

CALIFORNIA COMPLIANT: Top Ten New Year's Resolutions for California Employers in 2023

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How's your New Year's Resolution coming along? It's that time of year when everyone pauses to reflect. Whether we pledged to exercise or meditate, we often realize later on that sticking to our resolutions is harder if we only have ourselves to keep us accountable.

California employers may be challenged to fulfill their New Year's resolutions in 2023, which has brought significant changes in various California labor and employment laws. Some of the most widely applicable new laws that will impact the workplace in 2023 include:

- 1. Increased Privacy Protections under California Consumer Privacy Act:** California employees have gained significant privacy rights in 2023. The new California Privacy Rights Act (CPRA) amends the California Consumer Privacy Act (CCPA), and companies subject to the CCPA are now required to extend personal information privacy rights to their workers (past and present), officers, directors, medical staff members, independent contractors, and job applicants. Employers must provide notice, have a privacy policy covering collection, use, and transfer of personal information, and offer these individuals the right to request copies, correction, and deletion of their personal information, among other rights. To ensure compliance, employers should first determine if they are covered by the CCPA. The CCPA is applicable to for profit businesses, doing business in CA, and that meet one of three criteria: (1) they generate gross annual revenues over \$25 million, (2) they buy, receive, or share the personally identifiable information of \$100,000 or more consumers, or (3) they derive 50% of annual revenue from selling or sharing consumers' personal information. Notably, the exemption in the CCPA for employee personal information was not extended in Prior to this year, CCPA requirements did not apply to personal information regarding employees, but that exemption has expired.
- 2. AB 2188 – Protections for Off-Site, Off-Duty Marijuana Use Beginning 1, 2024:** Soon, employers will be prohibited from discriminating against applicants/employees because they have 1) used cannabis off the job and away from the workplace; or 2) were found to have non-psychoactive cannabis metabolites in their hair, blood, urine or other bodily fluids by a drug screening test. In appropriate circumstances, employers may still use scientifically valid drug tests conducted through methods that screen for current impairment. Also, the law will not condone employees' possession of, or impairment by, cannabis on the job, even for medicinal purposes. Employers still can enforce a drug- and alcohol-free workplace under current health and safety laws. Notably, the bill does not cover all workers; for example, employees in the "building and construction trades" are not protected. The bill will take effect in 2024, giving employers one more year to update their policies, practices, and procedures and to train personnel for the changes.
- 3. Increases to State and Local Minimum Wage Increases and Salaries for Exempt Employees:** The state minimum wage is now \$15.50 for all employers, regardless of employee headcount. California formerly used a two-tiered minimum wage system, requiring employers with 25+ employees to pay a higher minimum wage than those with fewer employees. Now all employers, regardless of size, must pay at least \$15.50 per hour.

Given that California law provides that overtime-exempt employees must receive a salary of at least two times the state minimum wage, this means that exempt (administrative, executive, and professional) employees must be paid at least \$64,480/year. Exempt computer professionals must be paid at least \$112,065.20/year and meet the applicable duties tests.

Certain cities also raised the minimum wage for non-exempt employees working within city limits. Non-exempt employees working within one of these cities must be paid the local minimum wage when greater than the state minimum. For example, employees in Los Angeles must be paid at least \$15.96/hour; in San Francisco,

\$16.99/hour. Employers should ensure that employees are being paid in accordance with the required minimum wage of the jurisdictions in which they work. Employers should work with payroll providers to ensure that new rates are properly paid and recorded on employee pay stubs going forward.

4. **SB 1044 – Retaliation Protections for Certain Workplace Emergency Conditions**: SB 1044 prohibits employers from taking or threatening any adverse action against employees who leave the premises or choose not to report to work during a state of emergency or emergency condition that causes them to reasonably believe “that the workplace is unsafe.” It also prohibits employers from limiting employees’ use of mobile phones or other devices to communicate about their safety, seek emergency assistance, or assess the situation. This new law reflects the Legislature’s intent to keep employees safe at work in a post-COVID-19 world. SB 1044 has been criticized because whether an employee “feels unsafe” is arguably subjective and vague. Still, employers should update handbooks and cell phone policies in light of the law.
5. **SB 523 – Expansion of Protection of Reproductive Healthcare Decisions**: The Contraceptive Equity Act of 2022 (Senate Bill 523) prohibits discrimination against applicants/employees based on their reproductive health decisions. It also prohibits employers from requiring applicants or employees to disclose information relating to reproductive health decisions as a condition of employment or employment. The new law also protects an employee’s “decision to use or access a particular drug, device, product, or medical service for reproductive health.” It also amends the Government Code to require that most health benefit plans or contracts provide coverage for contraceptives, vasectomies, and related services, consistent with the requirements of certain provisions of the Health and Safety Code and Insurance Code. Employers should update employee handbooks and EEO statements accordingly.
6. **AB 1632 – Employee Restroom Access to Members of Public with Certain Medical Conditions**: Businesses that have restrooms for employees and that are open to the public must allow individuals who have Crohn’s disease, ulcerative colitis, irritable bowel syndrome, or any other similar medical condition, to use employee restrooms during business hours. Employers should train employees accordingly.
7. **IRS Mileage Rates**: The IRS standard mileage rate for the use of a car (also vans, pickups or panel trucks) is now the equivalent of no less than 5 cents per mile. The IRS already increased mileage reimbursement to 62.5 cents per mile in the middle of 2022 but provided a three-cent increase in 2023 to address rising fuel costs. To ensure compliance, employers should review and revise reimbursement policies and provide clear instructions to employees as to how to request reimbursement.
8. **AB 2693 – New COVID-19 Required Notice**: Instead of requiring individual written notices to employees, AB 2693 provides employers with more latitude with respect to required written notices regarding COVID-19 exposure. Employers may now post notices in all places where notices to employees concerning workplace rules or regulations are customarily posted (including an existing employee portal if the employer posts other workplace notices on the portal) with required information regarding The employer must post the notice within one business day from when it is notified of a potential COVID-19 exposure, keep the notice posted for at least fifteen calendar days, draft the notice in English and the language understood by the majority of the employees, and display the notice in the location(s) where it posts other workplace rules and regulations. Additionally, if the employer customarily posts workplace notices on an online employee portal, it must also post this notice on the employee portal. AB 2693 requires employers to maintain a record of each date the notice was posted at each worksite and allows the Labor Commissioner to access and inspect those records. Employers should ensure they have compliant notices that contain all required information.

Employers who experience a COVID-19 outbreak in their workplace are no longer required to notify the local public health agency within 48 hours. Employers are required to continue providing notification of potential COVID-19 exposure in the workplace through January 1, 2024.

9. **AB 2068 – Employers Required to Post OSHA Information Regarding Citations or Orders in English and Other Specified Languages:** AB 2068 requires that certain Cal-OSHA information be posted in the workplace in multiple languages. Under the new law, any time Cal-OSHA issues a citation, order or special order that is required to be posted in the workplace, the employer must post the citation/order/notice in English and the top seven non-English languages used by limited-English-proficient adults in California, as determined by the most recent U.S. Census Bureau American Community Survey, plus Punjabi (if not already included in the top seven).
10. **Agreements to Arbitrate Employment Claims:** Employers should continue to monitor developments in both state and federal law with respect to the enforceability of pre-dispute arbitration agreements entered into as a condition of employment. A district court judge enjoined the enforcement of California Labor Code Section 432.6 (“AB 51”), which prohibits employers from mandating such agreements on or after January 1, 2020, but the Ninth Circuit is expected to weigh Similarly, the impact of the Supreme Court’s decision in *Viking River Cruises, Inc.*
11. *Moriana* (2022) 142 S.Ct. 1906, regarding mandatory arbitration of PAGA claims, is uncertain (the California Supreme Court may address that in connection with its review of the Court of Appeal’s decision in *Adolph v. Uber Technologies*).

In addition, President Biden recently signed H.R. 4445, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, into law on March 3, 2022. The bill amended the Federal Arbitration Act (adding 9 U.S.C. § 402) to prohibit enforcement of pre-dispute arbitration agreements when an employee asserts claims of sexual assault or sexual harassment. The amendment does not prohibit arbitration of such claims, but prevents employers from compelling arbitration of those cases. In other words, the employee has the option to sue in court or demand arbitration under an existing agreement. Nothing in the Act prohibits the parties from entering into *post-dispute* agreements to arbitrate sexual assault or harassment claims.

Additional New Laws Already Covered by This Blog:

We recently covered required bereavement leave, which is now a protected leave of absence in 2023, and the addition of the term “Designated Person” to the California Family Rights Act (CFRA) and Paid Sick Leave. Employers should review these changes to ensure compliance in their leave policies.

We also recently wrote on the Pay Transparency Act. Employers should review their pay practices carefully to ensure they are complying with the pay data reporting and pay scale disclosure obligations imposed by this complex law.

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