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Five Key Legislative Updates Affecting California Employers in 2024

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California Governor Gavin Newsom signed a flurry of new bills at the end of the legislative session, including numerous bills that will impact employers across various industries across the state.

Some of the key changes impacting California employers are described below. Each bill is detailed, and compliance may require guidance from counsel to better understand and implement changes. Employers are encouraged to reach out to counsel regarding these legislative changes, as many of them take effect January 1, 2024.

Fast Food Restaurant Minimum Wage Increase (AB 1228)

Governor Newsom signed AB 1228 on September 28, 2023. AB 1228's primary purpose is to create a Fast Food Council and to set the minimum wage for workers in the fast food industry at $20 an hour effective April 1, 2024. This is a first-of-its-kind law.

The Impact of AB 1228

The Fast Food Council will, beginning January 1, 2025, establish annual increases in the minimum wage for covered employees until 2029 using a formula supplied by the statute. Specifically, the council will establish an increase in wages by no more than the lesser of the following: (1) 3.5%; or (2) the rate of change in the averages of non-seasonally adjusted US Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Notably, the council may set minimum wage standards that vary by region within the state.

The law applies to chains of "limited-service" restaurants (e.g., fast food and fast casual concepts) that are part of a chain of more than 60 restaurants nationally and share a "common brand" or that are "characterized by standardized options for décor, marketing, packaging, products, and services." The law specifically excludes bakeries and restaurants within a grocery store.

In addition to setting the minimum wage, the Fast Food Council is tasked with making recommendations for “minimum standards on working hours, and other working conditions adequate to ensure and maintain the health, safety, and welfare of, and to supply the necessary cost of proper living to, fast food restaurant workers.” In practice, the authority may be quite limited as the council only has direct authority over wages and can only make recommendations as to other matters. Thus, the council could not, for example, issue binding regulations related to expense reimbursements or paid time off. Ultimately, the Labor Commissioner is responsible for issuing and amending standards proposed by the council.

Given that many employees currently earn less than $20 an hour in the fast food industry as that term is defined, it is imperative that affected California employers begin to evaluate the impact of this new legislation on their operations in the state.

Workplace Violence Prevention Programs (SB 553)

Governor Newsom signed SB 553 into law on September 30, 2023. The bill is the first of its kind in the country and changes California law in two key respects. First, the bill supplements existing law that allows an employer to seek a temporary restraining order on behalf of an employee who has suffered unlawful violence or has received a credible threat of violence at the workplace. The bill allows, beginning January 1, 2025, a union representative to pursue a restraining order on the employee’s behalf under the same circumstances. The bill also permits an employee to request not to be named in the restraining order.

Second, beginning July 1, 2024, the bill requires employers in California to implement a violence prevention plan, including a log of violent incidents and training related to workplace violence and

the prevention plan. The training must include information about the workplace violence prevention plan, and new training must be provided when new workplace violence hazards are identified and when changes are made to the prevention plan. Employers are required to include the workplace violence prevention plan as part of their effective injury prevention program.

The Impact of SB 553

There are several requirements related to the violence prevention plan that employers must keep in mind. First, the plan must be specific to each work area and operation's hazards. Thus, the same business may require different plans for different physical locations and areas within those locations if the risks are different. Second, in general, the log must record every workplace violence incident with specific information, including the date, time, and location of the incident, the violence involved, the perpetrator's identity, and information about the use of a weapon. Further, the employer must designate a person(s) responsible for the plan, and maintain required records related to the plan, training, and any related investigation. The law is nuanced, and each employer should consult with counsel as they prepare their workplace violence plan.

The law applies to all industries and covers almost every employer in the state (there are extremely limited exceptions set forth in the statute). It is worth noting that the requirements are similar to what the California Division of Occupational Safety and Health (Cal/OSHA) adopted for the health care industry in 2016. Failure to comply with the new standards will subject an employer to the issuance of a citation and civil penalty. If they have not done so already, employers should begin to develop their workplace violence prevention plan, including what training they will offer, who

will be responsible for the plan, how the plan will be implemented and rolled out to employees, and how workplace hazards will be identified and corrected.

Protected Leave After Reproductive Loss (SB 848)

On October 10, 2023, Governor Newsom signed SB 848 into law. The legislation expands unpaid leave by allowing employees to take protected time off after experiencing a “reproductive loss.” The law becomes effective on January 1, 2024, and employers should begin reviewing and modifying their policies to ensure compliance with the new legislation.

The Impact of SB 848

SB 848 applies to private employers of more than five employees and public employers of any size. Further, “employee” is defined to mean any person employed by the employer for at least 30 days. “Reproductive loss” is defined expansively, covering any event where the employee would have been recognized as a parent if the event had not taken place, including miscarriage, stillbirth, failed adoption, failed surrogacy, or unsuccessful assisted reproduction.

After experiencing a qualifying “reproductive loss,” the employee is entitled to five days of unpaid protected time off, which need not be taken consecutively but must be completed within three months of the loss. If an employee suffers more than one “reproductive loss” within 12 months, employers are required to provide up to 20 days of protected leave. An employee may be entitled to pay for the leave if an employer’s policies require pay; otherwise, personal time, paid sick time, and paid time off may be used to cover the leave.

Unlike other forms of leave, medical documentation is not required to support an employee's request for leave under SB 848. Furthermore, employers must maintain the confidentiality of any employee requesting leave for a reproductive loss.

To ensure compliance with SB 848, employers should carefully review and update their policies and practices and consult with counsel as needed to ensure compliance with this new legislation.

Non-Competes Now Void; New Notice Requirements for Employees Working Under Non-Competes (SB 699 and AB 1076)

Recently, Governor Newsom signed two bills that address non-compete agreements. On September 1, 2023, the Governor signed SB 699, which prohibits employers from entering into non-compete agreements with California employees that would be void under state law. Thereafter, on October 13, 2023, he signed AB 1076, which implements significant notice requirements for employers related to non-competes. Specifically, AB 1076 reinforces the state's stringent limitations on non-compete agreements and requires employers to notify current and former employees whose contracts included an unlawful non-compete agreement that the non-compete is void by February 14, 2024.

The Impact of SB 699

Through existing law, California has already made most non-compete agreements involving California employees void. In passing SB 699, the legislature noted that many employers still use non-compete agreements for their deterrent effect, which chills employee mobility. Thus, SB 699 prohibits employers from entering into non-compete agreements that are void under California law. Furthermore, SB 699 prohibits employers from attempting to enforce a non-compete agreement that is unlawful in California,

regardless of whether the non-compete was initially signed by an employee who worked out of state at the time. SB 699 also provides an enforcement mechanism — any employer that enters into or seeks to enforce an unlawful non-compete will be deemed to have committed a civil violation that will allow the employee to seek damages, injunctive relief, and attorneys' fees and costs. The new law becomes effective January 1, 2024, and employers should promptly review their employment contracts and materials for non-compete provisions.

The Impact of AB 1076

With the passage of AB 1076, California codifies existing case law that generally makes void any non-compete agreement in the employment context. Most notably, under AB 1076, employers must provide notice to current and former employees who signed an unlawful non-compete agreement to inform them that the agreement is now void. The notice must be contained in an individualized, written communication deliverable to the employee's last known mailing address and email address. Failure to provide individualized, written notice to employees will subject an employer to potential liability under California's Unfair Competition Law. To satisfy the notice requirements, employers should promptly review all employment agreements and make plans to notify employees whose agreements contain an unlawful non-compete agreement.

Litigation No Longer Stayed During Appeal Of Order On Arbitration (SB 365)

Governor Newsom recently signed SB 365, which provides trial courts with discretion to stay proceedings while an appellate court addresses a trial court's decision on a petition to compel arbitration. Effective on January 1, 2024, this statute will add an

additional consideration for employers seeking to compel lawsuits to arbitration. Previously, trial court proceedings were automatically stayed pending the appeal of an order denying a petition to compel arbitration. The rule requiring an automatic stay pending an appeal was recently affirmed by the US Supreme Court case *Coinbase, Inc. v. Bielski*. Nevertheless, California sought to revise that procedure in SB 365.

The Impact of SB 365

Starting on January 1, 2024, what was previously an automatic stay following the denial of a petition to compel arbitration will now be discretionary. The legislation allows the trial court to decide whether a stay is warranted while its order on a motion to compel arbitration is appealed. The bill will likely create inefficiencies in litigation. For example, if a trial court denies a motion to compel arbitration in an order that is later reversed, the time and money spent litigating in state court during the appeal process may have been wasted.

There are questions as to whether SB 365 is preempted by the Federal Arbitration Act, but it may take some time for those questions to be addressed by the courts.

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