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BUSINESS AND ECONOMY

Top 10 California Laws, Regs for 2024

EVERY YEAR, bills passed by the state Legislature and signed into law by the governor take effect, and 2023 was a busy legislative session in Sacramento. The end result is another set of new laws that employers need to stay on top of in the New Year.

1. Sick leave law expanded

A new law that took effect Jan. 1 increased the amount of paid sick leave days California workers are eligible for to five days (40 hours), up from the current three, or 24 hours.

The new legislation applies to virtually all employees in the state. Under the law, businesses have two options for providing sick leave:

Up front: They can provide all five paid sick days up front for the year, and these days can be used immediately.

Accrual: They can build up paid sick leave by either accruing one hour of leave for every 30 hours worked, or providing 40 hours of leave by the 200th day of the year.

2. Pre-employment cannabis screening

Employers in California are no longer allowed to ask a job applicant about past cannabis use.

The legislation, SB 700, bars employers from conducting pre-employment drug screenings for cannabis. In addition, the new law, which took effect Jan. 1, prohibits companies from penalizing workers for their off-the-clock cannabis use.

Another measure, AB 2188, makes it unlawful for employers to "discriminate" against a person for failing a workplace drug test that only detects inactive cannabis compounds called metabolites.

3. FAIR Plan increases its limits

With more and more California businesses being forced to go to the California FAIR Plan for their property coverage, the market of last resort has increased its commercial property coverage limits to $20 million per location from the previous $8.3 million.

This should bring a semblance of relief to companies located in wildfire-prone areas, who have seen their commercial property insurance non-renewed and who have been unable to find replacement coverage.

4. Workplace violence law

A new law, which takes effect July 1, requires employers with at least one worker to have in place a workplace violence prevention plan, and conduct workplace violence prevention training and keep a log of violent incidents in the workplace..

The prevention plan must include:

- Procedures for the employer to accept and respond to reports of workplace violence.
- Procedures to communicate with employees regarding workplace violence.
- Procedures for responding to workplace violence emergencies.

Employers will also be required to train their workers on the plan and on how to respond to violent incidents or threats of violence.

See 'Non-Competes' on page 2

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Non-Competes with Employees Now Expressly Illegal

5. Treasury reporting rule

A new Treasury Department rule requires businesses with fewer than 20 employees and less than $5 million in revenue to report ownership and control information to the Financial Crimes Enforcement Network (FinCEN) as part of an effort to cut down on fraud, money laundering and the funding of terrorism that could run through anonymous business entities.

The new rule was prompted by the passage of the Corporate Transparency Act enacted in 2021, but which took effect Jan. 1.

Companies formed after Jan. 1 will have 30 days to file that information with FinCEN. Existing companies will have to start filing that information starting Jan. 1, 2025.

6. No more non-competes

Under two new laws, non-compete agreements with employees are expressly illegal starting in 2024 and if an employer requires one be signed, it could provide grounds for a lawsuit by the worker.

Here's a rundown of the two laws:

AB 1076 – This law adds new requirements and penalties to existing cases that make it illegal for employers to include non-compete clauses in employment contracts or require an employee to sign a non-compete agreement that doesn't meet exceptions under the law.

The law also requires employers to notify current employees who signed non-compete agreements that they are now void under California law by Feb. 14, 2024. This also applies to former employees who were hired after Dec. 31, 2021.

SB 699 – This legislation bars employers from enforcing a non-compete agreement that is void under state law. Most notably it would make void an agreement signed by an employee out of state who later relocates to California.

It also provides employees and job applicants a private right of action, including awards for injunctive relief, actual damages and attorney's fees, and costs if an employer requires them to sign a non-compete. Additionally, it makes a violation of the statute an act of unfair competition — another possible legal risk.

7. New joint-employer rule

The National Labor Relations Board has issued a final rule that expands the definition of what's considered a joint-employer relationship and increases employers' potential liability.

Under the rule, two or more entities may be considered joint employers if they share one or more employees and they both can determine the workers' essential terms and conditions of employment. If a company is deemed a joint employer with another entity, each can be held liable for labor law violations that the other commits.

The new NLRB rule applies to almost all industries, but will have the most effect on companies that use staffing or temp agencies, firms that are third party employers, and franchisors.

The rule took effect Dec. 26, 2023 on a prospective basis, meaning it applies to any cases filed on or after that date.

8. Reproductive-loss leave law

Starting Jan. 1, workers in the Golden State can take up to five days off for a "reproductive loss," defined as a miscarriage, stillbirth, failed adoption or failed surrogacy experienced by an employee, their spouse or partner.

Under the new law, SB 848, workers are not required to take all five days consecutively, but they must use them all within three months of the event.

If an employee experiences two reproductive losses in a year, they will be eligible for 20 days off.

9. New telecommuter class code

If you have staff who work remotely, you'll want to know that there is a new California workers' compensation class code.

After droves of employees starting working remotely after the COVID-19 pandemic began in 2020, the Workers' Compensation Insurance Rating Bureau created a new telecommuter class code (8871) and tethered its pure premium advisory rate to the 8810 clerical classification for easier administration.

Under Rating Bureau rules, code 8871 will receive its own rate which is 25% lower than the clerical rate. If you have remote workers, you'll want to ensure they are in the telecommuter class code to enjoy the lower premium.

10. Minimum wage hike

The state minimum wage increased at the start of 2024 to $16 from last year's $15.50.

While that wage is for the state, a number of cities and municipalities have minimum wage rates that are higher.

Additionally, a new law, AB 1228, raises the minimum wage for fast food restaurant workers in the state to $20 an hour, starting April 1, 2024. This rate will increase annually through 2029 based on inflation. ❖

BIG CHANGE: *Firms in California will no longer be allowed to ask a job applicant about cannabis use.*

HUMAN RESOURCES

Age Discrimination Cases Up; Set Strong Policies

THE EQUAL Employment Opportunity Commission continues seeing a steady flow of complaints for one of the more common forms of workplace bias — age discrimination.

The number of court filings the EEOC made under the Age Discrimination in Employment Act (ADEA) in fiscal year 2023 was more than double that of fiscal year 2022. As the EEOC steps up its efforts under the Biden administration, it's crucial that employers have in place policies and employment standards to avoid any appearances of discrimination against workers based on age.

The ADEA prohibits harassment and discrimination on the basis of a worker's age for individuals over 40. This extends to any aspect of employment, including hiring, job assignments, promotions, training, benefits and more.

The law even applies to employers that use third party recruiters to screen job applicants, according to EEOC guidance.

RECENT CASES

- In March 2023, Fischer Connectors settled with the EEOC for $460,000 over accusations that the manufacturer fired a human resources director and replaced her with two younger workers after she had spoken up about company plans to replace other older workers.
- In September 2023, two former IBM human resources employees who were both over 60, sued IBM after they were terminated, alleging age discrimination.
- Wisconsin-based Exact Sciences agreed to pay $90,000 to settle a lawsuit alleging that it discriminated against a 49-year-old job applicant based on his age after it had turned him down for a medical sales rep position in favor of a 41-year-old.
- A 52-year-old woman sued a Palm Beach restaurant, alleging violations of the ADEA and the Florida Civil Rights Act of 1992. She claims that after working for 10 years as a seasonal server, she was terminated on the grounds that the restaurant was moving to year-round employment, yet continued to hire young seasonal workers.

What you can do

Age discrimination in the workplace doesn't just negatively affect employees. It also affects your company. Over the past 15 years, age discrimination cases have accounted for 20-25% of all EEOC cases — and such cases typically receive the highest payouts.

Ageism in the workplace is bad for business. Not only do you risk a large settlement, but you also miss out on a large talent pool of older workers in your hiring practices. You also miss out on the major contributions that older workers can make to your organization.

To prevent age discrimination at your firm:

- Train your managers and supervisors on age discrimination and that it won't be tolerated. Have in place consequences (and follow through on them) for managers that discriminate against an employee due to any protected status, including age.
- Consider taking out any sections of your application that disclose information about an applicant's age. Removing the date that an applicant graduated or completed their degree is helpful. This can allow hiring managers to focus on the skills and experience an applicant brings to the table rather than their age.
- If you have to go through a layoff, ensure you don't make any decisions based on age. You should focus only on two things during this process: making choices solely based on performance and the necessity of the position they hold. Even a seniority-based system is acceptable.

The takeaway and insurance

Often when the EEOC settles these cases, it will require the employer to sign a consent decree requiring them to implement age-discrimination training for hiring managers. You shouldn't wait for an order by the agency to do the same.

Finally: In the event you are sued for age discrimination, if you have in a place an employment practices liability policy, it may cover your legal costs and any potential settlements or verdicts.

Besides age discrimination, these policies will cover a host of other lawsuits by employees. ❖

WORKPLACE SAFETY

OSHA Making Changes to Construction PPE Standard

FED-OSHA has proposed new regulations that would require personal protective equipment for construction workers to be properly fitting.

The lack of access to properly fitting PPE for smaller-framed construction workers — especially women — has been a perennial problem, as ill-fitting gear may not protect employees properly in case of an incident. The proposed standard explicitly states that PPE must fit properly to protect workers from workplace hazards.

The proposed revision would align the construction PPE standard with the language in OSHA's PPE rules for general industry and the maritime sector.

What the new standard says

Most of the gloves, goggles, respirators, harnesses and work boots that help keep construction workers out of harm's way are made for average-sized men.

When women or small men wear PPE that wasn't designed for them, they have to deal with gaps, bulges and a poor overall fit that make it uncomfortable, reduce its effectiveness and increase the risk of sustaining an injury.

The takeaway

In the absence of current regulations, construction firms should ensure that they have different sizes of protective equipment to accommodate all of their employees. An employee with poorly fitting equipment can not only injure themselves, but they also put other workers at risk.

Manufacturers already make PPE in various sizes. If you are ordering new PPE for your workers, you should take into account that not all are 5.8 and taller and that women and some men are much shorter and perhaps weigh less as well. Even a pair of size "small" gloves may be too large for a small person.

OSHA noted in its proposed rule that an analysis it had carried out indicated that the cost to employers to comply with the new rule would be negligible.

The agency's cost analysis estimated a one-time cost to the construction industry could be approximately $545,000 in total. ❖

Specific dangers of ill-fitting PPE include:

- Sleeves of protective clothing that are too long or gloves that do not fit properly may make it difficult to use tools or control equipment, putting other workers at risk of exposure to hazards.
- The legs of a protective garment that are too long could cause tripping hazards and affect others working near the wearer.
- A loose harness when working at elevations may not properly suppress a person's fall and may get caught up in scaffolding and equipment.
- Goggles worn by an employee with a small face may leave gaps at their temples, allowing flying debris to enter their eyes.
- Gloves that are too large have a number of issues: the fingers are too long and too wide, the palm area too big and the cuffs allow sawdust to fill the fingers. Someone wearing such ill-fitting gloves risks getting their fingers caught in machinery and pinched when stacking or carrying lumber.