With the turmoil caused by the global coronavirus pandemic, the California Legislature was very active in 2020, passing many new laws in particular to address the impact of the pandemic, as well as to keep up with our gig economy. Furthermore, with the change in the presidential administration, we are sure to see drastic, whiplash-like changes in laws pertaining to wages, benefits, and worker protections at the federal level. Given the evolving landscape of employment law, it is critical to contact legal counsel for reviewing how these new laws impact your specific business, and developing or modifying specific policies and procedures that minimize legal liability arising from these new laws.

SB 1159 –Workers' Compensation for COVID-19 Injuries (Effective September 17, 2020; Ends January 1, 2021; Date of Injury Starting On or After July 6, 2020)

SB 1159 expands the term "injury" to include illness or death resulting from COVID-19 under certain circumstances. SB 1159 creates new rebuttable presumptions of workers' compensation compensability for two classes of employees.

First Responders and Health Care Workers Presumption: A presumption for compensability is created for certain first responders and healthcare workers who test positive for COVID-19 within 14 days of a workday occurring at a worksite that is not their home. An employer has only 30 days after the claim form is filed to deny the claim (as opposed to the typical 90 days) and otherwise may rebut the presumption only with evidence obtained after that 30-day period.

Outbreak Presumption: A presumption of compensability is created for employees whose (a) employers have five or more employees; (b) who test positive within 14 days of a workday occurring at a worksite that is not their home; **and** (c) who test positive during an "outbreak" at their workplace. There is an "outbreak" if **any one** of the following occurs within a 14-day period:

i. 4 employees test positive (if the employer has 100 or fewer employees);
ii. 4 % of employees who reported to the worksite test positive (if the employer has 100 or more employees); **or**
iii. The place of employment is ordered closed by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection of COVID-19.

For purposes of the "outbreak" presumption, an employer must report certain information to their claims administrator when the employer knows or reasonably should know that an employee has tested positive for COVID-19. Failure to do so may result in civil penalties of up to $10,000 for intentionally submitting false or misleading information, or for failing to report required information.

Under the Outbreak Presumption, an employer has only 45 days after the claim form is filed to deny the claim (as opposed to the typical 90 days) and otherwise may only rebut the presumption with evidence obtained after that 45-day period.

AB 1867 – Supplemental Paid Sick Leave
(Effective September 19, 2020; Ended December 31, 2020 or the expiration of any federal extension of the FFCRA, whichever is later)

AB 1867 covers employers that were not covered in the federal Families First Coronavirus Response Act ("FFCRA") due to the size of the employer having 500 or fewer employees. AB 1867 is the companion to the FFCRA and mandates that employers with **more than** 500 employees nationwide, and all entities employing healthcare providers or emergency responders regardless of their sizes, must provide supplemental paid sick leave to employees who are unable to work because they:

i. Must quarantine or isolate pursuant to a federal, state, or local quarantine or isolation order related to COVID-19;
ii. Are advised by a healthcare provider to self-quarantine or self-isolate because of COVID-19; or
iii. Are prohibited from working by the employer because of health concerns related to potentially transmitting COVID-19.

For full-time employees and those employees who were scheduled to work an average of 40 or more hours per week in the two weeks prior to taking COVID-19 supplemental leave, they are entitled to receive 80 hours of supplemental paid sick leave.

For part-time employees who work fixed weekly schedules, employees are entitled to receive supplemental paid sick leave equal to the number of hours scheduled to be worked over two weeks.

For part-time employees who **do not** work fixed weekly schedules, employees are entitled to receive supplemental paid sick leave equal to 14 times the average number of hours worked each day in the six months preceding the date that leave was required. For example, a part-time, nonfixed scheduled employee who worked 3 hours per day on average over the last six months would be entitled to 42 hours of supplemental paid sick leave.

An employer may not require an employee to use other paid time off, paid or unpaid leave or vacation time before or in lieu of COVID-19 supplemental paid sick leave.

Employers are also required to report supplemental paid sick leave on employees' paystubs.

Although neither the FFCRA nor AB 1867 has been extended or renewed as of the publishing of this newsletter, there is a significant chance that one or both of these laws will be extended in 2021.

AB 685 – COVID-19: Employer COVID Exposure Notification Requirements and Enhancement of Cal/OSHA Enforcement of COVID Prevention Requirements (Effective January 1, 2021)

AB 685 (1) requires employers to notify its employees who were at a worksite of all potential exposures to COVID-19 and to notify the local public health agency of outbreaks and; (2) enhances Cal/OSHA's enforcement of COVID-19 infection prevention requirements by allowing for Orders Prohibiting Use and citations for serious violations related to COVID-19 to be issued more quickly.

Employer COVID Exposure Notification Requirements

AB 685 requires employers to notify (in writing and within 1 business day) any employees, and the employers of subcontracted employees, who were on the premises at the same worksite as the person who was infectious with COVID or who was subject to a COVID-related quarantine order.

The written notification must notify employees, and employers of subcontracted employees, of their potential exposure and provide them with certain information regarding COVID-related benefits and options. The written notification must also provide information about the employer's disinfection and safety plan that that must be implemented per the guidelines of the federal Centers for Disease Control and Prevention.

An employer is further required to notify local public health agencies (within 48 hours of becoming aware of the outbreak) of any workplace "outbreaks," which are defined as 3 or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a 2-week period. An "outbreak" in a workplace is defined as 3 or more laboratory-confirmed cases of COVID among employees who live in different households within a two-week period.

Employers must maintain records of notifications for at least 3 years.

Enhancement of Cal/OSHA Enforcement of COVID-19 Infection Prevention Requirements (Enforcement Period: January 1, 2021 until January 1, 2023)

During the enforcement period, Cal/OSHA has the authority to do the following:

1. Issue an Order Prohibiting Use (OPU) to shut down an entire worksite or a specific worksite area that exposes employees to an "imminent hazard" related to COVID. An "imminent hazard" is defined as any condition or practice which poses a hazard to employees, which could reasonably be expected to cause death or serious physical harm immediately, or before the imminence of such hazard can be eliminated through normal enforcement procedures.

2. Issue citations for “serious violations” related to COVID without giving employers 15-day notice before issuance. A “serious violation” exists if there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation.

Cal/OSHA Emergency Regulations
(Effective December 1, 2020)

Effective December 1, 2020, all employers are required to implement and maintain a written COVID-19 Prevention Program that provides the following:

1. Identifying and evaluating employee exposures to COVID health hazards;
2. Implementing compliant policies and procedures to correct unsafe and unhealthy conditions (such as safe physical distancing, modifying the workplace and staggering work schedules); **and**
3. Providing and ensuring workers wear face coverings to prevent exposure in the workplace.

The Prevention Program also requires employers to train employees on how COVID is spread, infection prevention techniques, and information regarding COVID-related benefits that affected employees may be entitled to under applicable federal, state, or local laws.

In addition, the Prevention Program sets forth specific testing and notification requirements for employers to follow in the event of “outbreaks” (3 or more cases in a workplace in a 14-day period) and “major outbreaks” (20 or more cases within a 30-day period).

Finally, the Prevention Program requires employers to confidentially maintain a record of and track all COVID cases. When a COVID-related serious illness (*e.g.*, COVID-19 illness requiring inpatient hospitalization) or death occurs, the employer must report this immediately to their nearest Cal/OSHA enforcement district office.

For further information on how to implement Cal/OSHA’s Emergency Regulations, including the drafting of a compliant Cal/OSHA Pandemic Plan, please contact our office.

SB 1383– California Family Rights Act
(Effective January 1, 2021)

Prior to SB 1383, the California Family Rights Act ("CFRA") only applied to private employers with 50 or more employees (much like its federal counterpart, the Family Medical Leave Act—"FMLA"). However, the new SB 1383 expands the CFRA's scope and requirements to employers with as little as 5 or more employees, and eliminates the 75 miles of the same worksite requirement. Employers covered by the expanded CFRA are required to provide unpaid leave of absences of up to 12 weeks during each 12-month period for certain qualifying reasons to employees. For example, an eligible employee may take leave to bond with a new child of the employee or to care for themselves or a "family member" with a serious medical condition.

SB 1383 also expands the definition of the term "family members," which now includes a child, parent, grandparent, sibling, spouse, or domestic partner. This is broader than the "family members' covered under the federal Family and Medical Leave Act ("FMLA").

We expect many issues to come up with the passage of SB 1383 and its intersection/overlay with other existing laws, such as California's Pregnancy Disability Leave, and to what extent the newly expanded CFRA runs concurrently with the FMLA.

Minimum Wage Increases

As of January 1, 2021, California State's minimum wage increases to $13.00 per hour for employers with 25 employees or less, and $14.00 per hour for employers with 26 employees or more. Additionally, the following local cities and counties will see an increase in the minimum wage as well, requiring the employer to pay the higher local minimum wage effective January 1, 2021:

Daly City	$15.00
El Cerrito	$15.61
Emeryville	$16.84 **Starting July 1, 2021**: $16.84 + CPI

Fremont	**For 1-25 employees:** $13.50 **For 26 or more employees** $15.00 **Starting July 1, 2021** **For 1-25 employees:** $15.00 **For 26 or more employees** $15.00 + CPI
Half Moon Bay	$15.00
Hayward	**For 1-25 employees**: $14.00 **For 26 or more employees**: $15.00
Los Altos	$15.65
Los Angeles (city and unincorporated areas of LA county)	**For 1-25 employees**: $14.25 **For 26 or more employees:** $15.00 **Starting July 1, 2021**: $15.00
Los Angeles (county)	**For 1-25 employees**: $14.25 **For 26 or more employees:** $15.00 **Starting July 1, 2021**: $15.00
Malibu	**For 1-25 employees:** $14.25 **For 26 or more employees** $15.00 **Starting July 1, 2021**: $15.00
Menlo Park	$15.25
Milpitas	$15.40 **Starting July 1, 2021**: $15.40 + CPI
Mountain View	$16.30
Novato	**For 1-25 employees:** $14.00 **For 26-99 employees**: $15.00 **For 100 or more employees**: $15.24
Oakland	$14.36
Palo Alto	$15.65
Pasadena	$15.00
Petaluma	$15.20
Redwood City	$15.62
Richmond	$15.21
San Carlos	$15.24
San Diego	$14.00
San Francisco	$16.07 **Starting July 1, 2021**: $16.07 + CPI
San Jose	$14.45
San Leandro	$15.00
San Mateo	$15.62
Santa Clara	$15.65
Santa Monica	**For 1-25 employees**: $14.25 **For 26 or more employees**: $15.00 **Starting July 1, 2021**: $15.00
Santa Rosa	$15.20

Sonoma	**For 1-25 employees:** $14.00 **For 26 or more employees**: $15.00
South San Francisco	$15.24
Sunnyvale	$16.30

This is not an exhaustive list. Also, with the upcoming change in administration, there is a potential increase of minimum wage at the federal level and this chart is subject to change.

Along with adjustments to the minimum wage, California employers need to review the salaries of certain exempt employees. Specifically, those exempt employees who must earn a salary of at least two times the state minimum wage now must pay $54,080 or $58,240 a year as the salary (depending on if the employer has more or less than 25 employees).

AB 5, AB 2257 and Proposition 22 – Worker Classification Laws (Effective September 2020)

AB 5 was a significant development in California employment law in 2019. Except for certain exemptions, AB 5 presumes that all workers are employees, and places the burden on employers to establish that a worker is instead an independent contractor. The factors are known as the "ABC Test": (A) the worker is free from the control and direction of the hirer in connection with the performance of the work; (B) the worker performs work that is outside the usual course of the hiring entity's business; and (C) the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. AB 5 does exempt certain occupations, industries, and contractual relations from the "ABC Test".

For 2021, AB 2257 modifies and clarifies the exemptions in AB 5 – the business-to-business, the referral agency, and the professional services exemptions. AB 2257 also exempts additional professional services and music industry/performer occupations and certain bona fide business-to-business relationships, as well as referral agency relationships.

While not a legislative effort, California Proposition 22, App-Based Drivers as Contractors and Labor Policies Initiative, was on the ballot for the November 2020 election and ultimately approved. The initiative carves out an additional exemptions for app-based transportation and delivery drivers,

and in lieu adopts certain labor and wage policies for those drivers.

AB 979 – Board of Directors from Underrepresented Communities (Effective September 30, 2020; December 31, 2021 and December 31, 2022 Deadlines)

AB 979 requires publicly-held domestic or foreign corporations whose principal executive offices are located in California to have a minimum number of "directors from underrepresented communities", defined as individual[s] who self-identif[y]as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identif[y] as gay, lesbian, bisexual, or transgender.

Publicly-held corporations must have at least 1 director from an underrepresented community on its board by **December 31, 2021**. Publicly-held corporations with 5-8 directors must have at least 2 directors from underrepresented communities on its board by **December 31, 2022**. Publicly-held corporations with 9 or more directors must have at least 3 directors from underrepresented communities on its board by **December 31, 2022**.

Publicly-held corporations must also timely file board member information with the California Secretary of State, which is expected to be reported on the California Corporate Disclosure Statement annually, **within 150** days following the end of the covered corporation's fiscal year.

In conjunction with our 2019 Employment Laws Updates where we discussed SB 826 – Representation of Women on California-Based Publicly Held Company Board, the following represents the current and future diversity requirements:

By End of Calendar Year	**No. of Total Board of Directors**	**Minimum No. of Directors from Underrepresented Communities (AB 979)**	**Minimum No. of Female Directors (SB 826)**
2020	1 or more	0	1
2021	4 or fewer	1	1

	5	1	2
	6 or more	1	3
2022 and each calendar year thereafter	4 or fewer	1	1
	5	2	2
	6	2	3
	7	2	3
	8	2	3
	9 or more	3	3

AB 1947– Extended Period to File DSLE Complaints and Attorneys' Fees for Whistleblowers

(Effective January 1, 2021)

AB 1947 revises Labor Code section 98.7 to increase the time to file a complaint with the Division of Labor Standards Enforcement ("DLSE") from six months to one year. AB 1947 also authorizes courts to award reasonable attorneys' fees to plaintiffs who bring successful retaliation claims under Labor Code section 1102.5. Both of these new laws will most likely invite more retaliation/whistleblower claims.

SB 973 – Employers Pay Data Report

(Effective March 31, 2021)

SB 973 requires California employers who have 100 or more employees, and who are required to file an annual Employer Information Report (EEO-1) under federal law, to collect and submit an annual report containing two categories of information.

Similar to the federal EEO-1, the first category requires employers to report the number of employees by race, ethnicity, and gender in 10 job categories: executive or senior-level officials and managers; first or mid-level officials and managers; professionals; technicians; sales workers; administrative support workers; craft workers; operatives; laborers and helpers; and service workers.

The second category requires employers to report the number of employees by race, ethnicity, and gender whose annual earnings fall within each of the pay bands used by the U.S. Bureau of Labor Statistics in the Occupational Employment Statistics survey. This report must also include the total number of hours worked by each employee in each pay band during the reporting year.

Employers must submit their pay data reports to the California Department of Fair Employment and Housing ("DFEH") on or before March 31, 2021, and then annually thereafter.

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