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California's New 2023 Employment Laws: What You Need to Know

Holly L. Sutton, Esq

What We Will Cover

- California Family Rights Act (CFRA) Updates: AB 1041 & AB 1949
- COVID-19 Updates: AB 1751, AB 2068, & AB 2693
- Expansion of Reproductive Rights: AB 2223 & SB 523
- Expansion of Employee Privacy Rights: AB 984 & California Privacy Rights Act of 2020
- Labor Code Update: SB 1044
- Anti-Discrimination Update: AB 2282
- New Benefits Requirement: SB 1126
- New Accommodation Requirement: AB 1632
- New Wage Transparency Law: SB 1162

AB 1041 – Expanded Family Leave Coverage Overview

- What is the California Family Rights Act (CFRA)?



AB 1041 – Expanded Family Leave Coverage

What is Changing?

- Existing law limits CFRA leave to “family members,” currently defined as a:
 - Child (biological, adopted, foster, stepchild, legal ward, or a child to whom employee stands in loco parentis)
 - Parent (biological, adoptive, foster, stepparent, legal guardian, or person who stood in loco parentis)
 - Spouse
 - Registered domestic partner
 - Grandparent
 - Grandchild
 - Sibling
- New law will add “a designated person” to the definition of a family member
- This is one person (per 12-month period) that the employee designates as a relation by blood or association equivalent to a family relationship

AB 1041 – Expanded Family Leave Coverage

Local Laws

- Under existing local ordinances in Berkeley, Emeryville, Oakland, and San Francisco, employees without a spouse or registered domestic partner, could already have a “designated person.”
- Law is currently not clear on how CFRA and local laws will interact.
 - Possibility that employee could designate one person under local ordinance and a different person under state law
 - Exercise caution when denying leave, in case it is now covered under either local or CFRA protections



AB 1949 – Additional Bereavement Leave Overview

- Effective January 1, 2023, CFRA will now also require any employers with more than 5 employees to provide unpaid bereavement leave
 - Employees (with at least 30 days of service) will be allowed up to 5 days of bereavement leave upon the death of a family member
 - Leave must be taken within 3 months of the death
- Employees may use vacation, personal time, accrued sick time, or other available compensatory time off
- If employer already has a paid bereavement leave policy, they must continue to offer that

AB 2068 – COVID-19 Workplace Posters

Overview

- Currently, employers are required to post certain health and safety posters relating to COVID-19 in the workplace
- Effective January 1, 2023, certain employers will also be required to post these notices in additional languages
- Which languages?
 - top seven non-English languages used by limited-English-proficient adults in California and Punjabi (if not already included)
- Provision is enforceable by civil penalties



AB 2693 – COVID-19 Exposure Notifications Overview

- Currently, California Labor Code Section 6409.6 requires:
 - Employers to prominently display COVID-19 notices that include:
 - The date an employee with confirmed COVID-19 was on the worksite,
 - The location of the exposure
 - Contact information for employees regarding COVID-19 related benefits
 - Contact information for employees to receive the employer's cleaning and disinfection plan
- Now, this notice can be provided through email or an existing employee portal
 - A form of communication the employer normally and already uses to communicate about employment-related matters
- Notice to public health agency no longer required for outbreak
- These notification duties are now being extended to January 1, 2024

AB 2223 – Reproductive Privacy Rights Overview

- Under the existing Reproductive Privacy Act, individuals have a right of privacy with respect to their reproductive decisions
 - Includes right to choose or refuse birth control
 - Includes right to bear children or obtain an abortion
- Now, individuals can bring a lawsuit under the Tom Bane Civil Rights Act if any employer interferes with their rights under the Reproductive Privacy Act



SB 523 – FEHA Protects Reproductive Health Overview

- This is the Contraceptive Equity Act of 2022
- Current protected categories under FEHA include but are not limited to, race, age, sex, or medical condition
- Now, an individual's reproductive health decision-making is also a protected category
 - This includes, for example, use or access to a particular, drug, device, product, or medical service for reproductive health
- Employees cannot be required to disclose their reproductive health decision-making as a condition of employment
- Employer provided healthcare plans must also now cover over the counter contraceptives and prohibit cost-sharing for vasectomies

SB 984 – Surveillance Privacy Overview

- Employers cannot use a tracking device to monitor employee unless it is necessary for the performance of the employees' duties
 - Monitoring can only happen work hours
- Employers must provide notice to employees prior to monitoring
- Employees can remove device outside of work hours and cannot be retaliated against for doing so
- Employers who do not notify can be subject to subject to civil penalties of \$250 for the initial violation, and \$1,000 per employee for each subsequent violation.



California Privacy Rights Act – Data Privacy Overview

- Up until now, employment data had been exempted from most of the CCPA's requirements
- Starting in 2023, employee data will be treated as any other commercial information, and covered employers will need to add employee and human resources data to their ongoing compliance efforts.



California Privacy Rights Act – Data Privacy What Now?

- Employers must prepare and provide a privacy notice to an employee (or a job applicant) at or before the time personal information is collected
 - For example, including a privacy policy on an application site
- Employer must enter into a Data Processing Agreement (“DPA”) with vendors that govern the treatment of personal information
- Employees must be allowed to:
 - Access personal information the employer collected or generated after 2022
 - Correct inaccurate personal information
 - Request that personal information is deleted
 - Restrict personal information to specific business purposes
 - Opt out of sale of information to third parties
- Request must be honored within 45 days

SB 1044 – No Retaliation for Emergency Time Off

Overview

- In the case of an emergency condition, employees are entitled to refuse to report to a workplace without facing retaliation
- An emergency condition is:
 - Disaster or extreme peril to safety of persons or property caused by natural forces or criminal act
 - An evacuation order
- Does NOT include a health pandemic
- Employer also cannot prevent an employee from seeking their mobile device or other communication device for emergency situations
- Employee must notify the employer of the emergency condition

AB 2282 – Expanded Definition of Hate Crimes

Overview

- Existing law prohibits placement of certain symbols/marks/ signs (including, but not limited to, a Nazi swastika, hangs nooses, or burns or desecrates crosses or other religious symbols), with the intent to terrorize a person on certain property
- Now, there are criminal penalties for such action
- Now, “places of employment” is a covered location

SB 1126 – Expanded Eligibility Under CalSavers

Overview

- Existing law defines “eligible employer” for purposes of CalSavers to mean a person or entity engaged in a business (excluding specified federal, state, and local governmental entities), with 5 or more employees
 - Those eligible employers must participate in a payroll deposit retirement savings arrangement.
- Now, employers are eligible if they have just one employee but excluded if they are sole proprietorships, self employed individuals, or business entities that only employ owners
- By December 31, 2025 all eligible employers must have a payroll deposit retirement savings arrangement if they do not have a retirement savings program

AB 1632 – Restroom Accommodations

Overview

- Business open to the public with a toilet facility for employees must also now allow any individual who is lawfully on the facility to use the toilet if they meet certain conditions:
 - Have a medical condition or use an ostomy device (may require reasonable evidence)
 - Have no public restroom immediately accessible
 - That providing access wouldn't create a health or safety risk
- Willful or gross negligence would subject employer to a civil penalty of not more than \$100 per violation



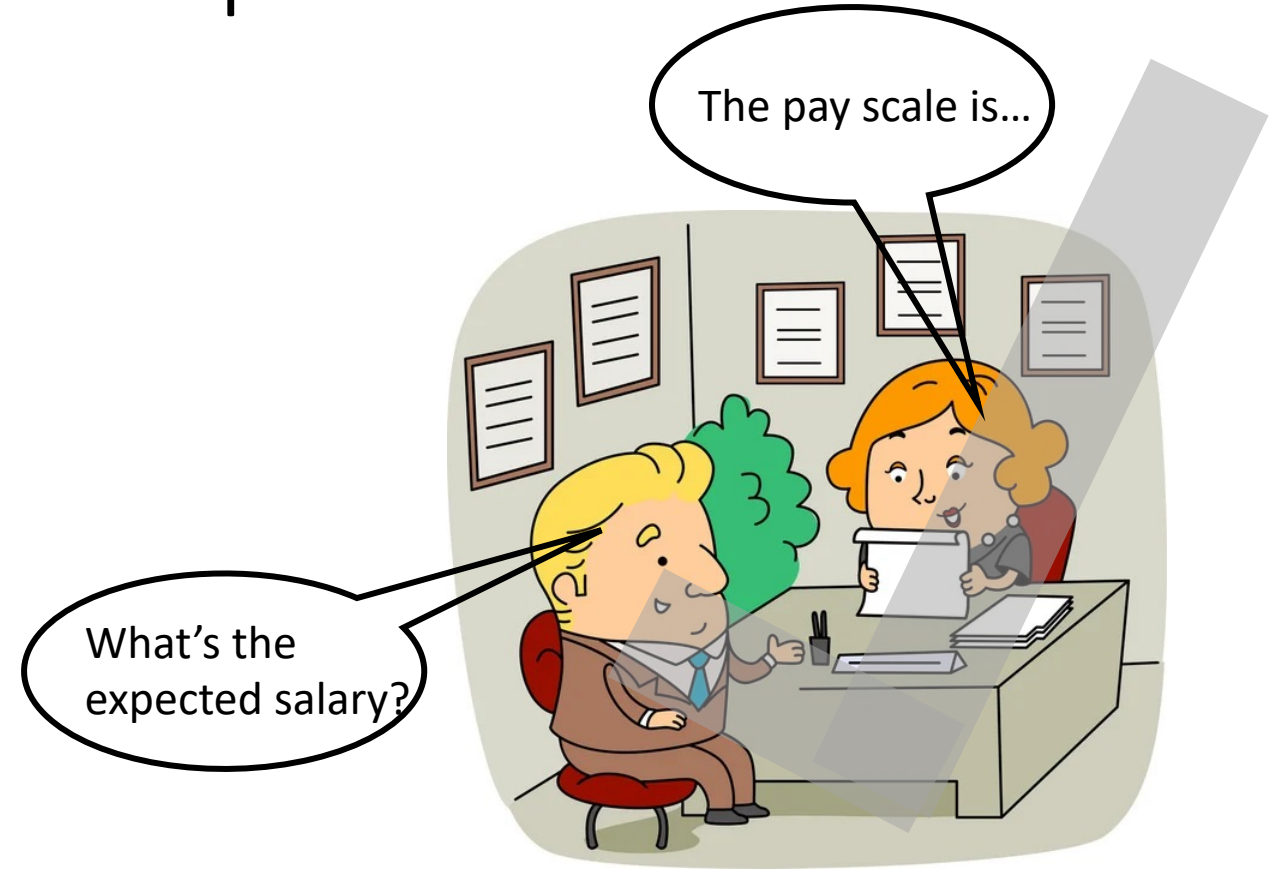
SB 1162 - New Wage Transparency Law

Overview

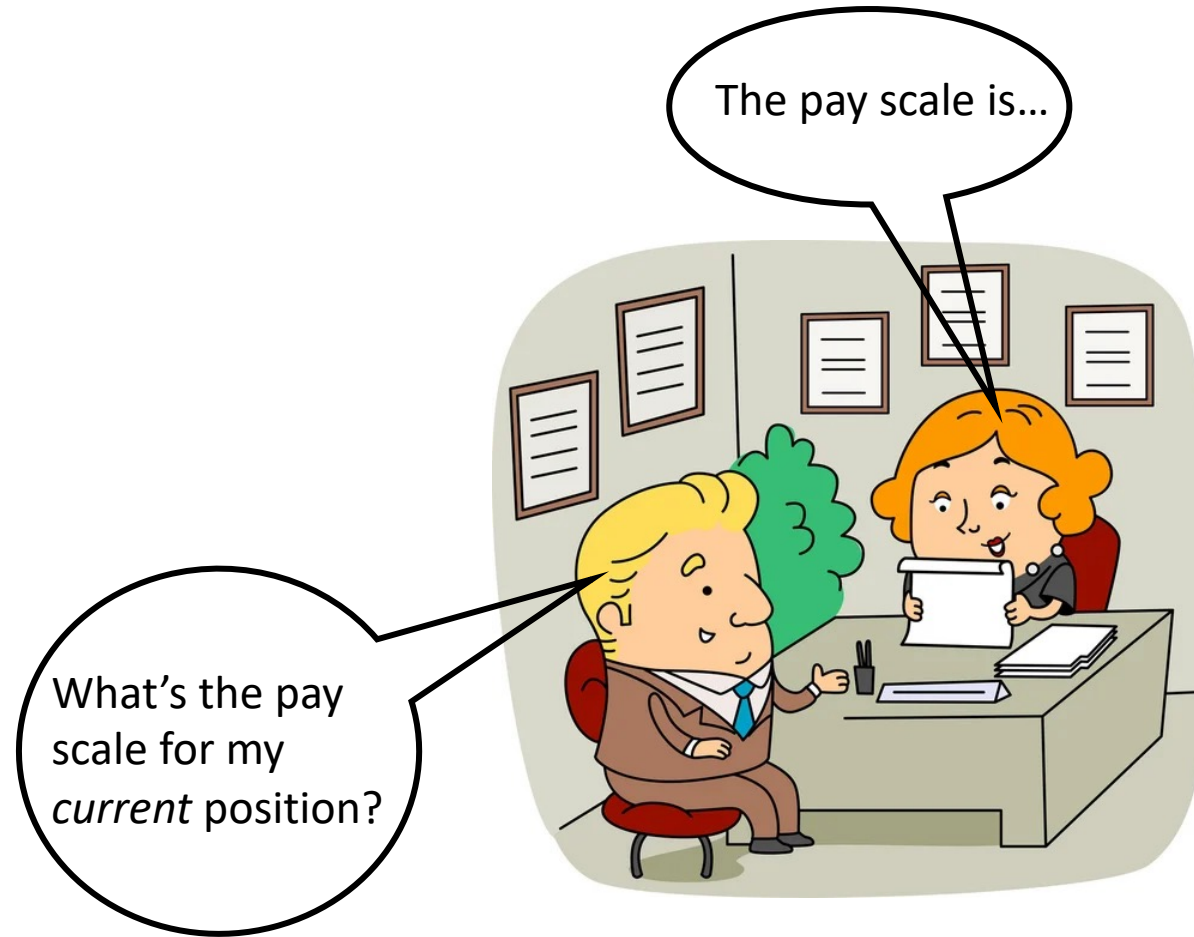
- California has passed a game-changing bill that will impose significant new requirements on California employers.
- SB 1162 prohibits consideration of salary history in pay decisions, equips applicants and employees with equal information from which to negotiate starting pay, and requires reporting of compensation to the state.
- The new requirements are set to become effective January 1, 2023, with the first pay data reports due to the California Civil Rights Department (formerly the Department of Fair Employment and Housing) in May 2023.

SB 1162 - New Wage Transparency Law

What Does Existing Law Require?



Here's What's New: Pay Disclosure Requests (for all employers)



Here's What's New: Job Postings (for employers with 15+ employees)

Sommelier

Barrio Social
Vail, CO

🕒 Posted: 25 days ago \$ \$80,000 to \$110,000 Yearly 🏢 Full-Time

Job Description

Barrio Social, one of the most anticipated restaurants in years in Colorado and is seeking a highly qualified sommelier to take on the wine program at this restaurant as well as assisting at our other well established restaurant, La Bottega. We are looking for an individual with the same passion and knowledge of their craft as we will have throughout the restaurant. Food and wine pairings as well as incorporating fortified wines into your program will be key to making this restaurant stand out.

Indoor Cycling Instructor

City of Lafayette, Colorado
Lafayette, CO

🕒 Posted: November 08, 2021 \$ \$15 to \$18 Hourly 🏢 Part-Time

Are you passionate about cycling, a master at motivating others, and love nothing more than to see others get the results they've dreamed of? Well, you're in luck! The City of Lafayette is looking for dynamic, high-energy Indoor Cycling Instructors to join our team of fitness professionals. In addition to designing, implementing, and leading safe, effective, and motivating classes to participants of various experience levels, you also need to be organized, reliable, and able to arrive at all your scheduled classes on time.

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Here's What's New: Pay Data Reporting (for employers with 100+ employees or contractors)

Job Categories	Annual Salary in Thousands	Number of Employees (Report employees in only one category)														
		Race/Ethnicity														Total Col A-N
		Hispanic or Latino		Non/Hispanic or Latino												
				Male						Female						
		Male	Female	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	White	Black or African American	Native Hawaiian or Pacific Islander	Asian	Native American or Alaska Native	Two or More races	
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O		
Executive/Senior Level Officials and Managers 1.1	1. \$19,239 and under															
	2. \$19,240 - \$24,439															
	3. \$24,440 - \$30,679															
	4. \$30,680 - \$38,999															
	5. \$39,000 - \$49,919															
	6. \$49,920 - \$62,919															
	7. \$62,920 - \$80,079															
	8. \$80,080 - \$101,919															
	9. \$101,920 - \$128,959															
	10. \$128,960 - \$163,799															
	11. \$163,800 - \$207,999															
	12. \$208,000 and over															
Median																
Mean																

What Are the Penalties?



How Should You Prepare?

1. Consult with employment counsel on your job postings and pay bands
2. Develop a process for consistently publishing pay scale information and preserving publications
3. Train managers, recruiters, and human resources professionals
4. Consider an internal audit of current wages

An audit of current wages may help identify any significant discrepancies or inequities

AB 1751 – COVID-19 Workers Compensation Overview

- Currently, the burden is on California employers to prove essential workers did not contract COVID-19 at work for Workers Compensation purposes
- Employers have to show that COVID-19 could not have been sustained in the course of employment
- AB 1751 extends the rebuttable presumption to January 1, 2024

