

# California employment legislation on the horizon: A preview of 2024

September 14, 2023



# California employment law legislative update: Bills remaining on track to become law in 2024

The California Legislature had until September 14, 2023, to pass bills in the current Legislative Session before these bills are sent to Governor Newsom to either sign, approve without signing, or veto each bill by October 14, 2023. More than 2,600 new bills were introduced, the largest quantity in over a decade. Several key bills relate specifically to employment law, including expansion of paid sick leave, CalWARN notice requirements, remote workers' rights, and wage theft. Unless otherwise noted, bills that become law will presumably take effect January 1, 2024.



## **AB 524 and SB 403: “Family caregivers” and “caste” as new FEHA-protected classes**

AB 524 would amend California's primary anti-discrimination law, the Fair Employment and Housing Act (FEHA), by adding “family caregiver status” as a protected class. The bill defines “family caregiver status” as “a person who contributes to the care of one or more family members.” “Family member,” in turn, is defined broadly to include “a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any individual previously identified as a ‘designated person’” per Government Code Section 12945.2 (“any

individual related by blood or whose association with the employee is the equivalent of a family relationship”). Last year, a similar bill prohibiting discrimination against individuals with “family responsibilities” failed.

SB 403 would add “caste” as a protected class to various laws including the FEHA. If passed, this would make California the first state to ban caste discrimination. The bill includes “caste” in the definition of “ancestry” and defines “caste” as “an individual's perceived position in a system of social stratification on the basis of inherited status.”

**AB 524 status:** Passed by both Senate and Assembly but awaiting concurrence in Assembly

**SB 403 status:** On the Governor's desk

## **AB 518: Broadens who is eligible to receive Paid Family Leave benefits to include employees on leave to care for a “designated person”**

Last year, the Legislature expanded California's leave laws to allow employees to take leave to care for a “designated person.” This year, it is attempting to continue the trend with respect to the state's Paid Family Leave insurance program. Specifically, AB 518 broadens the definition of a “family member” so that employees will be eligible for wage replacement benefit payments when they take time off work to care for a seriously ill “designated person,” defined as “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” Employees would identify their designated person when they file a claim for benefits. If AB 518 becomes law, it will take effect on July 1, 2024.

**Status:** Passed by Assembly, pending in Senate

### **SB 616: Paid sick leave increases**

This bill amends California's Paid Sick Leave law by increasing the amount of paid sick leave employers must provide to their employees with respect to annual accrual, carryover and accrual cap. Specifically, SB 616 allows employees to annually accrue five days (instead of three days) and carry over five days from one year to the next (instead of three days). It also more than doubles the accrual cap, bumping it up to 14 days (instead of six days). Initially, the bill set forth an annual accrual of seven days of paid sick leave, but earlier this month the Legislature lowered it to five days.

**Status:** Passed by both Senate and Assembly

### **SB 731: Work from home rights**

SB 731 amends the FEHA to provide protection for employees who work from home. Under the bill, it is an unlawful employment practice for an employer to require a remote worker to return to work without first providing the worker with 30 calendar days' notice. The notice must be in writing and include specific information regarding an employee's right to remote work as a reasonable accommodation for a disability, as well as employer's duty to engage in the interactive process.

**Status:** On the Governor's desk

### **SB 723: Broadens re-hiring rights for laid-off employees**



This bill proposes to amend Labor Code 2810.8, broadening the right to recall for employees in the hospitality and business service provider industries who were laid off due to the pandemic. Affected employers would include hotels, private clubs, event centers, airports, and building service providers. Current law requires employers to offer reemployment to qualified former employees as positions become available, so long as the former employees were: (1) employed for at least 6 months in the year preceding January 1, 2020; and (2) laid-off for a reason related to the pandemic. SB 723 broadens the pool of covered employees by amending the first prong, applying it to any employee who was ever employed for at least six months, within any timeframe, and laid off on or after March 4, 2020. SB 723 maintains the second prong but, significantly, adds a "presumption that a separation due to a lack of business, reduction in force, or other economic, nondisciplinary reason is due to a reason related to the COVID-19 pandemic," and the burden is on the employer to prove otherwise by a preponderance of the evidence. Lastly, SB 723 also extends the sunset date of current law, pushing it out one year further to December 31, 2025.

**Status:** Passed by both Senate and Assembly but awaiting concurrence in Senate

### **AB 1356: Cal-WARN Act expansion**

This bill expands existing law under the California Worker Adjustment and Retraining Act. If passed, covered employers would have to provide 75 days advance notice of a mass layoff, closure, or relocation instead of the previously required 60 days. The bill would also revise the definition of a "covered establishment" to instead mean a "single location or a group of locations" with 75 or more persons. More importantly, employers would be prohibited from using severance agreements to waive an employee's right to claims under this Act.

**Status:** Passed by both Senate and Assembly

### **SB 497: Rebuttable presumption of retaliation**

SB 497 amends various sections of the California Labor Code to create a rebuttable presumption of retaliation if an employer disciplines or takes adverse action against an employee within 90 days of that employee engaging in protected conduct including but not limited to disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding and encouraging another employee to exercise their rights.

**Status:** Passed by both Senate and Assembly

### **SB 525: Minimum wage increase for health care workers**

SB 525 would raise the minimum wage for all health care workers at covered health care facilities in California. Starting June 1, 2024, the bill would require a health care worker minimum wage increase to \$21 per hour with a subsequent increase to \$25 per hour starting June 1, 2025. For health care workers paid on a salary basis, they must be paid no less than 150 percent of the health care worker minimum wage. Covered health care employment would include all work performed on the



premises of any covered health care facility and all paid work providing health care services performed for any person that owns, controls, or operates a covered health care facility, regardless of work location.

**Status:** Passed by Senate, pending in Assembly

### **AB 594: Public prosecution for wage theft/labor code violations**

AB 594 would give public prosecutors the ability to prosecute an action, either civilly or criminally, for violations of certain provisions of the Labor Code. Under existing law, the Labor Commissioner is vested with the authority to receive, investigate, and hear employee complaints regarding the payment of wages and other employment-related issues. This bill would expand the authority to public prosecutors. This type of enforcement would be separate and apart from potential recovery under a subsequent Private Attorneys General Act (PAGA) lawsuit.

**Status:** Passed by both Assembly and Senate

### **SB 848: Leave for reproductive loss**

SB 848 entitles employees to five days of leave for loss related to reproduction or adoption. The bill would make it unlawful for an employer to refuse an employee's request for up to five days of leave following a reproductive loss event including but not limited to: miscarriage, unsuccessful assisted reproduction like IVF, or failed adoption. The employee would have to take the leave within three months of the event, and the total amount of leave cannot exceed 20 days within a 12-month period. The reproductive loss leave can be unpaid, but employees could use other leave balances such as accrued and available paid sick leave.

**Status:** Passed by both Senate and Assembly

### **SB 699 and AB 1076: Noncompete agreements**

SB 699, signed into law on September 1, 2023, and effective January 1, 2024, prohibits employers from entering into or enforcing noncompete agreements of any kind, which are void in California, regardless of the employee's work location or when and where the agreement was entered into. If forced to sign a noncompete agreements, employees can seek injunctive relief or damages.

Similarly, and in line with California's effort to do away with noncompete agreements, AB 1076 seeks to amend Section 16600 of the California Business and Professions Code to void noncompete agreements in the employment context, making noncomplete clauses in employment contracts – past, present, and future – unlawful. AB 1076 would require employers to give employees notice that any previously signed noncompete agreement is now void. AB 1076 seeks to codify already existing law and legislative opinion on the issue of noncompete agreements.



**AB 1076 Status:** Passed by both Assembly and Senate

### **SB 428: Workplace restraining orders for harassment**

Current law allows employers to seek temporary restraining orders (TROs) on behalf of their employees to protect them from violence or credible threats of violence. SB 428 would amend the law to also allow employers to seek TROs to protect employees from harassment. The bill defines harassment as "a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that

which would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress." SB 428 includes a carve-out that prevents courts from issuing TROs that prohibit speech or activities protected by the National Labor Relations Act. If SB 428 becomes law, it will be effective on January 1, 2025. This bill may also allow collective bargaining representatives to seek TROs on behalf of employees, but this provision is dependent on whether SB 553 is also enacted and is enacted first.

**Status:** Passed by Senate, pending in Assembly

## SB 553: Employers to establish workplace violence prevention plans

SB 553 amends the Labor Code to require every employer's injury prevention program to include a workplace violence prevention plan. Employers would need to establish and maintain their plan starting on July 1, 2024. This would include duties such as keeping a log of workplace violence incidents, providing training on the plan, and recordkeeping.

This bill may also allow collective bargaining representatives to seek TROs on behalf of employees, but this provision is dependent on whether SB 428 is also enacted and is enacted first.

**Status:** Passed by both Senate and Assembly

## SB 700: Protection for prior marijuana use

This bill would expand marijuana protection for applicants and employees. It would make it unlawful for an employer to request information about an applicant's prior cannabis use. SB 700 also specifies that the law against discrimination on the basis of marijuana use applies to information an employer may obtain about prior cannabis use from a person's criminal history, unless otherwise permitted by law.

**Status:** Passed by both Senate and Assembly but awaiting concurrence in Senate

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## Key contacts

If you have questions or would like to learn more about recent California legislation, please contact one of the lawyers below or the Reed Smith Lawyer with whom you normally work.



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