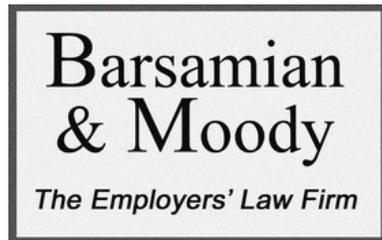


# Preparing for 2023: Laws and Regulations

Presented by:



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We wish to express confidence in the information contained herein. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

The reader should consult with **Barsamian & Moody at (559) 248-2360** for individual responses to questions or concerns regarding any given situation.

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# 1. Employee-focused Changes

- a) AB 5 [Classification – ABC test]
- b) SB 1162 [Pay-Scale Disclosure]
- c) SB 1126 [CalSavers]
- d) CPRA [Privacy Rights]
- e) SB 523 [New FEHA protective categories]

# AB 5 [Classification – ABC test]

- Presumption of classification of an employee rather than an independent contractor.
- Codified a 2018 appellate court decision (*Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903) regarding independent contractor status.
- ABC test required to refute presumption – Employer burden to prove classification was proper.
- This bill subjects misclassified workers to wage orders, WC coverage, unemployment benefits, leave mandates, labor codes, and other worker benefits.
- Note: A federal court on 8/28/2022 dissolved a nearly 3-year injunction preventing AB 5 enforcement on the trucking industry.



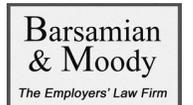
# SB 1162 [Pay Scale Disclosure]

- Requires employers with 15 or more employees to disclose pay scale information to all job applicants upon request.
- Requires all employers, regardless of size, to provide current employees with pay scale information upon request.
- “pay scale” – Salary or hourly wage range that the employer “reasonably expects” to pay for the position.
- Requirement extends to 3<sup>rd</sup> party recruiters.
- Labor commissioner authorized to levy penalties up to \$10,000 per violation.



# SB 1162 [Record Retention]

- Employers required to retain records of job title and wage history for each employee up to 3 years after termination of employment.
- Labor commissioner authorized to inspect records.
- Presumption of fault if employer fails to retain records.



# SB 1162 [Annual Reports]

- Large employers (100+ direct hire employees and/or 100+ employees hired through a labor contractor or temp agency) must file annual pay data disclosures, broken down by gender/race/ethnicity and job categories.
- FLCs are required to provide all necessary data to contracting employer.
- Reports must now also contain media and mean hourly rates for each combination of race, ethnicity, and gender within each job categories.
- Multi-establishment employers do not need to consolidate reports.
- Penalties for failure to file report are \$100/employee for initial failure, and \$200/employee for additional violations..
  - Penalties may be apportioned to FLCs for failure to provide data.
- Reports due 2<sup>nd</sup> Wednesday of May and first report due on May 10, 2023 for 2022 pay data.



# SB 1126 [CalSavers]

- Expansion of existing 2020 CalSavers program for employers with at least one employee.
- Phase-in of mandatory retirement program for California employers who do not offer employer-sponsored retirement plan.
- As of 06/01/2022, employers with 5 or more employees are mandated to register with CalSavers (1 or more employees starting 12/31/2025).



# California Privacy Rights and Enforcement Act (CPRA)

- Expands consumer privacy rights to employees, job applicants, independent contractors, board members, and employees' dependents.
- Applies to businesses with gross annual revenue of over \$25 million, or businesses who “sell” or “share” personal data.
- New categories of Sensitive Personal Information (SPI).
- New data retention and notice to consumer requirements.
- Enforcement authority moved from Attorney General to California Privacy Protection Agency.
- This law goes into effect 01/01/2023, but retroactive to 01/01/2022 for retention and disclosure requirements.

# SB 523 [New FEHA Protected Category]

- Contraceptive Equity Act of 2022 expands coverage of contraceptives and vasectomy services by health care service plan contract and health insurance policy issued, amended, renewed, or delivered on or after 01/01/2024.
- Amends FEHA to prohibit employment discrimination on basis of individual's reproductive health decision-making.
- Makes it unlawful for an employer to require, as a condition of employment, continued employment, or a benefit of employment, the disclosure of information relating to an applicant's or employee's reproductive health decision making.
- All employers should update their handbooks to include this new category.



Effective 01/01/2023

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## 2. Workplace Issues and COVID-19

- AB 2188 [Off Duty Cannabis Use]
- AB 2777 [Sexual Assault Statute of Limitations]
- AB 2282 [Discrimination & Harassment: Hate Crimes]
- AB 2243 [Occupational Safety]
- AB 2068 [Occupational Safety]
- SB 1044 [Emergency Conditions in the workplace]
- New EEOC Poster requirement
- AB 2693 [Covid-19: Exposure – Close Contact redefined]
- AB 1751 [COVID-19: Workers' Comp & Critical Workers]
- AB 152 [Covid-19: SPSL Extension]

# AB 2188 [Off Duty Use of Cannabis]

- This bill expands FEHA, making it unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment based on a person's use of cannabis off the job with some minor exceptions (DOL, federal contractors, etc.).
- Employers can still maintain policies for drug-free workplace and issue disciplinary actions against employees possessing, using, or under the influence of cannabis while on the clock or on company property.



Effective 01/01/2024



# AB 2777 [Sexual Assault Statute of Limitations (SOL)]

- Under existing law, SOL to commence a civil action for sexual assault is 10 years from the last act of sexual assault; or within 3 years from the date a plaintiff discovers or reasonably should have discovered that an injury or illness resulted from those acts.
  - Current SOL applies to any action commenced on or after 1/1/2019.
- This bill provides that actions commenced on or after 1/1/2019 and based on conduct that occurred on or after 1/1/2009, will not be time-barred by the 10-year SOL, provided these claims are commenced by 12/31/2026.
- This bill also provides that where a party seeks to recover damages on a sexual assault that was “covered up” by an entity, the action may be commenced between 1/1/2023 and 12/31/2023, even if that claim would otherwise be time-barred.

# AB 2777 [Continued.]

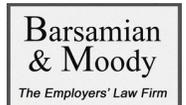
- This bill revives any related claims, including, but not limited to, wrongful termination and sexual harassment, arising out of the sexual assault that is the basis for a claim pursuant to this subdivision. The act does not revive claims in which there has been, prior to 1/1/2023, a final decision by a court or a written settlement.
- For the purposes of the act, “cover up” means “a concerted effort to hide evidence relating to a sexual assault that incentivizes individuals to remain silent or prevents information relating to a sexual assault from becoming public or being disclosed to the plaintiff, including, but not limited to, the use of nondisclosure agreements or confidentiality agreements.”

# AB 2282 [Discrimination & Harassment : Hate Crimes]

- Existing law makes it unlawful to place or display certain symbols, marks, signs, emblems or other impressions on private or non-private property with the intent to terrorize a person.
- This bill will expand to place of employment and aims to protect employee(s) who are targeted with these displays.



Effective 01/01/2023



# AB 2243 [Occupational Safety – Heat and Smoke Proposal]

- This bill requires Cal/OSHA to submit to the Standards Board, a rulemaking proposal revising heat illness standard and wildfire smoke standard before 1/1/2025.
- This bill further requires Cal/OSHA to consider developing regulations, or revising existing regulations, relating to acclimatization to higher temperatures, especially following an absence of a week or more from working in ultrahigh heat settings, such as an absence due to an illness.
- The Standards board is directed to review the proposed changes and consider adopting revised standards on or before 12/31/2025.



Effective 01/01/2023

# AB 2068 [Occupational Safety – Spoken Languages]

- Requires certain health and safety posters relating to COVID-19 to be posted in additional languages.
- When a citation or special order or action is required to be posted regarding a violation, the employer shall also post an employee notification prepared by the division.
- In addition to English, the employee notification shall be made available by the division in the top seven non-English languages used by limited-English-proficient adults in California, as determined by the most recent American Community Survey by the United States Census Bureau. If Punjabi is not included among these languages, the division shall also make the employee notification available in Punjabi.

# SB 1044 [Emergency Conditions in the Workplace]

- In the event of a state of emergency or an emergency condition, employers are prohibited from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe.
- Employers are prohibited from preventing employees from accessing their mobile devices to seek emergency assistance, assess the safety of the situation, or communicate with others to confirm their safety in the event of an “emergency condition.”
- "Emergency condition" does not include a health pandemic.

# SB 1044 [Continued.]

- Employees are required to notify their employer of the emergency condition requiring them to leave or refuse to report to the workplace or worksite either prior to leaving or refusing to report, when feasible, or – when prior notice is not feasible – after leaving or refusing to report as soon as possible.
- In the event a current or former employee brings an action that could be brought pursuant to the Labor Code Private Attorneys General Act (PAGA) for violations of these prohibitions, the law gives employers the right to cure alleged violations as set forth in Section 2699.3.



Effective 01/01/2023



# New EEOC Poster Requirement

- U.S. Equal Employment Opportunity Commission (EEOC) issued an updated mandatory poster which replaces the “Equal Employment Opportunity is the Law” poster.
- The new poster is entitled “Know Your Rights: Workplace Discrimination is Illegal.”
- Employers with 15 or more employees are required to post these in accordance with federal regulations.
- In January 2022, the Department of Labor increased the maximum fines for non-compliance with certain notice and posting requirements, which includes compliance with updating mandatory postings.
- Posted available on [www.eeoc.gov](http://www.eeoc.gov)



# AB 2693 [Covid-19 Exposure]

- Removal of outbreak notice requirement to local public health agencies.
- Employers may either provide written notification to the employees or a worksite posting of potential COVID-19 exposure posted for 15 days.
- “Close contact” redefined:
  - In indoor space 400,000 or fewer cubic feet per floor, close contact is defined as “sharing the same indoor airspace for a cumulative total of 15 minutes or more than 24-hour period during an infected person’s infectious period.
  - In large indoor spaces greater than 400,000 cubic feet per floor (such as open-floor-plan offices, warehouses, large retail stores, manufacturing, or food processing facilities), a close contact is defined as being within 6 feet of the infected person for a cumulative total of 15 minutes or more over a 24-hour period during the infected person's infectious period.
  - Space separated by floor to ceiling walls are considered distinct indoor spaces.

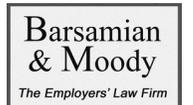
# AB 1751 [COVID-19: Workers' Comp & Critical Workers]

- Under existing law an “injury” for Workers’ Compensation purposes includes illness or death resulting from COVID-19 under certain circumstances. Existing law also creates a rebuttable presumption that certain employees contracted COVID-19 at work.
- This bill extends the expiration date of Labor Code sections 3212.86, 3212.87, and 3212.88 until 1/1/2024.



# AB 152 [Covid-19: SPSL Extension]

- Extends the existing COVID-19 SPSL leave to 12/31/2022 under the same 40 / 40 bucket framework as was previously in place for employees who are unable to work or telework due to an approved COVID related reason.
- AB 152 does not provide any additional paid sick leave. Therefore, if an employee has already used all their COVID-19 Supplemental Paid Sick Leave, AB 152 does nothing to provide them additional paid time off.



# 3. Employee Leave Changes

- AB 1949 [Bereavement Leave]
- AB 1041 [Leave: Designated person]
- SB 951 [State Disability/Paid Family]



# AB 1949 [Bereavement Leave]

- Requires employers to grant an “eligible employee” up to five days of bereavement leave upon the death of a “qualifying family member” after 30 days of employment.
- This bill applies to employers with five or more employees.
- An employee can use bereavement leave for each qualifying occurrence, meaning each death of a qualifying member. Note: While unclear at this time, there does not appear to be a limit for how many times an employee can be eligible for bereavement leave.
- A “qualifying family member” includes a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law as defined in CFRA.

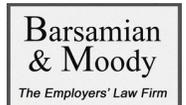


# AB 1949 [Continued.]

- The leave can be taken intermittently but must be completed within three months of the date of death.
- The leave is not required to be paid leave, unless the employer's policy is to provide paid leave. But employees may choose to use eligible PTO or vacation time.
- It is unlawful for an employer to engage in discrimination, interference, or retaliation upon an employee's exercise of rights under the bill.
- Upon request, the employee must provide documentation of the death of the family member within 30 days of the first day of bereavement leave.  
documentation of the death of the family member including a death certificate, published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.
- Employers are required to maintain confidentiality of any requests and documentation.

# AB 1041 [Leave: Designated person]

- Under the California Family Rights Act (CFRA), an employer with five or more employees must provide eligible employees who meet specified requirements to take up to a total of 12 workweeks in any 12-month period to care for their own medical need or the serious health condition of a family member defined by the CFRA.
- This bill expands the definition of family member to include a “designated person.”



# AB 1041 [Continued.]

- “Designated person” means any individual related by blood or whose association with the employee is the equivalent of a family relationship.
- Employees must identify the designated person at the time the requested leave and the employer may limit the employee to one designated person per 12-month period.
- This bill also expands the definition of family member under the Healthy Workplaces, Healthy Families Act of 2014 (aka the CA Paid Sick Leave Law) to include a “designated person.”



# SB 951 [State Disability/Paid Family]

- Starting in 2025, workers who earn 70% or less than the state's average wage would be eligible to receive 90% of their regular wages under the Paid Family Leave and State Disability programs. This is an increase from the current 70%.
- Other workers also would get a boost, receiving 70% instead of 60% of their wages. The bill would offset some of these costs by removing a cap on workers' contributions to the program.
- Grant Program for Small businesses: Small businesses in California with 1 to 100 employees who have at least one employee utilizing PFL on or after 6/1/2022, may be eligible to help offset costs associated with cross-training existing staff or hiring and training new or temporary employees to cover during the employee's leave.



Effective 01/01/2025

## 4. Miscellaneous Changes

- AB 2183 – Agricultural Labor Relations: Elections
- AB 2766 [Unfair Competition Law: Enforcement powers]
- SB 189 [DFEH renamed]
- I-9 Change
- Minimum wage change
- Mileage change



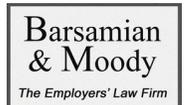
# AB 2183 [Agricultural Labor Relations: Elections]

- Labor Peace Compact
- Union election procedure changes
  - **Previously:** Secret Ballot Elections only
  - **Now added:** Mail-in ballots and Card Checks
- ALRB now authorized to levy penalties for unfair labor practices
- Bond posting requirements



# AB 2183: Labor Peace Compact [LPC] - Overview

- An optional agreement for employers.
- If entered into an LPC, employer agrees to the following:
  - Make no statements for or against union representation in any form;
  - Allow union access to employer property; and
  - Not engage in any captive audience meetings.
- FLCs bound by LPC.
- Automatic renewal unless revoked 30 days before renewal (1<sup>st</sup> day of the following year).



# AB 2183: Labor Peace Compact [LPC] - Elections

- Labor unions\* authorized to request voting kits from ALRB.
  - Voting kits include mail-in ballots;
  - Ballots signed by employees are good for 180 days.
- Steps to Certification:
  - A labor union obtains signatures of 50%+ employees and submits a petition to the Board.
  - Employer submits a complete employee list, included in its response.
  - Upon review of ballots and confirmation of majority, Board will mail voting kits to all employees.
  - Board receives ballots and certifies the labor union based on majority.



Effective 01/01/2023



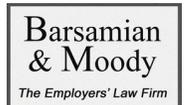
# AB 2183: Non-Labor Peace Compact

- For employers who do not opt-in a LPC, labor unions may obtain signatures of majority of workers through proof of authorization cards, or other proof of majority support and file certification petition with the Board.
- Employer submits a complete employee list included in its response.
- If Board finds a majority support, the labor union becomes the exclusive bargaining organization.



# AB 2183: Penalties

- ALRB authorized to levy civil penalties of \$10,000 for each ULP.
- Penalties up to \$25,000 in discrimination cases.
- Direct penalties on individual director/officer based on circumstances of the case.



# AB 2183: Review/Appeal and Bond Posting

- Employer required to post bond in the amount of the entire economic value of the Board order before filing an appeal.
- Financially burdensome to appeal all Board decisions.



# AB 2766 [Unfair Competition Law: Enforcement Powers]

- Grants Attorney General level enforcement and investigatory power to the city attorney of any city with population of over 750,000, to the county counsel of any county (which a city within the county has a population over 750,000), or the city attorney of a city and county when the Investigators reasonably believe there may have been a violation of the Unfair Competition Law, including any unlawful, unfair, or fraudulent business act or practice, and unfair, deceptive, untrue, or misleading advertising.
- This bill also provides that the Investigators may issue a subpoena as part of their investigation.

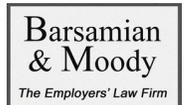


Effective 01/01/2023 or later



# SB 189 [DFEH renamed]

- This law changes the name of the Department of Fair Employment and Housing (DFEH) to the Civil Rights Department (CRD).
- The law also changes the name of the Fair Employment and Housing Council to the Civil Rights Council.



# I-9 Change

- The prior I-9 Form version expired on 10/31/2022. Current employees with valid I-9 Forms on file do not need to complete new Form I-9s. However, all new hires and certain re-hires will need to complete new Form I-9s starting 11/1/2022.
- In an 10/11/2022 update DHS stated that employers should continue using the Form I-9, Employment Eligibility Verification, after its expiration date of 10/31/2022 until further notice.
- On 10/11/2022, the DHS indicated that due to the continued safety precautions related to COVID-19, DHS will extend the updated I-9 verification flexibilities until 07/31, 2023.
- Note that where employees are physically present at a work location, no exceptions to the in-person verification of identity and employment eligibility documentation for Form I-9 apply.

# Minimum Wage Change

- \$15.50 per hour effective 1/1/2023 – applies to all employers no small/large employer phase in.
- \$64,480, exempt employee salary requirements for all employers regardless of size ( $\$15.50 \text{ hour} \times 40 \text{ hours/week} \times 52 \text{ weeks/year} \times 2$ ).
- 40 localities have increased minimum wage rates.



# Mileage Change

- 62.5 cents per mile.
- The revised standard mileage rates apply to the allowances or reimbursements paid (1) to an employee on or after July 1, 2022, and (2) for transportation expenses paid or incurred by the employee on or after July 1, 2022.



# Thank you!

- Questions?

