

HR COMPLIANCE BULLETIN

California Employment Laws Effective Jan. 1, 2022

In general, once approved by both the state legislature and the state governor, a new bill in California becomes effective on Jan. 1 of the following year (some exceptions are possible for emergency measures and when the bills specifically appoint a different effective date).

This Compliance Bulletin provides an overview of labor and employment laws California adopted throughout 2021. Specific labor and employment updates include the following topics:

- Anti-harassment protections
- Electronic posters and notifications
- Employee leave
- Employee wage payment
- Independent contractor classification
- Personal information protections
- Prohibited Discrimination
- Warehousing quotas
- Workplace safety

Action Steps

Employers should review these laws and update their employment policies, practices and procedures to remain in compliance. Employers should seek the advice of a knowledgeable legal professional for specific situations and counsel on how to implement required changes.

Employers should also continue to monitor California's Department of Industrial Relations communications for updates on these and additional labor and employment topics. Please contact Coffman Insurance Agency, Inc. for more information on these updates and other labor and employment issues.

Provided to you by **Coffman Insurance Agency, Inc.**

Important Updates

Electronic Posters and Notices

Employers required to physically post notices may also distribute that information to employees by email with the document or documents attached.

Wage Payment Enforcement

The intentional theft of wages, including gratuities, in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period is punishable as grand theft.

Warehousing Quotas

Specified employers are required to provide to each employee defined as a nonexempt employee who works at a warehouse distribution center upon hire or within 30 days of the effective date of these provisions with a written description of each quota to which the employee is subject.



COFFMAN BENEFITS



Anti-harassment Protections

Prohibits employers from requiring individuals to sign settlement or nondisparagement agreements relating to unlawful acts in the workplace, including discrimination and harassment (SB 331): Existing law prohibits a settlement agreement from preventing the disclosure of factual information regarding specified acts related to a claim filed in a civil action or a complaint filed in an administrative action. These acts include sexual assault, as defined; sexual harassment, as defined; an act of workplace harassment or discrimination based on sex, failure to prevent such an act or retaliation against a person for reporting such an act; and an act of harassment or discrimination based on sex by the owner of a housing accommodation, as defined, or retaliation against a person for reporting such an act.

This bill clarifies that this prohibition includes provisions that restrict the disclosure of the information described above. For purposes of agreements entered into on or after Jan. 1, 2022, the bill also expands the prohibition to include acts of workplace harassment or discrimination not based on sex and acts of harassment or discrimination not based on sex by the owner of a housing accommodation.

In addition, the California Fair Employment and Housing Act (FEHA) prohibits various actions as unlawful employment practices unless the employer acts based upon a bona fide occupational qualification or applicable security regulations established by the United States or the state of California. In this regard, FEHA makes it an unlawful employment practice for an employer, in exchange for a raise or bonus or as a condition of employment or continued employment, to require an employee to sign a nondisparagement agreement or other document that purports to deny the employee the right to disclose information about unlawful acts in the workplace, including but not limited to sexual harassment or discrimination.

This bill provides that unlawful acts in the workplace for these purposes include any harassment or discrimination and instead prohibits an employer from requiring an employee to sign a nondisparagement agreement or other document to the extent it has the purpose or effect of denying the employee the right to disclose information about those acts. The bill makes it an unlawful employment practice for an employer or former employer to include in any agreement related to an employee's separation from employment any provision prohibiting the disclosure of information about unlawful acts in the workplace. The bill provides that any provision in violation of that prohibition is against public policy and unenforceable. The bill requires a nondisparagement or other contractual provision that restricts an employee's ability to disclose information related to conditions in the workplace to include specified language relating to the employee's right to disclose information about unlawful acts in the workplace.

Electronic Posters and Notices

Authorizes an employer to provide required notices and postings via email (SB 657): Existing law regulates the wages, hours and working conditions of any worker employed in any occupation, trade or industry, whether compensation is measured by time, piece or otherwise, except as specified.

This bill provides that, in any instance in which an employer is required to physically post information, an employer may also distribute that information to employees by email with the document or documents attached. The bill specifies that this does not alter the employer's obligation to physically display the required posting.

Employee Leave

Permits the use of CFRA leave to care for a parent-in-law (AB 1033): Existing law, the Moore-Brown-Roberti Family Rights Act, commonly known as the California Family Rights Act, which is a part of FEHA, makes it an unlawful employment



practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave, as specified. Existing law defines family care and medical leave to include, among other things, leave to care for a parent. Existing law requires the department to initiate the mediation promptly following a request, prohibits an employee from pursuing a civil action until the mediation is complete and tolls the statute of limitations for the employee, including for all related claims not subject to mediation, from the date of receipt of a request to participate in the program until the mediation is complete. Existing law repeals the pilot program on Jan. 1, 2024.

This bill includes leave to care for a parent-in-law within the definition of family care and medical leave and makes other conforming changes.

This bill recasts those provisions to require the department, when an employee requests an immediate right to sue alleging a violation of the above-described family care and medical leave provisions by an employer, to notify the employee in writing of the requirement for mediation prior to filing a civil action, if mediation is requested by the employer or employee. The bill also requires the employee to contact the department's dispute resolution division in the manner specified by the department prior to filing an action to indicate whether they are requesting mediation.

This bill entitles a respondent or defendant in a civil action that did not receive the required notification as a result of the employee's failure to contact the department's alternative dispute resolution prior to filing a civil action and who had five to 19 employees at the time the alleged violation occurred to a stay of any pending civil action or arbitration until the mediation is complete or deemed unsuccessful.

Employee Wage Payment

Removes the subminimum wage for persons with disabilities ([SB 639](#)): Existing law establishes a minimum wage for all industries and makes it a crime to pay an employee less than the minimum wage fixed by the Industrial Welfare Commission. However, existing law permits the commission to issue an employee who is mentally or physically disabled, or both, a special license authorizing the employment of the licensee for a period, not to exceed one year from date of issue, at a wage less than the minimum wage. Existing law requires the commission to fix a special minimum wage for the licensee, which may be renewed on a yearly basis.

This bill prohibits new special licenses from being issued after Jan. 1, 2022. The bill permits a license to only be renewed for existing license holders who meet requisite benchmarks. The bill makes the above-described provision authorizing a lesser minimum wage for an employee who is mentally or physically disabled inoperative on Jan. 1, 2025, or when the multiyear phaseout plan as described below is released, whichever is later. The bill, commencing on the later of Jan. 1, 2025, or when the plan is released, prohibits an employee with a disability from being paid less than the legal minimum wage or the applicable local minimum wage ordinance, whichever is higher.

Overtime exemption for computer software employees ([2021 announcement](#)): California Labor Code Section 515.5 provides that certain computer software employees are exempt from the overtime requirements stipulated in Labor Code Section 510 if certain criteria are met. One of the criteria is that the employee's hourly rate of pay is not less than the statutorily specified rate, which the Department of Industrial Relations is responsible for adjusting on Oct. 1 of each year to be effective on Jan. 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

HR COMPLIANCE BULLETIN



In accordance with Labor Code Section 515.5(a)(4), the department has adjusted the computer software employee's minimum hourly rate of pay exemption from \$47.48 to \$50, the minimum monthly salary exemption from \$8,242.32 to \$8,679.16 and the minimum annual salary exemption from \$98,907.70 to \$104,149.81, effective Jan. 1, 2022, reflecting the 5.3% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

Makes the intentional theft of wages punishable as grand theft ([AB 1003](#)): Existing law regulates the payment of wages and benefits in the state. Existing law makes violation of specified wage and gratuity provisions a misdemeanor and provides civil penalties and remedies for the recovery of wages. Existing law defines the crime of grand theft as theft committed when the money, labor, or real or personal property taken is of a value exceeding \$950. Under existing law, grand theft is generally punishable either as a misdemeanor by imprisonment in a county jail for up to one year or as a felony by imprisonment in county jail for 16 months or two or three years.

This bill makes the intentional theft of wages, including gratuities, in an amount greater than \$950 from any one employee, or \$2,350 in the aggregate from two or more employees, by an employer in any consecutive 12-month period punishable as grand theft. The bill specifically authorizes wages, gratuities, benefits, or other compensation that are the subject of a prosecution under these provisions to be recovered as restitution in accordance with existing provisions of law. This bill specifies that, for the purposes of these provisions, independent contractors are included within the meaning of "employee," and hiring entities of independent contractors are included within the meaning of employer.

Wage and hour requirements for the garment manufacture industry ([SB 62](#)): Existing law makes garment manufacturers liable for guaranteeing payment of wages to employees of their contractors. Existing law requires every employer engaged in the business of garment manufacturing to keep certain records for three years, including, among other things, contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.

This bill expands the definition of garment manufacturing to include dyeing, altering a garment's design and affixing a label to a garment. The bill prohibits any employee engaged in the performance of garment manufacturing to be paid by the piece or unit, or by the piece rate, except as specified. The bill imposes compensatory damages of \$200 per employee against a garment manufacturer or contractor, payable to the employee, for each pay period in which each employee is paid by the piece rate.

This bill defines "brand guarantor" for purposes of these provisions as a person contracting for the performance of garment manufacturing, as specified, regardless of whether the person with whom they contract performs manufacturing operations or hires a contractor or subcontractor to perform manufacturing operations. This bill specifies that a garment manufacturer, contractor, or brand guarantor who contracts with another person for the performance of garment manufacturing operations shares joint and several liability with any manufacturer and contractor for the full amount of unpaid wages and any other compensation, including interest, due to any and all employees who performed manufacturing operations for any violation, attorney's fees and civil penalties, as specified. The bill also makes garment manufacturers and contractors liable for the full amount of damages and penalties for any violation, as specified.

This bill also requires every employer engaged in the business of garment manufacturing and brand guarantors to keep all contracts, invoices, purchase orders, work orders, style or cut sheets, and any other documentation pursuant to which garment manufacturing work was or is being performed for four years.

HR COMPLIANCE BULLETIN

Finally, existing law requires the commissioner to deposit \$75 of each garment manufacturer's registration fee into one separate account to be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by a garment manufacturer, contractor or subcontractor.

Instead, this bill requires these funds to be disbursed only to persons determined by the commissioner to have been damaged by the failure to pay wages and benefits by a garment manufacturer, brand guarantor or contractor.

Health Plan Coverage

Provides requirements for multiple employer welfare arrangements (SB 326): Existing federal law, the Patient Protection and Affordable Care Act (PPACA), enacts various health care market reforms. Among other things, PPACA requires applicable individuals to maintain minimum essential coverage and imposes a shared responsibility penalty on an applicable individual who does not maintain minimum essential coverage. This provision is referred to as the individual mandate. PPACA prohibits a non-grandfathered health benefit plan from imposing a preexisting condition provision on an individual and requires a non-grandfathered health benefit plan to include coverage for essential health benefits, as defined. PPACA also includes a coverage guarantee that requires each health insurance issuer that offers health insurance coverage in the individual or group market in a state to accept every employer and individual in the state that applies for coverage and prohibits discriminatory premium rates, as specified.

Existing state law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires the above-described federal health care coverage market reforms to apply to a health care service plan or health insurer but the operation of certain of these market reforms depends on the continued operation of PPACA or certain of its requirements.

This bill deletes the conditional operation of the above-described provisions based on the continued operation of PPACA, the federal individual mandate, the federal coverage guarantee and federal essential health benefits coverage requirements. By indefinitely extending the operation of these provisions and thus indefinitely extending the applicability of a crime for a willful violation by a health care service plan, the bill imposes a state-mandated local program.

Independent Contractor Classification

Joint liability for port drayage drivers (SB 338): Existing law requires the Division of Labor Standards Enforcement to post on its internet website a list of port drayage motor carriers with unsatisfied court judgments, tax assessments, tax liens or any order, decision or award finding that the port drayage motor carrier has engaged in illegal conduct including failure to pay wages, imposing unlawful expenses on employees, and other labor violations. Existing law prohibits the Division from placing the information on the internet website until the period for all judicial appeals has expired. Existing law requires the Division to remove a posting within 15 business days after the Division determines there has been payment or settlement of the unsatisfied judgment, as specified. Existing law, except as specified, imposes joint and several liability on the port drayage motor carrier and any customer that obtained port drayage services after the date the port drayage motor carrier appeared on the Division's list for all civil legal responsibility and liability owed to a port drayage driver, including unpaid wages, unreimbursed expenses and damages and penalties that are due, as specified.

This bill requires the Division of Labor Standards Enforcement to post the information for a port drayage motor carrier that is a prior offender, as defined, with a subsequent judgment, ruling, citation, order, decision or award finding a

HR COMPLIANCE BULLETIN

violation of a labor or employment law or regulation, even if all periods for appeals have not expired. The bill requires the Division to post the information only if it is provided to the Division in a format acceptable to the Division.

This bill expands the liability of a customer of a listed port drayage motor carrier to also include the civil legal responsibility and civil liability owed to the state for port drayage services obtained after the date the motor carrier appeared on the prior offender list. The bill adds, in this regard, potential responsibility and liability for employment tax assessments issued by the state and civil liability stemming from the motor carrier's failure to comply with applicable health and safety laws, rules, or regulations.

Revises the applicability of the ABC test exemption to specified occupations (AB 1561): Existing law requires a three-part test, commonly known as the "ABC" test, to determine if workers are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code and the wage orders of the Industrial Welfare Commission. Under the ABC test, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business and the person is customarily engaged in an independently established trade, occupation or business. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of the ABC test described above. Existing law, instead, provides that these exempt relationships are governed by the multifactor test previously adopted in the case of *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341. These exemptions include services provided by a **licensed manicurist**, subject to the manicurist meeting specified conditions. Existing law makes this exemption for licensed manicurists inoperative on Jan. 1, 2022.

This bill extends the inoperative date of this exemption for licensed manicurists to Jan. 1, 2025.

Existing law exempts the **relationship between a contractor and an individual performing work** pursuant to a **subcontract** in the **construction industry** if the contractor demonstrates that specified criteria are satisfied, including that the subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license. Existing law for construction trucking services provides that the requirement of having this license does not apply to a subcontractor providing construction trucking services for which a contractor's license is not required, as specified. This provision applies to work performed before Jan. 1, 2022.

This bill extends the applicable timeframe for this provision to work performed before Jan. 1, 2025.

Existing law exempts the **relationship between a data aggregator and an individual providing feedback** to the data aggregator if certain conditions are satisfied. These conditions include, among others, any consideration paid for the feedback provided, if prorated to an hourly basis, is an amount equivalent to or greater than the minimum wage.

This bill deletes the above-described condition regarding the consideration paid. The bill revises the exemption to instead apply to the relationship between a data aggregator and a "**research subject**," as defined, and makes related, conforming changes.

Existing law also exempts a person or organization that is licensed by the Department of Insurance or a person who provides **underwriting inspections, premium audits, risk management or loss control work** for the insurance and financial



service industries. This bill expands that exception to also apply to a person who provides **claims adjusting or third-party administration**, as defined.

Existing law also exempts a **manufactured housing salesperson**, subject to specified legal obligations and regulations governing manufactured housing salespersons. This bill, in regard to the above exemption, provides that the statutorily imposed duties of a manufactured housing dealer are not factors to be considered under the *Borello* test.

Labor Code Enforcement

Permits a lien on real property for Labor Code violations ([SB 572](#)): Existing law vests with the Labor commissioner the authority to hear employee complaints regarding the payment of wages and other employment-related issues. Existing law imposes various civil penalties for violations of state law, including penalties on employers for failure to pay minimum wage, on successors to judgment debtors, on persons who do not hold a valid state contractor's license and employ workers to perform services for which a license is required, and on persons who violate provisions relating to minor employees. Existing law permits the commissioner to, as an alternative to a judgment lien, create a lien on real property to recover amounts due under final orders in favor of an employee named in the order.

This bill authorizes the Labor commissioner to create, as an alternative to a judgment lien, a lien on real property to secure amounts due to the commissioner under any final citation, findings or decision, as provided. The bill requires the commissioner, among other things, to include specified information on the certificate of lien to be recorded on the relevant party's real property and to issue a certificate of release once the amount due, including any interest and costs, has been paid.

Personal Information Protections

Including genetic data to protected personal information ([AB 825](#)): Existing law, the Information Practices Act of 1977, requires an agency that owns or licenses computerized data that includes personal information to disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was compromised, as specified. Existing law also requires a business that owns, licenses, or maintains personal information about a California resident to implement and maintain reasonable security procedures and practices. Existing law requires a person or business that conducts business in California and owns or licenses computerized data that includes personal information to disclose a breach of the security of the system following discovery or notification of the breach.

This bill specifies that personal information for these purposes includes genetic data and defines "genetic data" to mean any data, regardless of its format, that results from the analysis of a biological sample of an individual or other source and concerns genetic material, as specified. Because this bill establishes new requirements on local agencies, the bill imposes a state-mandated local program.

Prohibited Discrimination

Diversifying the Board of Directors ([AB 979](#)): Existing law, no later than the close of the 2019 calendar year, requires a publicly held domestic or foreign corporation whose principal executive office is located in California to have a minimum of one female director on its board. Existing law additionally requires such a corporation with five directors to have a minimum of two female directors no later than the close of the 2021 calendar year and such a corporation with six or more directors to have a minimum of three female directors. Existing law authorizes the secretary of state to impose fines

HR COMPLIANCE BULLETIN

for violations of these provisions, as specified, and requires the moneys from these fines to be available, upon appropriation, to offset the cost of administering these requirements.

This bill requires such a corporation to have a minimum of one director from an underrepresented community, as defined, no later than the close of the 2021 calendar year. No later than the close of the 2022 calendar year, the bill requires such a corporation with more than four but fewer than nine directors to have a minimum of two directors from underrepresented communities and such a corporation with nine or more directors to have a minimum of three directors from underrepresented communities.

Warehousing Quotas

Creates a new requirement for warehousing quotas ([AB 701](#)): Existing law relating to employment regulation and supervision imposes special provisions on certain occupations and industries. Existing law charges the Labor Commissioner and the Division of Labor Standards Enforcement with the enforcement of labor laws.

This bill, among other things, requires specified employers to provide to each employee, defined as a nonexempt employee who works at a warehouse distribution center, upon hire or within 30 days of the effective date of these provisions with a written description of each quota to which the employee is subject, including the quantified number of tasks to be performed or materials to be produced or handled within the defined time period and any potential adverse employment action that could result from failure to meet the quota. The bill provides that an employee cannot be required to meet a quota that prevents compliance with meal or rest periods, use of bathroom facilities, or occupational health and safety laws, as specified. The bill prohibits an employer from taking adverse action against an employee for failure to meet a quota that has not been disclosed or for failure to meet a quota that does not allow a worker to comply with meal or rest periods or occupational health and safety laws. The bill requires compliance of any action taken by an employee with occupational health and safety laws or Division standards to be considered time on task and productive time for the purposes of any quotas or monitoring system.

This bill provides that if a current or former employee believes that meeting a quota caused a violation of their right to a meal or rest period or required them to violate any occupational health and safety law or standard, they have the right to request and the employer is required to provide a written description of each quota to which the employee is subject and a copy of the most recent 90 days of the employee's own personal work speed data. The bill limits a former employee to one of these requests. The bill also authorizes a current or former employee to bring an action for injunctive relief to obtain compliance with specified requirements and may, upon prevailing in the action, recover costs and reasonable attorney's fees in that action.

Workplace Safety

Establishes a rebuttable presumption that a violation by an employer with multiple worksites is enterprisewide if the employer has a written policy or procedure that violates specified occupational safety and health regulations ([SB 606](#)): Existing law gives the Division of Occupational Safety and Health, within the Department of Industrial Relations, the power, jurisdiction and supervision over every employment and place of employment in this state, which is necessary to adequately enforce and administer all laws requiring that employment and places of employment be safe, and requires the protection of the life, safety and health of every employee in that employment or place of employment. Existing law requires the Division to issue a citation for a violation of provisions relating to the spraying of asbestos or any standard, rule, order or regulation established pursuant to specified provisions of the California Occupational Safety and Health Act of 1973 if, upon inspection or investigation, the Division believes that an employer has committed a violation. Existing law



imposes penalties of certain maximum amounts depending on whether the violation is serious, uncorrected, or willful or repeated. Existing law authorizes the Division to seek an injunction restraining certain uses or operations of employment that constitute a serious menace to the lives or safety of persons, as specified. Existing law establishes requirements for a prima facie showing by the Division to warrant, in the discretion of the court, the granting of a temporary restraining order.

This bill creates a rebuttable presumption that a violation committed by an employer that has multiple worksites is enterprisewide if the employer has a written policy or procedure that violates these provisions, except as specified, or the Division has evidence of a pattern or practice of the same violation committed by that employer involving more than one of the employer's worksites. The bill authorizes the Division to issue an enterprisewide citation requiring enterprisewide abatement if the employer fails to rebut such a presumption. The bill imposes specified requirements for a stay of abatement pending appeal of an enterprisewide citation. The bill subjects an enterprisewide violation to the same penalty provision as willful or repeated violations. The bill also exempts certain state agencies from the rebuttable presumption, enterprisewide citation and egregious violation citation provisions.

Youth Employment

Exempts misdemeanor convictions from some notification requirements ([AB 1171](#)): Under state law, employers may request certain conviction and arrest records for individuals who apply for a license, employment or volunteer position involving supervisory or disciplinary power over a minor. When the request reveals a prospective employee or volunteer has been convicted of certain offenses, employers have an obligation to notify the parents or guardians of any minor who will be supervised by that individual. The notification requirement is triggered only when employers hire the prospective employee or volunteer with the offense record.

The bill clarifies that the list of offenses that trigger this notification requirement includes spousal rape or any other felony conviction and excludes misdemeanor convictions.