

### California Compliant: The Year in Review – Changes to California’s Employment Laws

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California may be known as the Golden State, but its expansive protections for workers can take the shine off of virtually any business enterprise. In 2023, the legislature passed dozens of laws affecting employers. Predictably, the state *added to employees’ protections, restricted employers’ actions, and increased the exposure for companies that infringe upon workers’ rights.* In case you missed it, here are ten things to know.

1. **Expansion of the Entitlement to Paid Sick Leave.** Beginning in 2024, California workers will be entitled to take more days of paid sick leave each year. Senate Bill 616 amended Labor Code Sections 245.5 and 246 to increase employees’ minimum rate of accrual of paid sick time to 40 hours, or five days, each year. The bill also raised the minimum cap on accrual of paid sick leave; employees will be able to accrue at least 80 hours, or ten days, of paid sick leave. The Labor Commissioner published [FAQs](#) about the changes on December 12, 2023. Employees in some California cities may be entitled to even more paid sick leave. ([Read more here](#))

2. **New Right to Unpaid Leave for Reproductive Loss.** Employers having at least five workers must permit employees to take up to five days of unpaid leave if they experience a “reproductive loss.” New Government Code Section 12945.6 allows employees to take the unpaid leave within three months of a defined “reproductive loss event” affecting them or their spouse or domestic partner. The law requires employers to keep the employee’s request for reproductive loss leave confidential and prohibits retaliation against employees for taking such leave. ([Read more here](#))

3. **Restrictions on Permissible Testing for Past Use of Cannabis.** New restrictions on what employers may do about workers’ off-duty cannabis use will take effect on January 1, 2024. Assembly Bill 2188 (approved in 2022) added Section 12954 to the Government Code, prohibiting most employers from taking adverse action against an employee based on their recreational use of cannabis. With limited exceptions, employers cannot discriminate against an applicant or employee for (1) using marijuana “off the job and away from the workplace” or (2) based on an employer-required drug screening test that finds the person to have “nonpsychoactive cannabis metabolites” in their system. Senate Bill 700 amended Section 12954 to prohibit most employers from asking job seekers about their prior use of cannabis. The statute confirms that employers retain the right “to maintain a drug- and alcohol-free workplace.” ([Read more here](#))

4. **New Risks Associated with Non-Compete/Confidentiality Agreements.** New Business and Professions Code Section 16600.5 prohibits employers from entering into, *or attempting to enforce*, agreements purporting to restrict the freedom to work in California. Such contracts are “void ... regardless of whether the contract was signed ... outside of California.” Current, prospective, or former employees may be entitled to damages, injunctive relief, and their reasonable attorneys’ fees when a business violates the new statute. Further, new Section 16600.1 compels employers to provide “written individualized” notice to current – and some former – employees by February 14, 2024, informing them that non-compete agreements they may have signed are unenforceable. ([Read more here](#))

5. **Changes in the Use of Conviction History in Making Employment Decisions.** Effective October 1, 2023, employers must comply with amended regulations implementing California’s Fair Chance Act (known as the “Ban the Box” law). Among other things, the regulations prohibit companies from suggesting to applicants that those having a criminal history are ineligible for employment. They also prohibit companies from performing internet searches to uncover an applicant’s criminal history. Detailed rules apply to the consideration of conviction history in making employment decisions. ([Read more here](#))

**6. Rebuttable Presumption of Retaliation in Some Cases.** California employees generally have the right to engage in certain types of speech and protected activity (including “lawful conduct occurring during nonworking hours”) without penalty. Workers may, for example, share with authorities information that they reasonably believe discloses a violation of a law. They also can reveal their compensation and discuss their wages with others. Senate Bill 497 amended Sections 98.6 and 1197.5 of the Labor Code to add that “there shall be a rebuttable presumption in favor of the employee’s [retaliation] claim” if an employee has suffered an adverse employment action “within 90 days of” engaging in the protected conduct. The bill also amended Labor Code Section 1102.5 to expand the types of businesses that may be liable for civil penalties to whistleblowers (previously, civil penalties were only recoverable under that section as against corporations or limited liability companies).

**7. Obligation to Implement a Workplace Violence Prevention Plan.** Senate Bill 553 established a July 2024 deadline for most California employers to establish and implement a written workplace violence prevention and reporting plan. Cal/OSHA must propose standards for workplace violence prevention programs, but its deadline to do so is not until December 2025. In the interim, employers should be guided by new Labor Code Section 6401.9 in developing a compliant workplace violence prevention and reporting program and providing required training to employees. ([Read more here](#))

**8. Return of the Industrial Welfare Commission.** California’s Budget Act of 2023 charged the Department of Industrial Relations with resurrecting the Industrial Welfare Commission (IWC) for the purposes of drafting new orders regarding wages and working conditions of specific industries. The IWC must recommend new wage orders by October 1, 2024, and its orders may not be any “less protective [of workers] than existing state law.” Employers should carefully monitor the IWC and its proposals; the Budget Act also increased staffing for the Division of Labor Standards and Enforcement, which enforces the IWC’s wage orders. ([Read more here](#))

**9. Workplace Rules that Would Impermissibly Chill Protected Conduct.** California employers also should know that the National Labor Relations Board has articulated a new standard applicable to work rules affecting employees’ speech and conduct. In its August 2023 decision in *Stericycle, Inc.* (372 NLRB No. 113) the Board discussed whether and to what extent such rules may impermissibly “chill” employees from engaging in activity protected by the National Labor Relations Act. In *Stericycle*, the Board explicitly rejected its previous decision (*Boeing Co.*, 365 NLRB No. 154), which found that certain categories of rules are “always lawful.” Employers should review their employee handbooks, workplace rules, and codes of conduct in light of the new standard. ([Read more here](#))

**10. Deputization of Local Prosecutors to Enforce the Labor Code.** Based on a finding that “[e]xisting resources are insufficient to protect workers or to incentivize legal compliance for employers,” Assembly Bill 594 strengthens enforcement of Labor Code provisions relating to wage theft and misclassification of workers as independent contractors. The bill amends Labor Code Sections 180-182 and 226.8 to permit the Attorney General, a district attorney, a city attorney, county counsel, or other city/county prosecutor to bring civil or criminal actions against employers in some cases. “Public prosecutors” may take up violations occurring within that prosecutor’s geographic jurisdiction unless their authority is statewide. They may file actions seeking monetary or injunctive relief as well as civil penalties. Prevailing plaintiffs may recover their reasonable attorneys’ fees and costs. Public prosecutors will have this new authority until January 1, 2029.

California employers also should note that the Labor Commissioner has updated the Section 2810.5 Notice to Employee (form of notice to employees regarding identity of the employer, wage information, workers’ compensation carrier, and accrual of paid sick leave), which can be downloaded from [www.dir.ca.gov](http://www.dir.ca.gov).

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