2025 EMPLOYMENT LAW UPDATE

As 2025 begins, California employers will face a variety of new employment laws that may impact their businesses. In addition to new laws enacted by the California Legislature, state and federal courts have also issued decisions that impact California employers. Dunn DeSantis Walt & Kendrick is pleased to offer an overview of the most significant obligations created by these laws and court decisions as we head into 2025.

Dunn DeSantis Walt & Kendrick
www.ddwklaw.com

750 B Street, Suite 2620 San Diego, California 92101 619-573-4488

San Diego La Jolla Irvine Phoenix Dallas Walnut Creek Boise Pittsburgh

DUNN DESANTIS WALT & KENDRICK LLP
ATTORNEYS

CALIFORNIA STATE LAW UPDATE

California Minimum Wage Increases

California Minimum Wage Increases From $16.00 to $16.50 Starting January 1, 2025. Prop. 32 failed, so $18 per hour is at least on hold. However, some cities and counties have higher minimum wage rates than the California minimum wage rate.

Compliance Tip: Employers should review their payroll to ensure they comply with all the new local and statewide minimum wage requirements for their industries and locations.

SB 988: Freelance Worker Protection Act

Effective January 1, 2025, SB 988 imposes 4 minimum requirements in contracts between the hiring party and freelance worker. A freelance worker is an individual who provides professional services for compensation of greater than $250. The agreement must be in writing and include: (1) names and address of both parties; (2) an itemized list of services, their values, and compensation method; (3) payment due dates or mechanisms for determining them; and (4) due dates for the freelancer to report the completed services for processing timely payment. The hiring party must retain the written agreement for no less than 4 years. The bill would authorize an aggrieved freelance worker or a public prosecutor to bring a civil action to enforce these provisions.

Compliance Tip: Employers should identify any workers that may be classified as "freelance workers" under SB 988, verify agreements with freelance workers comply with the new requirements, revise any existing anti-discrimination and retaliation policies to include protection for freelance workers, and ensure timely payment to freelance workers in accordance with the contract or within 30 days of the completion of the services under the contract.

SB 1100: Requiring Driver's License for Job Openings

Effective January 1, 2025, SB 1100 adds a new provision to the Fair Employment and Housing Act (FEHA) that prohibits employers from including statements in job advertisements, applications, or other employment materials that an applicant must have a driver's license, unless: (1) the employer reasonably expects driving to be one of the job functions, and (2) the employer reasonably believes using an alternative form of transportation (e.g., carpooling or public transportation) would not be comparable in travel time or cost to the employer.

Compliance Tip: Employers should carefully review their job descriptions to determine whether driving is one of the job's functions, and revise their job postings accordingly.

SB 1137: Prohibiting Discrimination Based on Multiple, Combined Protected Characteristics

Effective January 1, 2025, SB 1137 will amend the anti-discrimination provisions in the Unruh Civil Rights Act, the Education Code, and the FEHA. Specifically, the bill clarifies that discrimination is prohibited not just on the basis of an enumerated protected characteristic (such as race, gender, or age), but also on the basis of any combination, or intersectionality, of protected characteristics. The law aims to address how certain individuals with intersectional characteristics may face unique stereotypes, leading to discrimination or harassment not experienced by others.

Compliance Tip: Existing California law requires most employers to provide regular anti-harassment training to employees. Employers should consider expanding trainings to include recognition of, and prevention of harassment based on, intersectionality. This legislative change should also be incorporated into any employee handbook, code of conduct, managerial training, complaint policy, or harassment/discrimination policy to reflect the new standard.

SB 1340: Local Enforcement of Employment Discrimination

Effective January 1, 2025, SB 1340 will expand anti-discrimination protections for employees by permitting city, county, or any other local state agencies to enforce local laws prohibiting employment discrimination on the basis of any protected class enumerated in state law, including the FEHA. The local enforcement must: (1) concern an employment complaint filed with the California Civil Rights Department (CRD); (2) occur after the CRD has issued a right-to-sue notice under Section 12965; (3) commence before the expiration of the time to file a civil action specified in the right-to-sue notice; and (4) be pursuant to a local law that is at least protective as state law. Importantly, any local enforcement will toll the one-year time limit for an employee to file a civil suit, which can greatly extend the life of an employment lawsuit.

Compliance Tip: The passage of SB 1340 provides employees with a non-litigation route to enforce local anti-discrimination laws. Such enforcement is restricted until after the issuance of a right-to-sue notice from the CRD, but invoking any local law enforcement will toll the usual one-year time limit for employees to file a lawsuit after receiving a right-to-sue notice. Employers should prioritize training and policies to prevent discrimination in the workplace and regularly consult with counsel to review local anti-discrimination laws to determine compliance.

SB 1105: Additional Sick Leave for Agricultural Employees

Existing law (the Healthy Workplaces, Healthy Families Act of 2014) mandates employers to provide paid sick leave to any employee who has worked for 30 or more days within a year of commencing his employment. Effective January 1, 2025, SB 1105 will augment existing sick leave provisions for agricultural employees and allow them to use paid sick leave to avoid smoke, heat, or flooding conditions created by a local or state emergency, including sick days necessary for preventive care due to their work or such conditions.

Compliance Tip: Agricultural employers should review and revise their leave policies to include this latest update to the Healthy Workplaces, Healthy Families Act of 2014.

AB 2499: Expansion of Protected Leave for Crime Victims

Effective January 1, 2025, AB 2499 will expand the list of crimes for which employees can take protected time off and allow employees to take protected time off to assist family members who are victims of specified crimes. Additionally, the law permits employees to use paid sick leave for these purposes.

AB 2499 is an extension of existing law that protects employees from discrimination or retaliation for taking time off for jury duty, for court appearances, or as victims of a crime (including domestic violence, sexual assault, or stalking). In addition to these enumerated crimes, AB 2499 broadens the requirement of a "crime" to a "a qualifying act of violence," which includes acts involving bodily injury or death; the exhibition or use of a firearm; or use, reasonably perceived, or actual threat of use of force. There need not have been any arrest, prosecution, or conviction to be a qualifying act of violence.

Under the new law, discrimination or retaliation against an employee for taking time off as a victim (or to assist a family member victim) of a qualifying act of violence is an unlawful employment practice under the FEHA. Employers must provide written notice to employees of their rights under this bill (1) upon hire, (2) annually, (3) upon request, and (4) at any time the employer becomes aware that an employee or their family member has become a victim.

Compliance Tip: Employers should promptly revise their employee handbooks and leave policies and provide information and training to supervisors and Human Resources personnel regarding this new category of protected leave. Additionally, they should take note of the requirements for providing notice of these rights to employees and be prepared to provide this information to employees when requested.

AB 1815: Amendments to the Definition of "Race" in Anti-Discrimination Laws

On September 26, 2024, Governor Newsom signed AB 1815, which amends anti-discrimination provisions of the California Government Code, including the FEHA and Education Code by removing the word "historically" from the definition of "race." The bill thus establishes that race is "inclusive of traits associated with race, including but not limited to hair texture and protective hairstyles," which "include but are not limited to such hairstyles as braids, locs, and twists." Importantly, AB 1815 applies retroactively as declaratory of existing law.

Compliance Tip: While the effect of the bill may seem minor, employers should review their existing employee handbooks or harassment/discrimination policies and update them to include compliant definitions of "race" and non-discriminatory standards for acceptable dress, appearance, or grooming in the workplace.

SB 399: California Worker Freedom from Employer Intimidation Act

Effective January 1, 2025, subject to certain exceptions, California employers can no longer discharge, discriminate, or retaliate against, or threaten to carry out such actions because an employee refused to attend any employer-sponsored meeting related to religious or political matters, including meetings wherein employers communicate their position to employees on matters related to labor organization. Violations may result in a $500 fine per employee, civil action against the employer, as well as enforcement by the State's Labor Commissioner.

Compliance Tip: The enactment of SB 399 notwithstanding, the federal National Labor Relations Act (NLRA) preempts state law on such meetings. Accordingly, legal challenges to the new law are likely in the new year. Nevertheless, California employers should consider making attendance at such meetings voluntary.

SB 92 and AB 2288: California's Private Attorney General Act

Enacted on July 1, 2024, SB 92 and AB 2288 introduce sweeping reforms to California's Private Attorney General Act (PAGA) and labor law enforcement. The new legislation, which applies to claims made after June 19, 2024, implements stricter standing requirements by requiring employees to have personally experienced all alleged violations. PAGA claims are now subject to a one-year statute of limitations, with the deadline set to one year and 65 days prior to the filing of the claim. The legislation also allows employers to mitigate penalties by addressing violations, such as paying unpaid wages, either before receiving a PAGA notice (reduced to 15% of default penalty) or within 60 days after (reduced to 30% of default penalty). Additionally, the reforms establish penalty caps, with a default fine of $100 per violation, increasing to $200 for repeat or malicious offenses. These changes aim to balance reducing employers' exposure to PAGA litigation while ensuring robust protections for employees.

Compliance Tip: To minimize exposure to PAGA claims, California businesses should implement a comprehensive labor law compliance program. Key preventive measures include conducting systematic wage and hour audits, developing robust written policies, providing thorough supervisor training on Labor Code requirements, and taking swift disciplinary action when management personnel fail to maintain compliance with workplace regulations. Moreover, it may not always make economic sense for an employer to cure past violations. Negotiating a lower settlement amount may be the better option depending on the circumstance.

AB 1870: Additional Information Required on Workers' Compensation Notices

Effective January 1, 2025, AB 1870 will require employers to include information in notices related to workers' compensation rights and benefits that an injured employee has the right to consult an attorney for advice and that attorneys' fees will be paid from the injured worker's award in most instances.

Compliance Tip: Once made available by the California Department of Industrial Relations, employers should ensure that they display the updated workers' compensation employee rights notice prior to January 1, 2025.

AB 2299: Employee Rights and Responsibilities and Notice Requirement

Effective January 1, 2025, AB 2299 closes a gap in California's whistleblower laws. The current law obligates employers to post notice of an employees' rights and protections under whistleblower laws. However, the law failed to provide employers with sufficient guidance on how to satisfy this notice requirement. AB 2299 directed the Labor Commissioner to develop a model notice which will satisfy the current whistleblower laws.

Compliance Tip: Employers should post the notice found here: https://www.dir.ca.gov/dlse/whistleblowersnotice.pdf. Ensure your handbook and policies regarding whistleblower rights are up to date, and provide guidance to managers and supervisors on how to respond to whistleblower complaints.

AB 2123: Paid Family Leave Requirements Reduced

Effective January 1, 2025, AB 2123 amends existing law in regard to the California Paid Family Leave (PFL) program, which provides benefit payments to employees who take time off work to: (1) care for a seriously ill family member; (2) bond with a new child; or (3) participate in a qualifying event due to a family member's military service.

Current law allows employers to require employees to take up to two weeks of unused vacation prior to using PFL benefits. Beginning January 1, 2025, employers can no longer apply that requirement.

Compliance Tip: Ahead of the new year, employers should review any policies referring to leaves of absence and Paid Family Leave to remove any outdated requirements to exhaust or use accrued company-provided benefits prior to accessing PFL benefits.

County of San Diego: Fair Chance Ordinance

Effective October 10, 2024, the ordinance covers employers in the unincorporated areas of San Diego County with 5 or more employees. It prohibits employers from taking certain criminal history factors into consideration for employment decisions, including hiring, transfers and promotions.

Compliance Tip: Employers should ensure personnel with authority to make employment decisions are aware of the limitations imposed by the Fair Chance Ordinance.

CASE LAW UPDATE

***Turrieta v. Lyft:* Plaintiffs lack automatic right to intervene in, object to, or vacate judgments in overlapping PAGA cases**

The California Supreme Court's ruling creates a "race to settle" dynamic where the first settlement could prevent other plaintiffs from pursuing similar claims against the same employer, though courts retain discretion to consider non-party objections to settlements. The decision, following California's broader PAGA reforms of July 2024, is expected to reshape litigation strategies, potentially leading to earlier case consolidation, increased engagement with state agencies during settlements, and stronger employer leverage in negotiations, while possibly encouraging greater collaboration among plaintiffs' attorneys to maintain their bargaining position.

Compliance Tip: Employers should consider implementing a proactive settlement evaluation protocol. When receiving a PAGA notice, promptly assess whether similar claims exist against your company, as settling with one plaintiff could now preclude others. Consider utilizing the new early evaluation conference option under the new reforms and, for businesses with fewer than 100 employees, take advantage of the 33-day window to submit a cure proposal to the Labor and Workforce Development Agency (LWDA). This strategic approach to early resolution, combined with documented compliance efforts, can help minimize exposure to multiple PAGA claims while potentially qualifying for reduced penalties under the new framework.

***Naranjo v. Spectrum Security Srvs., Inc.*: Good faith defense to wage statement claims**

The California Supreme Court concluded that an employer's objectively reasonable, good faith belief that it satisfied wage statement requirements is a defense to claims for penalties or damages for inaccurate wage statements under Labor Code, resolving a split among the California Courts of Appeal.

***Compliance Tip*:** Employers should continue to carefully review their wage statements and proactively consult with legal counsel with questions regarding payment of wages, meal and rest premiums, or wage statements.

***Estrada v. Royalty Carpet Mills, Inc.*: Representative PAGA claims are not vulnerable to typical class action manageability requirements**

The California Supreme Court ruled that courts cannot dismiss PAGA claims before trial on manageability grounds. Instead, trial courts may restrict the scope of evidence at trial to ensure manageability. While the recent reforms allow employers to argue for manageable evidence presentation before and during trial, this is unlikely to result in widespread pretrial dismissals of PAGA claims, given the Court's stance in *Estrada*.

Compliance Tip: Employers can strategically document significant variations in job duties, work locations, schedules, and supervision structures across the alleged aggrieved employee group. This detailed documentation of workplace diversity could help demonstrate to the court why certain evidence should be limited at trial, as attempting to present evidence for widely varying employee groups would be unwieldy and impractical.

***Quach v. California Commerce Club, Inc*: Contract waiver principles apply to arbitration agreements**

The California Supreme Court held that to determine whether the party seeking to enforce an arbitration agreement has waived its right to do so, courts should apply the same waiver principles as it does to other contracts.

***Compliance Tip*:** Since this ruling may increase claims of waiver in opposition to a party's attempt to enforce an arbitration agreement, employers should immediately investigate whether an employment dispute may be subject to an arbitration agreement, and consult with counsel before taking any action which may be construed as inconsistent with an agreement to arbitrate.

***Bailey v. San Francisco District Attorney's Office:* Single event may be sufficient to create hostile work environment**

The California Supreme Court reversed a grant of summary judgment for the employer and held that under a totality of circumstances analysis, an isolated and single use of an "unambiguous racial epithet" may be sufficiently severe to create a hostile work environment under the FEHA.

***Compliance Tip*:** Employers should update their employee handbooks and regular anti-harassment training to include notice that a single occurrence of unlawful conduct can have significant legal consequences.

Muldrow v. City of St. Louis: Modification and expansion of adverse action

The US Supreme Court's decision in *Muldrow v. City of St. Louis* makes it easier for employees to successfully sue for discrimination because it modifies and expands the definition of "adverse action." Under this ruling, a plaintiff need not show significant injury but need only show evidence of "some injury" relating to terms and conditions of employment in discriminatory decisions such as lateral transfer. Since it is likely the Court's holding will be interpreted as the new adverse action standard beyond just Title VII, almost all employment decisions now can be placed under scrutiny.

Compliance Tip: Employers should update their discrimination training and ensure employment decisions reflect the expanded definition of "adverse action." In short, if the employment decision leaves the employee worse off with respect to employment terms or conditions, it is an adverse action and exposes the employer to discrimination claims.

2025 Compliance Recommendations: What to Do Now

It is important to be aware of changes that may affect your business as non-compliance may result in serious penalties or legal liability. Annual audits, record maintenance, and policy updates are crucial to mitigating any potential exposure to your business.

DDWK is ready to assist your business with employment audits, compliance reviews, and ensuring your employee handbook, agreements, and policies are up to date. Please do not hesitate to contact our employment law attorneys at DDWK. We are here to help.