

- **CA Dept. of Health required to make workplace industry info received from local public health depts. available on its website**
 - **Local public health depts. and Cal/OSHA will provide link to this on their websites**
 - **No personally identifiable info will be made public or be posted**
- **Cal/OSHA is provided with additional enforcement authority when it believes employees are exposed to COVID-19 in a way that creates an “imminent hazard”**
 - **Cal/OSHA is authorized to prohibit entry, shut down operations and require company to post imminent hazard notice**
- **Employer’s right to rebut a Cal/OSHA determination of a serious COVID-19 violation is reduced and Cal/OSHA is not required to notify employer 15 days before issuance if violation is COVID-19-related**

AB 1512 Modifies Rest Period Requirements for Security Guards

(Amends, repeals and adds Labor Code § 226.7)

- Permits certain security officers (registered under Private Security Services Act) and employed by a registered private patrol operator to be required to remain on the premises, be on call and carry and monitor a communication device during rest periods
- Permits a restart of a rest period as soon as practicable if the rest period is interrupted
- Provides a penalty be paid to these employees if at least a 10-minute uninterrupted rest period per every 4 hour's work (or major fraction thereof) is not permitted
- Must be subject to a CBA
- Effective immediately
- Does not apply to existing cases filed before January 1, 2021 and will expire on January 1, 2027
- Modifies *Augustus v. ABM Security Services*



AB 2143 Modifies Exception to No-Rehire Clause

(Amends § 1002.5 to Code of Civil Procedure)

- **Modifies last year's AB 749 prohibiting use of no-rehire clauses in settlement agreements regarding disputes where worker filed complaint against employer**
 - **AB 749 only provided single exception to allow no-rehire clauses if the employer made a good faith determination that the employee engaged in sexual harassment or sexual assault**
- **Adds exception to permit no-hire provision if aggrieved party engaged in "any criminal conduct"**



AB 2143 Modifies Exception to No-Rehire Clause

(Amends § 1002.5 to Code of Civil Procedure) *(cont.)*

- Adds requirement that claim must have been made in good faith
- Also adds documentation requirement:
 - Employer must have documented its good faith determination of sexual harassment/sexual assault/criminal conduct before aggrieved party filed claim against employer
- Effective January 1, 2021



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals §2750.3 of the Labor Code, revises Tax Code)

- **L.C. 2775: ABC test remains the standard for all purposes under Labor Code, UI Code and Wage Orders**
 - (A) Free from the "control and direction" of the hiring entity
 - (B) Performing work that is "outside the course" of the hiring entity's usual business, and
 - (C) Have own independently established trade, occupation or business that is the same as work performed



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals §2750.3 of the Labor Code, revises Tax Code)

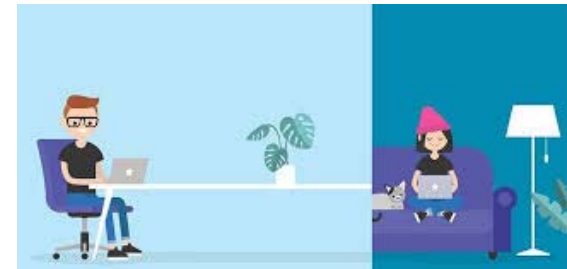
- L.C. 2776: *Borello* test will still apply to business-to-business relationship if contracting business proves:
 - (1) The business service provider is free from control in the performance of the work, both under the contract and in fact
 - (2) The business service provider is providing services directly to the contracting business rather than to customers of the contracting business except can provide to such customers in name of provider, and it regularly contracts with other businesses
 - (3) The contract is in writing and specifies payment amount, including rate of pay and due date
 - (4) The business service provider has any required business license or business tax registration
 - (5) The business service provider maintains a business location that is separate from the business or work location of the contracting business, which can be a residence
 - (6) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- L.C. 2776: *Borello* test will still apply to business-to-business relationship if contracting business proves:
 - (7) The business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity
 - (8) The business service provider advertises and holds itself out to the public as available to provide the same or similar services
 - (9) The business service provider provides its own tools, vehicles and equipment, not including proprietary materials
 - (10) The business service provider can negotiate its own rates
 - (11) Consistent with the nature of the work, the business service provider can set its own hours and location of work
 - (12) The business service provider is not performing work for which a license from the Contractor's State License Board is required



Can now apply to an individual worker acting as sole proprietor or business entity (otherwise ABC Test)

AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- **L.C. 2777: *Borello* shall apply to referral agency if it demonstrates the service provider is a sole proprietor or business entity and:**
 - (1) The service provider is free from the control and direction of the referral agency in connection with the performance of the work in contract and in fact**
 - (2) The service provider certifies that it has all the required business licenses or business tax registrations, which certification must be kept for 3 years**
 - (3) The service provider has all required contractor's licenses**
 - (4) The service provider certifies that it has all the appropriate licenses, permits, certifications and registrations, which must be kept for 3 years**
 - (5) The service provider delivers services to the client under service provider's name only**
 - (6) The service provider provides its own tools and supplies**
 - (7) The service provider is or was customarily engaged in an independently established business of the same nature**

AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) (cont.)

- L.C. 2777: *Borello* shall apply to referral agency if it demonstrates the service provider is a sole proprietor or business entity and:
 - (8) The service provider maintains a clientele without any restrictions from the referral agency and is free to seek work elsewhere
 - (9) The service provider sets its own hours and terms of work or negotiates directly with the client
 - (10) The service provider sets its own rates for services performed, without deduction by the referral agency
 - (11) The service provider is not penalized in any form for rejecting clients or contracts (except where it fails to perform)



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- “Referral agency” includes service providers who provide graphic design, web design, photography, tutoring, consulting, youth sports coaching, caddying, wedding or event planning, wedding and event vendors, minor home repair, moving, errands, furniture assembly, animal services, dog walking, dog grooming, picture hanging, pool cleaning, yard cleanup, and interpreting services; but not industry designated by OSHA or the DIR as a high hazard, or janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- L.C. 2778: *Borello* test will apply to “professional services” contractors if hiring entity proves:
 - (1) The individual maintains a separate business location, which can be a residence, although the individual may choose to perform services at the location of the hiring entity
 - (2) If the work is performed after March 4, 2021, the individual has the required business license or tax registration, in addition to any required professional licenses or permits
 - (3) The individual has the ability to set or negotiate rates
 - (4) Outside of project completion dates and reasonable business hours, the individual has the ability to set own hours
 - (5) The individual is customarily engaged in the same type of work performed under contract with others or holds themselves out as available to perform the same type of work
 - (6) The individual customarily and regularly exercises discretion and independent judgment in the performance of the services



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- **“Professional services” is limited to:**
 - **Marketing, which is “original and creative” and results from “invention, imagination or talent” or necessary to contract work**
 - **Administrators of human resources doing predominantly intellectual work that cannot be standardized to a given period of time**
 - **Travel agent services meeting code requirements**
 - **Graphic designers**
 - **Grant writers**
 - **Fine artists**
 - **Enrolled agents licensed by the United States Department of the Treasury to practice before the Internal Revenue Service**



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- “Professional services” is limited to:
 - Payment processing agents through an independent sales organization
 - Still photographers, photojournalists, videographers, photo editors, who work under contract with rate of pay and pay deadline, and individual is not replacing an employee doing the same volume of work, does not primarily perform work at hiring entity location and is not restricted from working for others, or such services provided to a digital content aggregator (exception does not apply to work on motion pictures, theatrical, television, internet streaming, commercial productions, broadcast news, music videos and live shows)
 - Freelance writers, editors, translators, copy editors, illustrators or newspaper cartoonists, who work under contract with rate of pay and pay deadline, and individual is not replacing an employee doing the same volume of work, does not primarily perform work at hiring entity location and is not restricted from working for others



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- Content contributors, advisors, producers, narrators or cartographers, for a journal, book, periodical, evaluation, other publication or instructional work, who work under written contract that specifies rate of pay, intellectual property rights and pay deadline, and individual is not replacing employee doing same volume of work, does not primarily perform work at hiring entity location, and is not restricted from working for others
- Licensed estheticians, licensed electrologists, licensed barbers, licensed cosmetologists, licensed manicurists (until 2022), provided they set their own rates and are paid directly by clients, set their own hours of work and have sole discretion to decide which clients to see and how many, have their own book of business and schedule their own appointments, maintain their own business license if performing at hiring location, and must issue a 1099 to owner from whom space is rented
- Specialized performers hired by performing arts company to teach a master class for no more than one week
- Appraisers, professional foresters, real estate licensees
- A repossession agency free from the control and direction of the hiring person or entity, both under the contract for the performance of the work and in fact



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- **L.C. 2779: The ABC test will not apply to the relationship between two individuals where each individual is acting as a sole proprietor or separate business entity performing work pursuant to a contract for purposes of providing services at the location of a single-engagement event under the following conditions:**
 - (1) Neither individual is subject to control and direction by the other, both under the contract and in fact**
 - (2) Each individual has the ability to negotiate their rate of pay**
 - (3) The written contract between both individuals specifies the total payment for services provided by both individuals at the single-engagement event, and the specific rate paid to each**
 - (4) Each individual maintains their own business location, which may be a residence**
 - (5) Each individual provides their own tools, vehicles and equipment**
 - (6) Each individual has the required business license or business tax registration**



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- **L.C. 2779:** The ABC test will not apply to the relationship between two individuals where each individual is acting as a sole proprietor or separate business entity performing work pursuant to a contract for purposes of providing services at the location of a single-engagement event under the following conditions:
 - (7) Each individual is customarily engaged in the same or similar type of work performed or separately holds themselves out to others as available to perform the same type of work
 - (8) Each individual can contract with other businesses to provide the same or similar services and maintain clients without restrictions
- “Single-engagement event” means a stand-alone non-recurring event in a single location, or a series of events in the same location no more than once a week
- “Services” under this section do not include services provided in an industry designated by OSHA or the DIR as a high hazard industry or janitorial, delivery, courier, transportation, trucking, agricultural labor, retail, logging, in-home care, or construction services other than minor home repair

AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- **L.C. 2780: *Borello* will apply to the following occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions:**
 - Recording artists*
 - Songwriters, lyricists, composers and proofers
 - Managers of recording artists
 - Record producers and directors
 - Musical engineers and mixers engaged in the creation of sound recordings
 - Musicians engaged in the creation of sound recordings*
 - Vocalists*



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- L.C. 2780: *Borello* will apply to the following occupations in connection with creating, marketing, promoting, or distributing sound recordings or musical compositions *(cont.)*:
 - Photographers working on recording photo shoots, album covers, and other press and publicity purposes
 - Independent radio promoters
 - Any other individual engaged to render any creative, production, marketing or independent music publicist services related primarily to the creation, marketing, promotion, or distribution of sound recordings or musical compositions, except not film and television crews
 - *Recording artists, musicians, vocalists who do not receive royalties must be treated as employees
- Certain single-engagement live musical performance events and individual performance artist performing material that is their original work and creative in character are also subject to *Borello*



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) (cont.)

- L.C. 2783 *Borello* test will still apply to these occupations:
 - Licensed insurance agents and brokers
 - Licensed physicians and surgeons, dentists, podiatrists, psychologists and veterinarians
 - Licensed lawyers, architects, landscape architects, engineers, private investigators and accountants
 - Registered securities broker-dealers and investment advisors
 - Direct sales salesperson
 - Primarily paid by sales rather than by hour
 - Written contract must state not employee for state tax purposes



AB 2257 Modifies AB 5 Independent Contractor Test

(Adds Article 1.5 and repeals § 2750.3 of the Labor Code, revises Tax Code) *(cont.)*

- L.C. 2783 *Borello* test will still apply to these occupations:
 - Commercial fishermen on American vessels (until 2023)
 - Newspaper carriers and distributors working under contract (until 2022)
 - A manufactured housing salesperson
 - A competition judge with specialized expertise that requires exercise of direction and independent judgment
- L.C. 2781, 2782 apply *Borello* to construction subcontracts and data aggregators under certain conditions
- Proposition 22 governs for app-based transportation and delivery drivers
- Effective September 4, 2020



SB 1383 Requires Small Employers to Provide Family, Medical & Child Bonding Leave & Expands Family Member Care

(Amends and repeals §12945.6, and amends, repeals and adds §12945.2 of the Gov't. Code)

- Employers with 5+ employees must provide CFRA leave to employees meeting service requirements (1,250 hours and 12 months)
- Expands CFRA 12-week unpaid leave to include leave for:
 - Care of employee's grandparent, grandchild and sibling (in addition to parents, spouse or domestic partner)
 - Care of child of domestic partner (in addition to child)
 - Repeals New Parent Leave Act
 - Care of employee's adult child (18+) with serious health condition regardless whether child can provide self-care
 - Qualifying exigencies for covered active duty or call to covered active duty for an employee's spouse, registered domestic partner, child or parent in US Armed Forces (eliminates inconsistency with FMLA)
 - Qualifying exigencies expanded to include employee's registered domestic partner in the US Armed Forces (creates inconsistency with FMLA leave)



SB 1383 Requires Small Employers to Provide Family, Medical & Child Bonding Leave & Expands Family Member Care

(Amends and repeals §12945.6, and amends, repeals and adds §12945.2 of the Gov't. Code) *(cont.)*

- **Additional differences from FMLA:**
 - Eliminates limitation on leave amounts if both parents employed by same employer - now permits both parents to take up to 12 weeks of leave each
 - Eliminates “key employee” exception to employee reinstatement rights
- Inconsistencies between FMLA and CFRA may create right to take both FMLA and CFRA leave for leaves not permitted under both
- As before, must continue health benefits during leave at level previously provided
- Effective January 1, 2021



AB 2992 Expands Protections and Leave for Crime Victims

(Amends Labor Code §§ 230 & 230.1)

- Requires employers to provide leave to obtain or attempt to obtain judicial relief
- Eligibility: Victims of domestic violence, stalking, sexual assault, crime causing physical or mental injury or threat of physical injury, and those whose immediate family member is deceased as the direct result of a crime
- “Crime” means a crime or public offense which would constitute a misdemeanor or felony if committed in CA by a competent adult, regardless whether anyone is arrested, prosecuted or convicted
- Purpose of Leave: To obtain or attempt to obtain judicial relief
- Must maintain confidentiality to extent possible



AB 2992 Expands Protections and Leave for Crime Victims

(Amends Labor Code §§ 230 & 230.1) *(cont.)*

- Employee must provide reasonable advance notice unless advance notice not feasible
- For unscheduled leave, employee must provide certification within reasonable time after absence:
 - Documentation may include police report, court order, documentation from certain professionals (medical, violence or assault counselors, victim's advocates, or licensed health care provider) or other documentation reasonably verifying crime or abuse including written statement from employee or individual acting on employee's behalf
- Must consider reasonable accommodations for safety of the victim



AB 2992 Expands Protections and Leave for Crime Victims

(Amends Labor Code §§ 230 & 230.1) *(cont.)*

- **Requires employers with 25+ employees to provide leave to victims:**
 - **To seek medical attention for injuries caused by crime or abuse**
 - **To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse**
 - **To obtain psychological counseling or mental health services related to an experience of crime or abuse**
 - **To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation**
- **Same notice to employer requirement and documentation as under leave request**
- **Provide written notice on hire and as requested (DLSE to provide form by January 1, 2022)**
- **Length of leave not to exceed unpaid FMLA leave length**
- **Must maintain confidentiality to extent possible**
- **May use vacation and sick leave, if available**
- **Effective January 1, 2021**



SB 83 Increases Paid Family Leave Benefits and AB 2399 Expands Paid Family Leave to Include Coverage for Qualifying Exigencies for Military Member Active Duty

- **SB 83:**
 - Increases PFL benefits up to 8 weeks starting July 1, 2020
 - Created a task force to develop program that extends PFL to 6 months by 2022
 - Amends Govt. Code §§ 13302, 18930.5, 19792, 19803, 19809, 19815.6, 19878, 19879.1, 19880, 19881, 19882, 19883, 19884, 19995.1.5, 22551, 22555, 22556, 22560, 22600, 22602, 22871.3, and 100014; adds §§ Govt. Code 3539.6 & 19878.5; repeals Government Code § 12472.5; amends Labor Code §§ 1420, 1421, 1428, 1429, 1429.5, 1430, and 1434; adds Labor Code § 6717.5; adds Labor Code § 6717.5; adds and repeals Labor Code § 1455; amends Unemployment Insurance Code §§ 984, 1088.9, and 1095; adds Unemployment Insurance Code §§ 3301



SB 83 Increases Paid Family Leave Benefits and AB 2399 Expands Paid Family Leave to Include Coverage for Qualifying Exigencies for Military Member Active Duty

- **AB 2399:**
 - Expands the definitions for PFL under §§ 3302 and 3307 of Unemployment Insurance Code to include coverage for active military members and their families
 - Creates new category of covered time off for a qualifying exigency related to active duty or call to active duty of the individual's spouse, domestic partner, child or parent in U.S. Armed Forces
 - Effective January 1, 2021



***McPherson v. EF Intercultural Foundation, Inc.* (April 2020) Provides Unlimited Vacation Policy & Practice Guidance**

- **Do unlimited vacation policies require payout of vacation on termination?**
- **CA Court of Appeals: Depends on employer policy and practice**
- **Guidelines:**
 - **Should be in writing**
 - **Should clearly state employees' ability to take paid time off is not additional wages, and not limited**
 - **Could be aspect of flexible work schedule—employee can decide when and how much time to take off**
 - **Should state consequences of failing to take time off**
 - **Should clearly sets forth employee/employer rights & obligations and consequences of not scheduling sufficient time off**



***McPherson v. EF Intercultural Foundation, Inc. (April 2020) Provides Unlimited Vacation Policy & Practice Guidance* (cont.)**

- **Employer should permit adequate opportunity to take time off or work fewer hours**
- **Employer must not treat policy as "use it or lose it" or permit unfairness (e.g., some employees work many hours and take little time off, while others work fewer hours and take more time off)**



AB 979 Requires Diversity on Boards of Public Companies

(Adds §§ 301.4 and 2115.6, and amends § 301.3, of the California Corporations Code)

- Imposes “underrepresented community” quota for corporate boards
 - Legislature finds that more companies with directors from underrepresented communities will boost economy and improve opportunities for these communities
 - Publicly traded corporations with principal executive offices in CA must appoint members of underrepresented communities to their boards of directors:
 - By end of 2021: one director from an unrepresented community
 - By end of 2022: three if nine or more, two if five to eight, one if 4 or fewer directors
 - “Director from an underrepresented community” means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender
- Effective January 1, 2020



AB 979 Requires Diversity on Boards of Public Companies

(Adds §§ 301.4 and 2115.6, and amends § 301.3, of the California Corporations Code) *(cont.)*

- Builds on SB 826 passed in 2018 imposing corporate board female quota
- Corporations may increase the number of directors to comply
- Secretary of State will publish results
- Violations carry fines:
 - \$100,000 – 1st violation
 - \$300,000 – Subsequent violation



SB 973 Requires Pay Data Reporting for Larger Employers

(Amends Government Code § 12930 & adds Chapter 10 to Government Code)

- **Expands EEO-1 federal requirement**
- **Employers with 100+ employees must report pay data by race, ethnicity and gender by job category on or before March 31 each year**
- **Job categories: executive or senior level officials and managers; first or mid-level officials and managers; professionals; technicians; sales workers; administrative support workers; craft workers; operatives, laborers and helpers; service workers**
- **Employers to use “snapshot” during single pay period of their choice between October 1 and December 31 of preceding calendar**



SB 973 Requires Pay Data Reporting for Larger Employers

(Amends Government Code § 12930 & adds Chapter 10 to Government Code) *(cont.)*

- **Must also report number of employees by race, ethnicity and sex whose annual earnings fall within each pay band used by US Bureau of Labor Statistics in Occupational Employment Statistics survey using employee W-2 data regardless if employee worked full year & total number of hours worked by each employee in each pay band (EEO-1 pay data information will comply)**
- **Employers with multiple establishments must submit report for each establishment and a consolidated report that includes all employees (“establishment” means an economic unit producing goods or services)**
- **Authorizes DFEH to:**
 - **Receive, investigate, conciliate, mediate and prosecute discriminatory wage rate complaints**
 - **Adopt enforcement procedures**
- **Prevents disclosure of reported personal information**
- **Effective January 1, 2021**



AB 3075 Requires Entities to Attest to

Owner/Director/Officer/Member/Manager Wage & Hour Violations

(Amends, repeals, adds Corp. Code § § 1502, 2117 & 17702.09, amends Labor Code § 1205 and adds Labor Code § 200.3)

- Beginning earlier of 1/1/2022 or implementation of CA Business Connect:
 - New corporations, limited liability partnerships and limited liability companies must attest on Statement of Information whether owner, director, officer, member or manager (as applicable) has outstanding wage and hour violation final judgments
- Permits local jurisdictions to enforce state, or more stringent local, wage standards
- Imposes successor employer liability for wage and hour violations
- Effective January 1, 2021



AB 1281 Extends Amendment of Consumer Privacy Act Excluding Employees from “Consumer” Definition

- Was contingent upon State Measure 24 (the CA Privacy Rights Act) not passing
- Since 24 passed, the exclusion under the CA Consumer Privacy Act of personal information from job applicants, owners, officers, directors, medical staff members, employees, contractors and emergency contacts allowing business to collect and use person’s information within context of that person’s role or former role at business will expire on January 1, 2023
- Still some disclosure requirements on information collected and use



State and Local Minimum Wage Increases

- On January 1, 2021, the CA minimum wage increased to \$14.00 per hour for employers with 26+ employees and \$13.00 per hour for those with 25 or fewer employees
- On July 1, 2021, in LA, Santa Monica, Malibu, unincorporated LA County and Pasadena, minimum wage will remain at \$15.00 per hour for employers with 26+ employees and increase to \$15.00 per hour (from \$14.25) for 25 or fewer employees
- N. California: Minimum wage in San Francisco is currently \$16.07 per hour and is subject to Consumer Price Index adjustment (CPI) in July 2021; Palo Alto increased to \$15.65 per hour on January 1, 2021; Berkeley is currently \$16.07 and is subject to CPI increase on July 1, 2021



U.S. Department of Labor Issues New Optional Model FMLA Forms and Notices

- New model FMLA forms and notices:
 - Intended to be more streamlined and convenient
 - Contain more explanatory language on various FMLA rights and requirements
 - New forms are optional and no specific form or format is required
 - Employers may continue to use prior FMLA forms
 - Found at <https://www.dol.gov/agencies/whd/fmla/forms>



U.S. Department of Labor Issues New Model COBRA Notices and Extends COBRA Deadlines

- New model COBRA notices:
 - Include option to enroll in Medicare instead of COBRA continuation of group health plan
 - Point out possible advantage of enrolling in Medicare before or instead of electing COBRA
 - Found at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra>
- DOL and IRS extended certain participant deadlines, but not employer notice requirements
- Advisable, but not mandatory, to include notice of extensions when providing COBRA election notices





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NEW EMPLOYMENT LAWS FOR 2021

*PRESENTED BY KELLY O. SCOTT, ESQ.
JANUARY 29, 2021*

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