

JacksonLewis

CALIFORNIA YEAR-END SUMMARY

2019

DEVELOPMENTS IN ARBITRATION AGREEMENTS

Prohibition on Requiring Job Applicants or Employees from Waiving California Fair Employment and Housing Act (FEHA) or Labor Code-Based Rights (Cal. Gov. Code § 12953; Cal. Lab. Code. § 432.6; Assembly Bill 51)

- Effective January 1, 2020
- It is unlawful for any person to require a job applicant or employee to waive FEHA or Labor Code-based rights as a condition of new or ongoing employment or receiving any employment-related benefit — that is, if the Federal Arbitration Act (FAA) does not apply. Employers are prohibited from threatening, retaliating, discriminating against, or terminating any job applicant or employee because of their refusal to consent to waiver of any FEHA or Labor Code-based rights. The FEHA deems it a violation of this new section an unlawful employment practice.
- More information is available on our [website](#) or [here](#).

Enforcement of Arbitration Agreements (Cal. Civ. Pro. §§ 1281.97, 1281.98, 1281.99; Senate Bill 707)

- Effective January 1, 2020
- Companies that fail to pay required arbitration fees within 30 days after the due date are in material breach of the arbitration agreement. The claimant will have the unilateral option of: (1) moving the case to court and recovering attorneys' fees in connection with the effort; (2) compelling the employer to pay the fees and recovering attorneys' fees in connection with the effort; (3) if arbitration has commenced, continuing the arbitration with the employer in default and a possible collection action against the employer at the conclusion of the arbitration; or (4) if arbitration has commenced, paying the fees and having them awarded back to the claimant as part of the arbitration award, regardless of the merits of the claim. Litigation likely will ensue on whether the FAA preempts the new law for creating obstacles to the execution and enforcement of arbitration agreements.
- More information is available on our [website](#) or [here](#).

DEVELOPMENTS IN SETTLEMENT AGREEMENTS

Prohibition on Settlement Agreements that Prevent Workers from Obtaining Future Employment with the Settling Employer or Its Affiliated Companies (Cal. Code Civ. Proc. § 1002.5; Assembly Bill 749)

- Effective January 1, 2020
- Any provision in a settlement agreement that prohibits, prevents, or otherwise restricts workers who have filed a claim against the employer from obtaining future employment with the settling employer or its affiliated companies is prohibited and invalidated. However, if there is a good faith determination the worker engaged in sexual harassment or sexual assault, then the employer may enter into a “no rehire” agreement or terminate the worker if there is a legitimate non-discriminatory reason to do so.
- More information is available [here](#).

DEVELOPMENTS IN SEXUAL HARASSMENT AND DISCRIMINATION PROTECTIONS

Sexual Harassment Prevention Training Deadline Pushed to January 1, 2021 (Cal. Gov. Code § 12950.1; Senate Bill 778)

- Effective August 30, 2019
- Senate Bill 778 provides that California employers must comply with sexual harassment prevention training requirements under California Government Code section 12950.1 by January 1, 2021, rather than January 1, 2020. Under section 12950.1, an employer with at least five employees must provide at least two hours of interactive training on sexual harassment to all supervisory employees and at least one hour of interactive training on sexual harassment to all nonsupervisory employees within six months of their assumption of a position.
- More information is available on our [blog](#) or [here](#).

DEVELOPMENTS IN OTHER HARASSMENT AND ANTI-DISCRIMINATION MEASURES

California Becomes First State to Clarify Definition of Race Discrimination to Include Hair Texture, Protective Hairstyles (Cal. Ed. Code § 212.1; Cal. Gov. Code § 12926; Senate Bill 188)

- Effective January 1, 2020
- Introduced as the CROWN Act (Creating a Respectful and Open Workplace for Natural Hair), Senate Bill 188 clarifies the definition of race for the workplace and educational institutions to include hair texture and protective hairstyles. It also defines protective hairstyles.
- More information is available on our [blog](#) or [here](#).

Deadline to File Allegations of Harassment, Discrimination, or Retaliation under FEHA Extended (Cal. Gov. Code §§ 12930, 12948; Assembly Bill 9)

- Effective January 1, 2020
- The new law extends the deadline to file an intake form with the California Department of Fair Employment and Housing of an allegation of unlawful workplace harassment, discrimination, or civil rights-related retaliation under the FEHA from one year to three years from the date upon which the unlawful practice occurred. Filing such a claim is an administrative prerequisite to suing under the FEHA.
- More information is available on our [blog](#) or [here](#).

DISABILITY AND LEAVE MANAGEMENT DEVELOPMENTS

Employers Must Provide Additional Unpaid Leave for Organ Donation (Cal. Ed. Code §§ 89519.5, 92611.5; Cal. Gov. Code § 19991.11; Cal. Ins. Code §§ 10110.8, 10233.8; Cal. Lab. Code § 1510; Assembly Bill 1223)

- Effective January 1, 2020
- Currently, state law mandates private employers with at least 15 employees to provide employees 30 days of paid leave in a one-year period when an employee participates in an organ donation. Assembly Bill 1223 extends the amount of leave an organ donor may take. In addition to paid leave, private employers must

provide a maximum of an additional 30 business days of unpaid leave.

- More information is available on our [blog](#) or [here](#).

Lactation Accommodation Specifications (Cal. Lab. Code § 1034; Senate Bill 142)

- Effective January 1, 2020
- Senate Bill 142 expands on existing Labor Code requirements for employee lactation accommodations and adopts significant new consequences to employers for non-compliance. The law requires the following features for private lactation spaces: be safe, clean, and free of hazardous materials; contain a surface to place a breast pump and personal items; contain a place to sit; and have access to electricity or alternative devices (e.g., extension cords or charging stations) needed to operate a breast pump. Employers also must develop and implement a lactation policy that includes a statement concerning an employee's right to request lactation accommodation. Employers must include the policy in their employee handbooks. They also must distribute the policy to new employees upon hire and when an employee makes an inquiry about or requests parental leave.
- More information is available on our [blog](#) or [here](#).

Paid Family Leave Increases to Eight Weeks (Cal. Gov. Code §§ 3539.6, 19878.5; Cal. Lab. Code § 6717.5; Unemp. Ins. Code § 3301; Senate Bill 83)

- Effective July 1, 2020
- The new law extends the maximum duration of Paid Family Leave (PFL) benefits from six weeks to eight weeks. The paid family leave program allows wage replacement benefits for workers who take time off to care for a seriously ill family member or to bond with a minor child within one year of birth or placement.
- More information is available on our [blog](#) or [here](#).

WAGE AND HOUR DEVELOPMENTS

Definition of Independent Contractor under Three-Part Test (Cal. Lab. Code §§ 3351, 2750.3; Unemp. Ins. Code §§ 606.5, 621; Assembly Bill 5)

- Effective January 1, 2020
- Assembly Bill 5 codifies and clarifies the California Supreme Court's 2018 *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*, 4 Cal. 5th 903. In *Dynamex*, the Court adopted the "ABC Test" for determining whether an individual is an employee or independent contractor under the Industrial Welfare Commission (IWC) Wage Orders. The Court abandoned the multi-factor test established in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989), except under narrow exceptions identified in the statute. Under the ABC Test, to establish that an individual is in fact an independent contractor, an employer must prove that the person: (A) is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) performs work that is outside the usual course of the hiring entity's business; and (C) is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
- More information is available on our [blog](#) or [here](#).

Reporting Time Pay Requirements Includes Telephonic Reporting

- Historically, California's Wage Orders have required employers to compensate employees with reporting time pay if employees are required to report for work, and in fact show up, but are then provided less than an established minimum number of hours of work or are provided with no work at all. Instead of requiring appearance at the workplace, the California Court of Appeals, Second Appellate District held that employees also may be entitled to reporting time pay if they are merely required to call in advance to confirm whether they are needed for a scheduled shift. See *Ward v. Tilly's, Inc.*, 31 Cal. App. 5th 1167 (2019).
- More information is available on our [website](#).

Expansion of Enforcement of Wage Penalties (Cal. Lab. Code § 210; Assembly Bill 673)

- Effective January 1, 2020
- Workers may recover penalties through a private right of action for late payment of wages. The penalties are: (1) \$100 for each failure to pay each employee for any initial violation; (2) \$200 for each failure to pay each employee for each subsequent violation, or any willful or intentional violation; and (3) plus 25 percent of the amount unlawfully withheld. Assembly Bill 673 limits employees' recovery to statutory penalties or civil penalties under the Labor Code Private Attorneys General Act of 2004 (PAGA), but not both, for the same violation.
- More information is available on our [blog](#) or [here](#).

Extension of Labor Commissioner's Authority to Cite for Failure to Pay Wages (Cal. Lab. Code § 1197.1; Senate Bill 688)

- Effective January 1, 2020
- The Labor Commissioner may issue a citation not only where an employer has failed to pay at least the minimum wage, but also where the employer has contractually promised to pay more than the minimum wage but has failed to pay the promised wage.
- More information is available [here](#).

Unpaid Wages Not Recoverable under PAGA

- Putting an end to employees' backdoor attempts to recover unpaid wages in PAGA-only actions under California Labor Code Section 558, the California Supreme Court has ruled against allowing such claims. *ZB, N.A., et al. v. Superior Court*, No. S246711 (Sept. 12, 2019). Because the unpaid wages provided for by Section 558 are not penalties and Section 558 does not contain a private right of action, the Court ruled the plaintiffs could not recover their wages or any aggrieved employees' wages under Section 558 and PAGA. On these grounds, the Court affirmed the order denying the employer's motion to compel arbitration and closed the door on a recent split in authority on whether a PAGA claim, with a claim for unpaid wages under Section 558, could be compelled to arbitration.
- More information is available on our [website](#) or [here](#).

Meal Period Premiums Do Not Trigger Derivative Liability for Penalties under Labor Code Section 203

- In *Naranjo et al. v. Spectrum Security Services, Inc.*, No. B256232 (Cal. Ct. App. Sept. 26, 2019), the California Court of Appeal ruled that actions to recover unpaid meal period premiums under Labor Code section 226.7 do not automatically entitle employees to derivative claims for waiting time penalties or inaccurate wage statements.
- More information is available on our [website](#) or [here](#).

2020 Minimum Wage Increases (Cal. Lab. Code § 1182.13)

- Effective January 1, 2020
- For employer with up to 25 employees, the statewide minimum wage will increase to \$12.00 per hour; employers with more than 25 employees must pay at least \$13.00 per hour.
- Applicable local minimum wage ordinances may exceed the minimum wage statewide. Employers must comply with the higher rate.

OTHER NOTABLE DEVELOPMENTS

Amendment to California Consumer Privacy Act (CCPA) (Cal. Civ. Code §§ 1798.130, 1798.145; Assembly Bill 25)

- Effective January 1, 2020
- Assembly Bill 25 excludes employee personal information from most of the CCPA's requirements. This exclusion is temporary and is due to sunset on January 1, 2021, on the understanding that the Legislature would consider more comprehensive employee privacy legislation during the one-year period.
- More information is available on our [website](#) or [here](#).

Elimination of Limits to Domestic Partnerships (Cal. Fam. Code §§ 297, 297.1, 298, 298.5, 298.6, 298.7 299.2; Senate Bill 30)

- Effective January 1, 2020
- Senate Bill 30 eliminates the limitations on who may form domestic partnerships, allowing opposite-sex couples under 62 to be eligible to form domestic partnerships. Under California Law, the rights and responsibilities of Registered Domestic Partners are the same as spouses.
- More information is available [here](#).

Thank you for your interest in the **2019: California Year-End Summary.**

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