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**All the Legalese: What You Need to Know About the New
Pay Transparency Law and Other Legal Updates.**

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Agenda & Learning Objectives

- Pay Transparency
- Employment Law Updates for 2023
- Meal breaks
- Workers compensation

CA Pay Transparency Requirements

- Employers with 15+ employees (one in CA): include a pay scale for job postings, including internal and external postings.
 - Range of pay for the position you “reasonably expect to pay”
 - Does not include bonuses, commission, tips, equity, or benefits.
 - Includes remote positions if employee is in CA
- Employers 100+: Deadline to submit pay data report for 2023 is May 2024
 - Cal Civil Rights Division has online portal.
 - Reports on company pay data by pay band and job category
 - Sex, race, and ethnicity.
 - Goal: self-assess pay disparities in workforce.

Employment Law Updates for 2023

Minimum Salary/Minimum Wage Updates

- CA Minimum Wage is increasing from \$15.50 to **\$16.00** effective Jan 1 2024.
 - Minimum Salary for exempt employees is two times minimum wage at 40 hours per week;
 - Minimum Salary will increase to **\$66,560** to meet this threshold requirement.
- Local Ordinances: There are over 35 local minimum wage ordinances throughout California. Employers are required to comply with the higher of the state or local minimum wage that applies to them. However, local minimum wages do NOT require higher minimum salaries for exempt employees.
 - Los Angeles: \$16.78
 - San Francisco \$18.07
 - San Jose \$17.00

Note that as of July 1 2023 distinctions between large/small employers were eliminated at state level.

Employee Leave Updates

California Paid Sick Leave Increase: SB 616 increases the amount of paid sick leave employers must provide to their employees from the current minimum of three days (24 hours) to five days (40 hours) per year. The new law also allows employees to carry over five days of paid sick leave from one year to the next and increases the accrual cap from six days (48 hours) to ten days (80 hours).

New Leave for “Reproductive Loss”: SB 848 (a subset of California’s Bereavement Leave law) now requires employers with 5 or more employees to provide up to five days of leave to an employee following a “reproductive loss event,” defined as “the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.” The total amount of leave is limited to a maximum of 20 days within a 12-month period. The law also prohibits retaliation against any employee from requesting or taking leave for a reproductive loss. Employees must have worked for the employer for at least 30 days to be eligible. The leave must be taken within three months of the triggering event but is silent regarding employers’ right to request documentation.

New Guidance for Separation Agreements

Recent amendments to California law, plus guidance from National Labor Relations Board and Securities and Exchange Commission, require changes to separation agreements.

California Legislative Amendments: Focused on provisions that prevent employees from disclosing information about unlawful acts in the workplace, specifically regarding harassment and discrimination (but also any other type of unlawful conduct). Also focused on ensuring employees have sufficient time to consider agreement and consult with attorney.

National Labor Relations Board: Focused on provisions that may chill rights protected by Section 7 of the National Labor Relations Act to engage in concerted protected activity with other employees (only applies to non-supervisors). Overbroad confidentiality/non-disparagement provisions may be found to interfere with these rights.

Securities and Exchange Commission: Focused on provisions that prevent employees from contacting the SEC or attorneys to report securities law violations.

Workplace Violence Prevention Program

- **Effective July 1, 2024**
- **1) Written Plan:**
 - employers must update their existing injury and illness prevention programs (IIPP) to include workplace violence prevention plans (WVPPs) that comply with the new Labor Code section 6401.9.
- **2) Reporting Channel**
 - offer a reporting channel for incidents and threats of violence, maintain logs.
- **3) Trainings**
 - train on the plan once per year.
- Exemptions include:
 - 1) health care facilities and employers covered by California's existing workplace prevention standard for the healthcare industry;
 - 2) facilities operated by the Department of Corrections and Rehabilitation;
 - 3) certain law enforcement agencies;
 - 4) teleworkers; and
 - 5) places of employment that are not accessible to the public and have fewer than 10 employees working at a location at a given time.

Workplace Violence - cont

- **Recordkeeping**
- Employers will be required to maintain the following records for **five years**: 1) records of workplace violence hazard identification, evaluation, and correction; 2) workplace violence incident investigations; and 3) violent incident logs.
- Training records must be maintained for **one year**.
- All WVPP records required under the statute must be made available to Cal/OSHA upon request. Employees and their representatives are entitled to records reflecting hazard identification, evaluation, and correction, as well as violent incident logs, within 15 days of request.
- **Enforcement**
- Cal/OSHA will enforce the new law through its standard inspection, citation, and penalty framework. Depending on the nature of an alleged violation, potential penalties may climb as high as \$25,000 (for violations classified as "serious") or \$153,744 (for violations classified as "willful").

Non-Compete Unenforceability

Cal. Business & Professions Code 16600 prohibits “every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind”

Prohibits Non-Competes: This provision has been interpreted broadly to prohibit non-compete agreements, i.e. an agreement that the employee will not work for a competing business or engage in a similar occupation after leaving their employment.

Some Exceptions: Cal. Bus. & Prof. Code Sec. 16601 creates some exceptions to this general rule, including for the sale of goodwill of a business, or selling/disposing of ownership interest in the business entity, all/substantially all of the operating assets of a division or subsidiary along with the goodwill of that division or subsidiary, or all of the ownership interest of any subsidiary. Under these circumstances, can agree with the buyer to refrain from carrying on a similar business within a specified geographic area.

Damages/Penalties: No clear current statutory penalties or damages – can just seek injunctive relief preventing the employer from enforcing the non-compete, or a ruling that the non-compete is void and unenforceable. Maybe an argument for PAGA penalties (\$100 or \$200 per violation).

Non-Compete Unenforceability

- California's SB 699 was recently signed by Governor Newsom and bolsters California's preexisting prohibition on non-compete agreements
- SB 699 confirms that any contract that is void under Bus. Prof. Code 16600 is unenforceable regardless of where and when the contract was signed (including agreements entered into or for work performed outside of California)
- Any employer that enters into an unenforceable noncompete commits a civil violation, and an employee, former employee, or prospective employee may bring a private action for injunctive relief, damages, and attorney's fees and costs
- In addition, AB 1076 (which has been presented to Governor Newsom and is awaiting signature) would require employers to notify current and former employees in writing by February 14, 2024 that any noncompete clause or agreement is void
 - Notice given via written individualized communication delivered to the last known address and email address of the employee or former employee

No Discipline for Off-Duty Cannabis Use

- In 2022, the CA Legislature passed AB 2188, which prohibits employers from discriminating against or disciplining employees for off-duty cannabis use (effective January 1, 2024)
- SB 700, passed in 2023, expands upon these protections and makes it unlawful to request information from an applicant or employee about prior cannabis use
- Employers still permitted to test employees for impairment and maintain a drug-free workplace, but requires testing for current impairment rather than historic use

A reminder on Meal Breaks

Reminder that non-exempt employees must be provided with 30-min meal breaks for if they work over 5 hours.

- Second meal break if work over 12 hours.
- Limited ability to waive.
- Employees should clock in/out – do not automate.
- One hour penalties for failure to provide. Err on the side of employee.
- Must have written policies!

A reminder on Workers Compensation

If employee reports an injury, must provide the Form DWC 1.
Send via email when possible.

Reminder that employee's on workers compensation leave are still protected by other leave laws, and HR needs to integrate those leaves:

- FMLA/CFRA leave
- ADA/ FEHA leave
- Discretionary leave

Questions?

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