

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase, sans-serif font, centered within an orange rectangular background. The background of the slide is a vibrant, multi-colored gradient with diagonal lines in shades of red, orange, yellow, green, blue, and purple.

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# New California Employment Laws for 2022

Gene Ryu, Partner, K&L Gates

Saman Rejali, Partner, K&L Gates

# PRESENTERS



**Gene Ryu**

Partner

[Gene.Ryu@klgates.com](mailto:Gene.Ryu@klgates.com)



**Saman Rejali**

Partner

[Saman.Rejali@klgates.com](mailto:Saman.Rejali@klgates.com)

# Major New Laws

## SB-331: Settlement & Non-Disparagement Agreements

- Expands the existing prohibition on settlement agreements that prevent disclosure of workplace harassment or discrimination based on sex to include harassment or discrimination not based on sex
- Unlawful to prohibit disclosure of unlawful employment practices or to include a nondisparagement provision that would prevent the employee from disclosing unlawful acts

# Wage & Hour Laws

## AB-1003: Wage Theft

- Wage theft punishable as grand theft
  - Intentional theft of wages in an amount greater than \$950 from any one employee; or
  - \$2,350 in the aggregate from two or more employees
  - Misdemeanor or felony
  - Wages are recoverable as restitution
  - This bill includes independent contractors as employees

## SB-646: PAGA - Janitorial Employees

- Updates Private Attorneys General Act (“PAGA”) to except certain janitorial employees
- Janitorial employees represented by a labor organization
  - Represented janitors before January 1, 2021
  - CBA that includes binding arbitration
- Sunsets July 1, 2028

## AB-701: Warehouse Distribution Centers

- Over 100 California employees at a single warehouse distribution center
- 1000 or more California employees at multiple warehouse distribution centers
- Must give each nonexempt employee (including employees of third-party employers, temporary services, or staffing agencies) a written description of any quota that applies

# AB-701: Warehouse Distribution Centers

- Notice must include:
  1. Number of tasks to perform or materials to produce or handle;
  2. Relevant time period; and
  3. Any potential adverse employment action that could result from a failure to meet the quota.
- Notice must be provided upon hire, or within 30 days of January 1, 2022

## AB-701: Warehouse Distribution Centers

- Also prohibits quotas that prevent compliance with meal or rest periods, use of bathrooms, and health and safety laws
- Any time spent by an employee complying with health and safety codes is considered time on task and productive time for the purposes of any quota or monitoring system
- Rebuttable presumption of unlawful retaliation if adverse action is taken within 90 days of employee's first request for quota information or complaint about a violation of the provisions of the bill

## SB-362: Chain Community Pharmacies: Quotas

- Prohibits a chain community pharmacy from establishing a workload quota for its pharmacists or pharmacy technicians
- Chain of 75 or more stores in California under the same ownership

## SB-62: Garment Manufacturing

- Prohibits an employee engaged in garment manufacturing to be paid by the piece or unit
  - Except for workplaces covered by a bona fide collective bargaining agreement
- Expands joint and several liability with a garment manufacturer to include contractors and brand guarantors
- Increases record keeping duration from 3 years to 4 years for every employer engaged in the business of garment manufacturing

## SB-639: Minimum Wage - Disability

- Existing law allows employers to pay employees who are mentally or physically disabled less than minimum wage under a state licensing program
- No new licenses after January 1, 2022 and additional parameters for renewals of existing licenses
- Development of a plan to phase out the use of this program by January 1, 2025

## SB-572: Labor Commissioner Enforcement: Lien on Real Property

- Authorizes the Labor Commissioner to create, as an alternative to a judgment lien, a lien on real property to secure amounts due to the Labor Commissioner under any final citation, findings, or decision

## SB-727: Labor-Related Liabilities: Direct Contractor

- Existing law requires a direct contractor to assume, and be liable for, any unpaid wages or benefits owed to a wage claimant by a subcontractor acting under the direct contractor
- For contracts entered into on or after January 1, 2022, SB-727 extends the direct contractor's liability to include penalties, liquidated damages, and interest owed by the subcontractor

# Independent Contractor Laws

# AB-1023: Contractor and Sub-Contractor Records

- Updates existing law regarding contractors who bid and work on public works contracts
  - Existing requirement to provide payroll records at least monthly
  - Now “monthly” is defined as every 30 days.
- Contractors to provide this information every 30 days while work continues and within 30 days after the final day of work performed on a project
- Certain Records MUST be transmitted electronically

# AB-1506: Employees and Independent Contractors: Newspaper Distributors and Carriers

- Extends the temporary exemption from the ABC test for newspaper distributors and carriers for an additional 3 years until January 1, 2025
- Every newspaper publisher/distributor that hires or contracts with newspaper carriers must provide information related to their workforce to the LWDA, including the number of carriers, the average wage, and the number of wage claims filed

## AB-1561: Worker Classification: Independent Contractors

- Extends the temporary exemption from the ABC test for licensed manicurists and construction trucking subcontractors until January 1, 2025
- Expands exemption for persons who provide underwriting inspections, premium audits, and risk management for the insurance and financial services industries to also include claims adjusting or third-party administration services
- Clarifies the exemption for data aggregators and housing salespersons

# Employment Compliance

## AB-1033: California Family Rights Act

- Last year, SB 1383 significantly modified the California Family Rights Act (“CFRA”)
  - Expansion of the definition of “family member” to include grandparent, grandchild, and sibling
- AB 1033 confirms “parent-in-law” is within the definition “family member”
- Clarifies family leave mediation program available to the small employer

## SB-657: Electronic Posting

- When employer is required to physically post information, Employer may also distribute that information to employees by email with the document or documents attached
- Email distribution pursuant to this section shall not alter the employer's obligation to physically display the required posting

## SB-807: Enforcement of Civil Rights

- Procedural changes to the enforcement of civil rights laws under the DFEH
  - Changes include the counties in which the DFEH can bring a civil action or file a petition to compel compliance with its investigation
  - Increases the record keeping time period mandated for employers and also
  - Tolls the statute of limitations for filing a civil action

## SB-93: Displaced Workers COVID-19

- Certain employers must offer employees laid off due to the COVID-19 pandemic information about positions that become available, and to offer positions to those laid-off employees based on a preference system
- Employers must keep records for 3 years
- Applies to hotels, private clubs, event centers, airport hospitality operations or airport service providers, or the providers of building services to office, retail, or other commercial buildings

# OSHA / SAFETY

# SB-321: Employment Safety Standards Household Domestic Services

- Creation of an advisory committee to recommend state policies to protect the health and safety of domestic workers
- Develop voluntary industry-specific occupational health and safety guidance in order to educate household domestic service employees and employers

## AB-654: COVID-19 Exposure Notification

- Changes to existing COVID-19 case reporting protocols
- Rather than notifying “employees who may have been exposed” employers are now required to notify all employees who were on the premises where there has been a confirmed case of COVID-19
- Expands the group of employers exempt from the COVID-19 outbreak reporting requirement to now include child day care facilities and residential care facilities for the elderly.

# AB-73: Health Emergencies Agricultural Workers Wildfire Smoke

- Wildfire smoke events are considered health emergencies
- “Essential worker” includes agricultural workers
- The Division of Occupational Safety and Health to review and update the contents of its wildfire smoke training

## SB-606: Enterprise-Wide Violations As Egregious Violations

- Requires the division to issue a citation for an egregious violation for each willful and egregious violation
- Requires each instance of an employee exposed to that violation to be considered a separate violation for purposes of the issuance of fines and penalties
- Maximum penalty would be calculated per violation multiplied by the number of employees exposed

## SB-606: Enterprise-Wide Violations As Egregious Violations

- Rebuttable presumption that employers with multiple worksites have made enterprise-wide workplace safety violations when the employer has a written policy or procedure that violates Cal/OSHA provisions, or
- Division has evidence of a pattern or practice of the same violation committed by that employer involving multiple worksites
  - Enterprise-wide violations subject to the same penalty as willful or repeated violations.

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