



Welcome to the first issue of [Murphy Austin's Employment Law News](#), Volume 3. As always, a new year brings new laws that California employers need to be aware of. We recommend that you update your employee handbooks to reflect important changes in the law discussed below. And, of course, a new year brings new required posters, in particular from the EEOC and Cal/OSHA.

The good news is that Cal/OSHA's Standards Board has approved a non-emergency COVID-19 regulation, which will become effective when the Office of Administrative Law approves the final text, expected at some time in January 2023. The change from an emergency to a non-emergency regulation means employers can expect less change in the rules governing their COVID-19-related obligations.

And – just a note – in case you missed it, California's Department of Fair Employment and Housing (DFEH) has changed its name to the California Office of Civil Rights. You should update that in the appropriate places in your discrimination and harassment policy. (Note: If your policy does not reference that department at least twice, then your policy is likely outdated.)

Wishing you a happy – and compliant – new year!

Sincerely,

Shawn M. Joost, Partner

Murphy Austin Labor and Employment Law Team



CHANGES IN EMPLOYMENT LAW

What's New in 2023?

By Shawn M. Joost

Important new laws effective January 1, 2023, include:

Minimum Wage: The small-employer phase-in has ended. All California employers must comply with a minimum wage of \$15.50 per hour starting January 1.

Exempt Employee Salary Threshold: For most “exempt” employee classifications, the employee must make at least twice the minimum wage. With the raise in the minimum wage, the exempt salary threshold is now \$64,480/year (\$5,373.33/month).

Agricultural Worker Overtime: Small agricultural employers (those with 25 or fewer employees) are still moving in stages toward “regular” overtime requirements. As of January 1, these employers must pay their employees overtime for hours worked over 9 in a day or 50 in a week.

Paid Sick Leave: As you know, an employee can take paid sick leave to care for family members (as defined). Employees can now also take paid sick leave to care for a “designated person,” which is defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” The designated person may be identified by the employee at the time the employee requests the leave. Employees are limited to identifying one designated person per 12-month period. ([AB 1041](#))

California Family Rights Act: Similarly, an employee may now take leave under the CFRA to care for a “designated person.” ([AB 1041](#))

Bereavement Leave: Employers with five or more employees must provide up to five unpaid days of bereavement leave upon the death of a “family member.”

Bereavement leave is unpaid unless the employer has an existing policy that provides for paid leave or if the employee has accrued leave, including vacation time or sick leave, which they may elect to use. Employers are permitted to request documentation. The bereavement leave does not need to be taken consecutively, but must be completed within three months of the death. ([AB 1949](#))

Emergency Conditions: Employers may not prevent or take action against employees who have a reasonable belief that a workplace is unsafe due to an emergency condition and who, therefore, leave or refuse to report to that workplace (with exceptions for designated safety and health employees).

In addition, employers may not prohibit workers from using their mobile devices or otherwise communicating to seek emergency assistance, to assess the situation, or to verify the safety of another person.

An emergency condition is defined as a condition of disaster or extreme peril caused by natural forces or a criminal act; or an order to evacuate the workplace, a worker’s home, or a worker’s child’s school due to natural disaster or a criminal act. It does not include a health pandemic. ([SB 1044](#))

Pay Transparency: Employers must provide the pay scale for a position upon reasonable request by an applicant. This information must also be provided to current employees upon reasonable request.

Employers with more than 15 employees must provide pay scale information in any job posting. Such employers using a third-party to announce, post, publish, or otherwise make a job posting, must provide the pay scale to the




third-party and the third-party must use it in the job posting.

Employers must maintain records of job title and wage rate history for each employee throughout their employment and three years after employment ends.

Employers of 100 or more employees must submit a pay data report to the Civil Rights Department of the Business, Consumer Services, and Housing Agency, due on the second Wednesday of May each year. The Labor Commissioner's office published a helpful [FAQ](#) for employers, which addresses common issues regarding the new law. ([SB 1162](#))

Reproductive Rights: The list of “protected categories” of characteristics for which discrimination and harassment are prohibited has expanded to include reproductive health decision-making. ([SB 523](#))



COVID-19 – UPDATE

New COVID-19 Laws and Regulations

By Shawn M. Joost

The good news: Employers now have the option to post a notice of potential COVID-19 exposure at the worksite (and on existing employee portals) instead of providing written notice. ([AB 2693](#))

The not-so-good news: The rebuttable presumption that an employee's illness resulting from COVID-19 was sustained in the course of employment for purposes of workers' compensation benefits was extended to January 1, 2024. ([AB 1751](#))



The new Cal/OSHA Non-Emergency COVID-19 Regulation (which will not be effective until approved by the Office of Administrative Law, anticipated in January 2023) provides some good news for employers. “Exclusion pay” is being removed, but employers must still provide notice to employees excluded from the workplace of benefits they may be entitled to use, such as sick leave or workers' compensation benefits. In addition, outbreak protocols may now end if an employer has one or fewer cases in a two-week period, instead of zero.

The regulation retains the “close contact” definition adopted by the California Department of Public Health (CDPH) last summer: For “indoor spaces larger than 400,000 cubic feet *per floor*, a close contact is ... being within six feet for a cumulative total of 15 minutes or more over a 24-hour period.” Alternatively, for “indoor airspaces of 400,000 cubic feet or fewer per floor, a close contact is ... sharing the same indoor airspace as a COVID-19 case for 15 minutes or more over a 24-hour period.”

Finally, the regulation allows the COVID-19 Prevention Policy to be included in your Illness and Injury Prevention Plan (IIPP) or maintained as a separate document.

As always, we recommend that you read the [entire text of the new regulation](#) to ensure that you are in compliance.



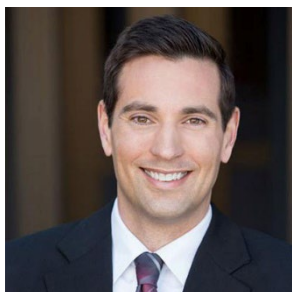
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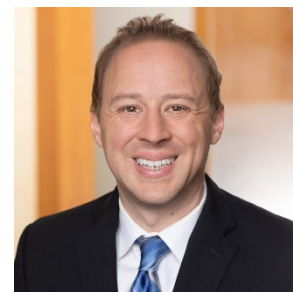
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