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Looking Beyond 2020: Eighteen New Employment Laws Employers With Operations In California Need To Know For 2021

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The end of the year is still months away, but 2020 already has secured itself as one of the most monumental years in modern history. Despite the turbulence and uncertainty of this year, however, one annual event that remains unchanged is the enactment of a wave of new employment laws by the California legislature and governor, imposing additional administrative burdens and legal risks on employers with operations in the state. Not surprisingly, a handful of this year's 18 new employment laws relate to the coronavirus pandemic, which has resulted in thousands of Californians losing their lives, millions of workers losing their jobs, and unprecedented numbers seeking government assistance to make ends meet. The remainder of the new laws continue the past trend of creating more potential legal claims in various areas, including wages and hours, leaves of absence, workplace discrimination, and retaliation.

This year's laws warrant the immediate and serious attention of all employers who have employees in California. Unless otherwise specified, the new laws discussed below take effect on January 1, 2021.

Laws Related to COVID-19

AB 685 (Notice and Reporting Obligations for COVID-19 Workplace Exposure)

Since the onset of the coronavirus pandemic, employers have wondered what actions, if any, they must take upon learning that one of their employees has been infected with or exposed to COVID-19. AB 685 sets out an employer's obligations, and enhances the ability of the California Division of Occupational Health and Safety's ("Cal/OSHA") to enforce health and safety standards to prevent workplace exposure to and spread of COVID-19. There are three key components of this new law.

Notice by Employer of Potential Exposure

Under AB 685, if an employer receives a notice of "potential exposure to COVID-19," the employer must provide a written notice *within one business day* to: (1) all employees, and the employer(s) of subcontracted employees, who were at the same worksite as the "qualifying individual" within the infectious period (currently defined as 10 days by the California Health Department) *and* who may have been exposed to COVID-19, and (2) the union(s) that represents the employees. The notice also must inform these parties of the disinfection and safety plan that the employer plans to carry out in accordance

with CDC guidelines, and provide the employees (and their union, if any) information regarding the COVID-19-related benefits to which they may be entitled under applicable laws.

The written notice must be given in the same manner in which the employer normally communicates employment-related information. It may be distributed through any means, so long as it can reasonably be anticipated to be received by the employee within one business day after sending it (*e.g.*, personal delivery, email, or text message). The written notice must be in both English and the language understood by the majority of the employees. To preserve employee privacy, the notice to employees must not disclose the identity of the qualifying individual. In contrast, the written notice to any unions must include the same information required in an incident report in a Cal/OSHA Form 300 log, which includes the employee's name. Employers must maintain records of the written notice for at least three years.

The employer's notification obligations are triggered upon receiving notice from (1) a public health official that an employee was exposed to a "qualifying individual," (2) an employee (or their emergency contact) that they are a "qualifying individual," (3) the result of test required by the employer showing that the employee is a "qualifying individual," or (4) a subcontractor that one of its employees is a "qualifying individual" and was at the employer's worksite.

A "qualifying individual" is a person who:

- has a laboratory-confirmed case of COVID-19,
- has a positive COVID-19 diagnosis from a licensed health care provider,
- has been ordered to isolate by a public health official due to COVID-19, or
- has died due to COVID-19.

Report to Local Health Authorities of Outbreak

AB 685 also imposes obligations to report a COVID-19 "outbreak," which it defines "as three or more laboratory-confirmed cases of COVID-19 among employees who live in different households within a two-week period." In such a case, *within 48 hours of learning this information*, the employer must notify the local public health agency of the names, number, occupation, and worksite of the employees who are the qualifying individuals, the employer's business address, and the NAICS code of the worksite. An employer that has an outbreak subject to these provisions must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

AB 685, to allow the public to track COVID-19 outbreaks, requires the California Health Department to make certain information on outbreaks publicly available on its website. Local public health departments and Cal/OSHA must also provide a link to this page on their websites.

Cal/OSHA Enforcement Changes

AB 685 currently authorizes Cal/OSHA to prevent entry to a place of employment or prohibit an operation or process if it determines that the place of employment, operation, or process exposes workers to an "imminent hazard." AB 685 amends section 6325 of the Labor Code to provide that Cal/OSHA can also prohibit operations when, in its opinion, a worksite or operation "exposes workers to the risk of infection" of COVID-19 so as to constitute an imminent hazard. Any such prohibition will be limited to the immediate area in which the imminent hazard exists.

AB 685 also modifies the process for when Cal/OSHA intends to issue a serious citation under Labor Code section 6432. Under the current statutory framework, before issuing a citation for a "serious violation" at a place of employment (*i.e.*, "there is a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation"), Cal/OSHA must (1) make a reasonable attempt to determine and consider various mitigating factors, such as the training that the employer gives its employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards, and (2) issue a pre-citation containing the alleged violation descriptions it intends to cite as serious, providing the employer with an opportunity to submit rebuttal evidence and engage in dialogue with Cal/OSHA about why it believes no serious violation exists. AB 685 eliminates the pre-citation process and authorizes Cal/OSHA to immediately issue a citation alleging a serious violation relating to COVID-19 before considering any mitigating factors that may be presented by the employer.

AB 685 remains in effect until January 1, 2023.

SB 1159 (Presumption of Workers' Compensation Liability for COVID-19 Illness Claims)

On May 6, 2020, Governor Newsom issued Executive Order N-62-20, which created a rebuttable presumption that a COVID-19 infection occurred at work and was a work-related illness *if* an employee received a positive test for COVID-19 or a doctor's diagnosis of COVID-19 followed by a positive COVID-19 test within 30 days of the initial diagnosis *and* the employee performed labor at the place of employment (not while telecommuting) at the employer's direction on or after March 19, 2020.

SB 1159 codifies the work-related COVID-19 presumption created by Executive Order N-62-20 and provides new rebuttable presumptions that an employee's illness related to the coronavirus is an occupational injury and therefore eligible for workers' compensation benefits if specified criteria are met for two categories of employees who get sick or injured due to COVID-19 on or after July 6, 2020.

Covered Employees

New Labor Code section 3212.87 creates a presumption of compensable illness to certain firefighters, peace officers, fire and rescue coordinators, health facility workers who provide direct patient care or are custodial workers at the health facility, registered nurses, medical technicians, providers of in-home supportive services, and employees who provide direct patient care for a home health agency who have tested positive for COVID-19 within 14 days after a day that they performed labor or services at their employee's place of employment at their employer's direction *(i.e.*, the First Responders and Health Care Workers presumption).

For all other types of workers, under new Labor Code section 3212.88, any worker who suffers an illness or death related to COVID-19 after July 6, 2020 is presumed to have suffered an occupational injury, and is therefore entitled to workers' compensation insurance benefits (*i.e.*, the Outbreak presumption) if all of the following circumstances exist:

- The employee tests positive for COVID-19 within 14 days after a day that the employee performed labor or services at the employer's direction at the employee's "specific place of employment."
- The work was performed on or after July 6, 2020.
- The employee's positive test occurred during a period of an "outbreak" at the employee's "specific place of employment."

What is a "Specific Place of Employment"?

"A specific place of employment" is defined in the new law to mean "the building, store, facility, or agricultural field where an employee performs work at the employer's direction," and specifically excludes "the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence."

What is an "Outbreak"?

SB 1159 defines an "outbreak" differently from AB 685. Under SB 1159, an outbreak is defined to have occurred if within 14-calendar day period one of the following events has happened:

- For employers of 100 employees or less at a specific place of employment, four employees tested positive for COVID-19.
- For employers of more than 100 employees at a specific place of employment, 4% of the number of employees who reported to the specific place of employment during the 14-day period tested positive for COVID-19.
- A specific place of employment is ordered to close 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 with COVID-19.

"Disputable" Presumptions

The presumptions created by SB 1159 are "disputable" by the employer. This burden can be met by presenting evidence of measures in place to reduce potential transmission of COVID-19 in the employee's place of employment or that there were non-occupational risks that could have caused the employee's COVID-19 infection.

If an employee is eligible for the First Responders and Health Care Workers presumption, the employer has up to 30 days to investigate and make a decision whether to accept or deny the claim for workers' compensation benefits. If the employer fails to reject the claim within that 30-day period, the injury or illness is presumed compensable, and the employer can then rebut the presumption with evidence it first discovered after the expiration of the 30-day period. The claim-rejection period is extended to 45 days for employees who are eligible for the Outbreak presumption.

Benefits

If either presumption is not successfully disputed, the employee is entitled to "full hospital, surgical, medical treatment, disability indemnity, and death benefits." An employee who has paid sick leave benefits for COVID-19, however, must exhaust them before any workers' compensation temporary disability or similar benefits are payable.

Reporting Obligation

SB 1159 also creates new reporting requirements for employers related to the Outbreak presumption. When an employer "knows or reasonably should know that an employee has tested positive for COVID-19," the employer must report all of the following information to its workers' compensation claims administrator within three (3) business days:

- An employee has tested positive. The employer may not provide any personal identifying information of the employee who tested positive, unless the employee has asserted that the

infection is work-related or has submitted a workers' compensation claim related to the infection.

- The date the employee tested positive (which is the date the specimen was collected for testing).
- The address(es) of the specific place(s) of employment the infected employee worked during the 14-day period preceding the date the employee tested positive.
- The highest number of employees who reported to work at the infected employee's specific place of employment in the 45-day period preceding the last day the infected employee worked at the specific place(s) of employment.

A civil penalty of up to $10,000 may be imposed by the Labor Commissioner if an employer intentionally submits false or misleading information. If this penalty is unsuccessfully contested by the employer, the Labor Commissioner is entitled to recover legal costs and attorney fees.

This new law took effect on September 17, 2020, and remains in effect through January 1, 2023.

AB 1867 (Supplemental COVID-19 Paid Sick Leave)

Under AB 1867, all private employers with 500 or more employees must provide COVID-19 supplemental paid sick leave ("SPSL") for their California employees who must leave their home to perform work for a covered employer if they are unable to work due to any of the following circumstances: (1) the covered worker is subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) the covered worker is advised by a health care provider to self-quarantine or self-isolate due to concerns related to COVID-19; or (3) the covered worker is prohibited from working by the covered worker's hiring entity due to health concerns related to the potential transmission of COVID-19. A detailed discussion of the SPSL provisions of AB 1867 is in our earlier alert here.

Unrelated to COVID-19, AB 1867 also establishes a small employer family leave mediation pilot program at the Department of Fair Employment and Housing ("DFEH"), which allows a small employer *(i.e.*, 5 to 19 employees) or an employee of a small employer to request all parties to participate in the DFEH's dispute resolution process within 30 days of receipt of or obtaining a right-to-sue notice. If such request is made, the employee cannot pursue any civil action until the mediation is completed. This program will expire on January 1, 2024, unless extended before then.

Wage and Hour

AB 2257 (Independent Contractors)

Last year, the governor signed AB 5 into law, codifying the California Supreme Court decision in *Dynamex Operations West v. Superior Court* (2018), which adopted the so-called "ABC test" for determining who can be classified as an independent contractor. *See* our AB 5 alert here. AB 5 specified the categories of employees for which the long-standing, previous "*Borello* test" would remain the standard for determining who is an employee. Since the enactment of AB 5, there have been over 30 proposed bills seeking to modify or repeal it. AB 2257 retains the ABC test, but introduces modifications to some of the current exceptions and adds new exceptions to the ABC test. We provide a high-level summary of the new law here, but employers should review the extensive and very detailed new law and consult with legal counsel to determine its applicability.

AB 2257 makes numerous changes to the "business-to-business" exception to the ABC test, including specifying the terms that must be included in a written contract, providing that a business service provider's residence is a permissible place of business, and limiting the type of work materials that must be provided by the business service provider. It also waives the requirement that the business service provider must provide services directly to the contracting business if employees are doing the contracted work.

AB 2257 also makes changes to the exception for "referral agencies." It clarifies various provisions, such as how a service provider certifies licensure, the freedom of a service provider to maintain its own clientele, and the ability of a service provider to set or negotiate its terms with clients, as well as establishing its rates without deduction by a referral agency. It also expands the type of qualifying services for the exemption to include graphic design, web design, tutoring, consulting, youth sports coaching, caddying, wedding planning, wedding and event vending, yard cleanup, captioning, and interpreting and translating services.

In addition, this new law clarifies that the *Borello* test (not the ABC test) applies, to the following occupations:

- Recording artists, songwriters, lyricists, composers, proofers, managers of recording artists, record producers and directors, musical engineers, musicians engaged in creating sound recordings, vocalists, photographers working on album covers, and other press and publicity photos relating to recordings, and independent radio promoters;
- Musicians or musical groups for the purpose of a single-engagement live performance event;
- Individual performance artists;
- Licensed landscape architects;
- Freelance translators, content contributors, advisors, narrators, cartographers, producers, copy editors, and illustrators;
- Registered professional foresters;
- Real estate appraisers;
- Home inspectors;
- Persons who provide underwriting inspections, premium audits, risk management or loss-control work for the insurance industry;
- Manufactured housing salespersons;
- Persons engaged in conducting international and cultural exchange visitor programs;
- Competition judges with specialized skill sets;
- Digital content aggregators who serve as licensing intermediaries for digital content;
- Specialized performers hired to teach a master class for no more than one week; and

- Feedback aggregators.

Under AB 5, freelance writers, photographers, photojournalists, editors, and newspaper cartoonists automatically become employees of a publisher if they contract for more than 35 submissions in a single year. AB 2257 eliminates the automatic employee provision based on the number of submissions, and provides that these positions (and additional, similar positions) are covered by the *Borello* test.

The bill took effect on September 4, 2020.

AB 5 likely will be further revised and challenged in court in the years to come. One of the most highly publicized challenges to AB 5 will be decided in the November 2020 statewide election with California voters considering Proposition 22, a ballot initiative that would exempt app-based rideshare and delivery drivers from AB 5, and subject to certain conditions, deem them to be independent contractors.

AB 1512 (Limited Exemption from On-Duty Rest Periods for Union-Represented Security Guards)

Under California law, nonexempt employees must be authorized and permitted to take a 10-minute rest period for every four hours worked or major portion thereof. In *Augustus v. ABM Security Services, Inc*., 2 Cal. 5th 257 (2016), a private security company argued that an employee does not need to be relieved of all duty during rest periods and, therefore, that its security officers could carry radios and be on call during their rest periods. The Supreme Court rejected the argument, holding that an employer has an affirmative responsibility to relieve its employees of all work responsibilities during their rest periods.

AB 1512 amends California Labor Code section 226.7 and exempts certain union-represented security guards from the holding in *Augustus*. Under AB 1512, qualifying security officers may be required to remain on premises and on call during rest periods, including by carrying and monitoring communication devices. If the security officer's rest period is interrupted by being "called upon to return to performing the active duties of the security officer's post prior to completing the rest period," the security officer must be permitted to restart his or her rest period as soon as practicable. If the security officer is not able to take a compliant rest period, the security officer must receive a premium of one hour's of pay at the security officer's regular hourly rate of pay.

The new law applies only to employees who are registered as security officers pursuant to the Private Security Services Act and employed by a private patrol operator registered pursuant to the Private Security Services Act, and who are covered by a collective bargaining agreement that includes terms for (1) the wages, hours of work, and working conditions of employees, (2) rest periods, (3) final and binding arbitration of disputes concerning application of its rest period provisions, (4) premium wage rates for all overtime hours worked, and (5) a regular hourly rate of pay of not less than one dollar more than the state minimum wage rate.

AB 1512 does not provide a defense to rest period violation cases filed before January 1, 2021. The law is effective until January 1, 2027, unless it is extended before then.

AB 2479 (Rest Periods in Petroleum Facilities)

Section 226.75 of the Labor Code currently provides a narrow exemption from the requirement that employees must be relieved of all duties during rest periods for union-represented employees who hold a safety-sensitive position at a petroleum facility and who must be available to respond immediately to emergencies, and therefore, must stay on the premises and carry and monitor a communication device

during rest periods. This exemption is set to expire on January 1, 2021. AB 2479 extends the exemption to January 1, 2026.

AB 1947 (Expanded Labor Code Retaliation Protections)

Under Labor Code section 98.7, employees who believe that their employment was terminated or that they suffered an adverse employment action in violation of any provision of the Labor Code may file a complaint with the Labor Commissioner within six months after the violation. Once the complaint is filed, the Division of Labor Standards Enforcement ("DLSE") investigates the matter, and if a violation is found, the employer may be ordered to reinstate the employee, pay back wages or lost benefits, or provide some other remedy. AB 1947 extends the deadline for filing a complaint with the DLSE to one year.

Labor Code section 1102.5 protects employees who, in good faith, have disclosed or threatened to disclose, or are believed to have disclosed, violations of law or regulations at the workplace to law enforcement, a government agency, a supervisor, or any person at the employer with authority to investigate such a violation. Currently, employees who prevail on a claim for violation of section 1102.5 may obtain damages, but not an award of attorneys' fees. AB 1947 authorizes a court to award reasonable attorneys' fees to a worker who succeeds on a retaliation claim under section 1102.5.

AB 3075 (Enhanced Enforcement Mechanisms for Wage/Hour Judgments)

AB 3075 was enacted in response to concerns that some employers attempt to avoid liability for unpaid wages by creating multiple subsidiaries or dissolving the company and reincorporating, making it difficult or impossible to enforce a judgment. This new law attempts to prevent such liability shields by requiring each party to the creation of a new corporation to attest under penalty of perjury that they have no outstanding final judgments issued to them for violations of any wage order or provision of the Labor Code. AB 3075 also provides that whether a company is a "successor employer" for purpose of collecting a judgment based on a violation of the Labor Code is determined based on the existence of one or more of the following factors: (1) the company uses substantially the same facilities or substantially the same workforce to offer substantially the same services as the predecessor employer, (2) it has substantially the same owners or managers that control the labor relations as the predecessor employer, (3) it employs as a managing agent any person who directly controlled the wages, hours or working conditions of the affected workforce of the predecessor employer, or (4) it operates a business in the same industry and the business has an owner, partner, officer, or director who is an immediate family member of any owner, partner, officer, or director of the predecessor employer.

Leaves of Absence

SB 1383 (Expansion of Family Care and Medical Leaves)

The California Family Rights Act ("CFRA"), like the federal Family and Medical Leave Act ("FMLA"), entitles an eligible worker of an employer with 50 or more employees to take up to 12 workweeks of unpaid, job-protected leave during a 12-month period for specified family care and personal medical reasons, including time to bond with a new child through birth, adoption, or foster care placement. SB 1383 expands the coverage and scope of CFRA.

Under SB 1383, CFRA coverage is expanded to all employers with five or more employees. As a result, the New Parent Leave Act (Government Code section 12945.6), which was enacted in 2018 and provided CFRA-like bonding leave rights for employees of employers with between 20 and 49 employees is repealed, effective January 1, 2021.

The CFRA currently provides a right to take the provided amount of leave to care for the employee's child (defined as a minor child unless the child is an adult, dependent child), parent, or spouse who has a serious health condition, or to bond with a newborn or newly adopted or placed foster child. SB 1383 expands the scope of the law to include leaves (1) to care for a grandparent, grandchild, sibling, or domestic partner who has a serious health condition, (2) to care for an adult child and child of a domestic partner with a serious health condition, and (3) to be with a spouse, domestic partner, child, or parent in the Armed Forces of the United States due to a qualifying exigency related to covered active duty or call to covered active duty. Although the new law includes a definition of the term "parent-in-law," this term is not included in any of the leave categories, and thus SB 1383 does not create a right to take CFRA leave to care for a parent-in-law with a serious health condition.

SB 1383 makes two additional material changes to the CFRA:

- Under current law, an employer may limit co-worker spouses/domestic partners to a combined total of 12 weeks of family care leave to bond with a newborn, newly adopted, or newly placed foster child. SB 1383 removes that limitation, and allows each of the co-worker spouses/domestic partners to take their full 12 weeks of family care leave for bonding for a combined total of up to 24 weeks.

- Currently an employer may deny reinstatement to an employee who takes CFRA leave where the employee is among the highest paid 10% of the employer's employees. SB 1383 eliminates this so-called "key employee" exemption and requires an employer to reinstate all employees who return from a covered leave within 12 weeks.

AB 2017 (Employee Designation of Reason for Use of Sick Leave)

As originally enacted, California's "Kin Care" law (Labor Code section 233) gave employees the right to use up to half of their annually accrued and available employer-provided sick leave to care for an ill family member. With the enactment of the Healthy Workplace, Healthy Families Act in 2014, the reasons for which an employee could use sick leave were expanded. Current law allows the employer to determine how to apply available sick leave to an employee's absences for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member, or for time off related to domestic violence, sexual assault, or stalking. AB 2017 gives employees the "sole discretion" to designate the reason for which they use their available sick leave.

AB 2992 (Expansion of Crime Victim Leaves)

Under California Labor Code sections 230 and 230.1, an employer is prohibited from discharging, retaliating against, or otherwise taking any adverse action against a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain relief, such as obtaining a restraining order; seeking medical attention for injuries caused by domestic violence, sexual assault, or stalking; or obtaining psychological counseling related to an experience of domestic violence, sexual assault, or stalking. AB 2992 expands the leave protections provided under sections 230 and 230.1 to victims of any violent crime, and to immediate family members of homicide victims. Employees are entitled to the leave "regardless of whether any person is arrested for, prosecuted for, or convicted of, committing the crime."

Employees may be required to verify their need for the leave, but this can be done by providing a written and signed statement certifying that the absence from work was due to a purpose authorized under Labor Code Section 230.1. Documentation from a victim advocate satisfies this requirement.

AB 2399 (Expansion of Paid Family Leave Benefits for Military Exigencies)

California's state-funded family temporary disability insurance program known as Paid Family Leave ("PFL") provides up to six weeks of partial wage replacement benefits to individuals who take time off work to care for a seriously ill child, spouse, parent, or domestic partner, or to bond with a newborn, newly adopted or newly placed foster child. In 2018, the PFL program was expanded to provide the benefits for time off to be with a family member who was being deployed on active duty in connection with a military exigency. AB 2399 expands the definition of "military member" to include a child, spouse, domestic partner, or parent of the employee, where the military member is on covered active duty or is called to active duty in the Armed Forces of the United States.

Discrimination and Harassment

SB 973 (Pay Data Reporting)

SB 973 requires that, on or before March 31, 2021, and on or before March 31 each year thereafter, a private employer with 100 or more employees and who is required to file a federal EEO-1 report must submit a pay data report to the Department of Fair Employment and Housing ("DFEH") that covers the prior calendar year. A detailed discussion of this new law is in our prior alert here.

AB 979 (Corporate Boardroom Diversity)

In 2018, then-Governor Brown signed SB 826 into law, which added Section 301.3 to the California Corporations Code, requiring publicly traded companies to place a minimum number of women on their board of directors. AB 979 is modeled after that law and requires all publicly held companies whose principal executive offices are located in California to have a minimum number of directors from "underrepresented communities" on their board of directors. It defines "director from an underrepresented community" as "an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender."

There are two temporal benchmarks that covered corporations must satisfy: (1) by the end of calendar year 2021, each publicly held corporation whose principal executive offices are located in California must have a minimum of one director from an underrepresented community on its board, and the corporation may increase the number of directors on its board to comply with this requirement, and (2) by the end of calendar year 2022, such companies must comply with the following:

- If its number of directors is nine or more, the corporation must have a minimum of three directors from underrepresented communities.
- If its number of directors is more than four but fewer than nine, the corporation must have a minimum of two directors from underrepresented communities.
- If its number of directors is four or fewer, the corporation must have a minimum of one director from an underrepresented community.

The Secretary of State is required to file a report by March 1, 2022, identifying the affected corporations and reporting their compliance. The Secretary of State also is authorized to impose fines for violations of the new law in the amount of $100,000 for a first violation and $300,000 for a subsequent violation.

SB 826 has been the subject of multiple lawsuits challenging its constitutionality. It is anticipated that AB 979 will face similar challenges.

AB 3175 (Age-Eligible Sexual Harassment Training)

In 2018, in response to the Me Too movement, California enacted a law requiring sexual harassment prevention training ("SHPT") for minor actors between the ages of 14 and 17 (age-eligible minors). Under that law, age-eligible minors and their parents or legal guardians are required to attend or otherwise participate in SHPT before they can obtain a permit to work in the entertainment industry.

AB 3175 clarifies that the minor must be accompanied by a parent or legal guardian during the training and that the parent or legal guardian must certify to the Labor Commissioner that the training has been completed. It also modifies the foreign language translation requirement from providing the SHPT in a language understood by the age-eligible minor and their parent or legal guardian to making a translation available "whenever reasonably possible."

This law took effect on September 25, 2020.

Privacy

AB 1281 (Extension of Temporary Exemption Under CCPA for Human Resources Data)

The California Consumer Privacy Act of 2018 ("CCPA") grants a comprehensive set of rights to consumers with regard to their personal information, including enhanced notice and disclosure rights regarding information collection and use practices, access to the information collected, the right to delete certain information, the right to restrict the sale of information, and protection from discrimination for exercising these rights. Last year, the CCPA was amended to create a temporary exemption from most of the protections of the CCPA for information an employer collects from individuals in the employment context (*i.e.*, as job applicants, employees, contractors, owners, directors, medical staff members, emergency contacts of employees, and employees' dependents or beneficiaries who receive company benefits). This exemption was for a one-year period (until January 1, 2021), but did not excuse employers from complying with the CCPA's pre-collection notice requirement or from data breach protections related to human resources personal information.

The purpose of the one-year exemption was to allow further negotiations to determine how human resources data would be protected under the CCPA. This has not occurred due to the legislature's focus on COVID-19-related measures. AB 1281 extends the temporary exemption for another year – until January 1, 2022.

AB 1281 may be superseded by the result of the statewide election in November 2020. The "California Privacy Rights and Enforcement Act of 2020" ("CCPRA" or "Prop 24"), which is on the ballot, not only would expand existing and create new rights under the CCPA, but it also would extend the exemption for human resources personal information until January 1, 2023. Therefore, AB 1281 will go into effect only if Prop 24 fails; if the ballot measure passes, then the exemption will be extended until January 1, 2023.

Settlement Agreements

AB 2143 (Expansion of Bases for No-Rehire Clause in Settlement Agreement)

Since January 1, 2020, "no-rehire" clauses have been prohibited in settlement agreements resolving employment disputes in which an employee has filed a complaint in court or with a government agency against their employer, except where the employer has made a good-faith determination that the former employee-complainant engaged in sexual harassment or assault. AB 2143 expands this exception to include a good-faith determination that the former employee engaged in criminal conduct, *e.g.*,

embezzlement. The new law also provides that, to be eligible for the prohibition against a no-rehire clause, the former employee's complaint must be made in "good faith," and to qualify for the exception to the general prohibition against no-rehire clauses, the employer must *make and document* the good-faith determination *before* the complaint by the former employee is filed.

Child and Sex Abuse Reporting

AB 1963 (Additional Mandated Reporters of Child Abuse)

Under the Child Abuse and Neglect Reporting Act, whenever a mandated reporter, in their professional capacity or within the scope of their employment, has knowledge of or observes a child who the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect, they must report the incident to certain public authorities. A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is guilty of a misdemeanor that is punishable by incarceration of up to six months in county jail, a base fine of up to $1,000, or both the incarceration and the fine. AB 1963 makes the following employees "mandated reporters": (1) a human resources employee of a business with five or more employees that employs minors, and (2) for the purposes of reporting sexual abuse, an adult whose duties require direct contact with and supervision of minors in the performance of the minors' duties in the workplace of a business with five or more employees.

What Should Employers Do?

California-based employers and out-of-state-employers with employees in California should immediately review their policies, procedures, and practices to ensure compliance with the new laws.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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