

WILSON TURNER KOSMO
— LLP —

2024
**COMPLIANCE
CHECKLIST**

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RESPONDING TO CHANGES IN THE LAW

This Checklist summarizes the steps California employers should consider taking to comply with new employment-related laws. Unless otherwise noted, new laws take effect January 1, 2024.

Please refer to [WTK's 2023 California Legislative Update](#) for background about the new employment laws. And for more information on various key cases, please see the [Special Alerts](#) WTK issued throughout the year.

Wilson Turner Kosmo's Compliance Checklist is intended to update our valued clients on significant employment law developments. This should not be considered legal advice.

UPDATE WAGE PAYMENTS



Pay at least \$16.00/hour statewide as of January 1, 2024.



Be aware of increases to higher minimum wages in various municipalities including San Diego (\$16.85/hr in 2024), San Francisco, San Jose, Palo Alto, Long Beach and the County of Los Angeles.



Employees classified as exempt from overtime must be paid at least \$5,546.67 per month (for a total of at least \$66,560 per year) and meet the applicable duties tests.



Exempt computer professionals must be paid at least \$55.58/hour, \$9,646.96/month, or \$115,763.35/year and meet the applicable duties test.



Industry-Specific Minimum Wages:



Fast Food Restaurants (AB 1228) – If covered by the new law, pay employees at least \$20/hour starting April 1, 2024.



Health Care Facilities (SB 525) – If covered by the new law, determine facility type and pay required increased minimum wage starting June 1, 2024. Watch for additional guidance from the Department of Health Care Access and Information (re: classification of facilities) and the Department of Industrial Relations (re: waiver system).

LEAVE OF ABSENCE POLICY UPDATES

Paid Sick Leave Increases (SB 616)

Applicable to all California employers.



Update all handbooks and Paid Sick Leave (“PSL”) policies:

- Increase PSL provided each year to 5 days/40 hours.
- Ensure employees accrue 1 hour of PSL per 30 hours worked or use different accrual method, provided employees have 24 hours of accrued PSL by 120th calendar day and 40 hours of accrued PSL by 200th calendar day of employment or in each calendar year or 12-month period. (Frontloading is still allowed.)
- Increase accrual limits to 10 days/80 hours.
- Increase limits on use of PSL to 5 days/40 hours per year.



Ensure employees covered by collective bargaining agreements are protected as required.



Carefully review any local PSL ordinances that apply to your workplaces and determine whether any provisions remain enforceable in light of new law’s partial preemption of local rules.



Be careful! Violations of Paid Sick Leave law can result in PAGA Penalties.

Reproductive Loss Leave (SB 848)

Applicable to employers with 5 or more employees.

Update all handbooks and leave policies to allow 5 days off upon “reproductive loss event.”

- “Reproductive loss event” means failed adoption, failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. (Each is defined more specifically in the statute).
- Note that any person who would have been a parent is entitled to leave (not just the person experiencing the miscarriage, etc.).
- Ensure employees may use otherwise accrued or available vacation, personal leave, sick leave, or other paid time off to cover otherwise unpaid reproductive loss leave.
- Five days need not be taken consecutively but must be taken within three months of the reproductive loss event (or within three months of the end of PDL, CFRA, or other leave).
- May limit to 20 days in 12-month period.
- Do not ask for documentation of reproductive loss event.
- Ensure requests for leave and any information is/are kept confidential.

FMLA Leave



Ensure FMLA leave is calculated correctly when an employee takes partial week leave during a week which includes a holiday. ([DOL Opinion Letter](#))

To calculate the fraction of the workweek of FMLA leave used, the amount of leave taken (not including the holiday) is divided by the total workweek (including the holiday).

Example: if an employee takes leave for one workday in a workweek with a holiday, and they were not scheduled to work on the holiday, the employee has taken one-fifth (1/5) of a week of leave.



Ensure intermittent FMLA Leave is provided appropriately. ([DOL Opinion Letter](#))

An eligible employee with a serious health condition may use FMLA leave to work a reduced schedule for an indefinite period as long as they do not exhaust their FMLA leave entitlement.

Employees are entitled to 12 workweeks of FMLA leave in a 12-month period; and if an employee is scheduled to regularly work more than 40 hours per week, they are entitled to more than 480 hours of FMLA leave in a 12-month period.

NON-COMPETE AGREEMENT REVISIONS (SB 699 AND AB 1076)

Applicable to all California employers

Review all **template** employment agreements with non-compete provisions (including, e.g., offer letters, confidentiality agreements, severance agreements, proprietary information and inventions agreements, etc.).

Remove any provision that restrains anyone from engaging in a lawful trade or business and does not fall within a statutory exception (for sale of goodwill/ownership in a business, dissolution of partnership, or dissolution or sale or limited liability company).

Do not include any void provision in future agreements.

Review all **existing** agreements with *current employees* and any *former employees* employed after January 1, 2022 that have non-compete provisions (including, e.g., offer letters, confidentiality agreements, severance agreements, proprietary information and inventions agreements, etc.)

Identify any non-compete provisions that are void (i.e., do not fall within a statutory exception).

Before February 14, 2024: Provide individualized written communications to last known address and e-mail address for each affected employee/former employee notifying them that the non-compete provisions are void.

Do not attempt to enforce any void provisions, regardless of whether the agreement was signed in and the employment was maintained outside of California.

WORKPLACE VIOLENCE PREVENTION PLANS (SB 553)

Effective July 1, 2024.

Applicable to:

- **All California employers except:**

- Employers that comply with healthcare workplace violence regulations (8 Cal. Code Regs. § 3342);
- Department of Corrections and Rehabilitation facilities and law enforcement agencies.

- **Workplaces except:**

- Remote work location chosen by employees, not under control of employer; or
- Workplace with fewer than 10 employees at a time that are not accessible to the public.

Establish, implement, and maintain an effective workplace violence prevention plan. *(Be on the lookout for a template plan or guidance from CalOSHA.)*

Create and maintain violent incident log.

Provide employee training at least annually. *(Watch for CalOSHA guidance.)*

Maintain records re: workplace violence hazard identification, evaluation, and correction for at least 5 years and make available to employees and their representatives upon request.

Review and revise plan at least once per year.

HIRING PRACTICES REVISIONS

Review and Update Hiring Practices to Comply with Revised Fair Chance Act Regulations ([2 Cal. Code Regs 11017.1](#))

- Note that “applicants” protected by the law include existing employees who apply or indicate specific desire to be considered for a different position, and existing employees subject to background checks because of change in ownership, management, policy, or practice.
- Review job postings – do not include statements that persons with criminal history will not be considered.
- Do not consider information about criminal history voluntarily shared by applicant prior to conditional offer.
- Comply with requirement that initial individualized assessment must be a “reasoned, evidence-based determination” and consider list of examples for factors that may be considered (e.g., whether harm caused was to property or people, amount of time that has passed since applicant’s release from incarceration, and many more)
- Provide increased detail in notice to applicant if preliminary decision is made to disqualify applicant.
- Consider specific factors set forth in regulations re: mitigating circumstances.

Cannabis Testing and Questions About Prior Cannabis Use (AB 2188 [2022] and SB 700 [2023])

Both laws effective January 1, 2024.

Applicable to all California employers absent an exemption, which can include:

- Employees in the building and construction trades (partial exemption);
- Applicants or employees hired for positions that require federal government background investigation or security clearance;
- Compliance with state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding, or federal licensing-related benefits or entering into a federal contract.



Update hiring practices and protocols.



Do not ask applicants about prior use of cannabis.



Do not ask about or use information about prior cannabis use obtained as part of criminal history unless permitted to do so under Gov. Code section 12952.



Inform Human Resources Personnel, Recruiters, and Supervisors involved in hiring that employers are *prohibited* from asking about prior cannabis use.



Assess use of any cannabis testing and any policies/practices related to cannabis use by employees or applicants.

- Identify when you test and the reasons for testing, including as part of job application process, and in connection with hiring, discipline, and termination.
- Comply with limitations on employer use of cannabis testing that identifies nonpsychoactive cannabis metabolites or the use of cannabis off the job and away from the worksite.
- Consider whether to replace existing tests with tests for impairment and/or “scientifically valid” tests that “do not screen for nonpsychoactive cannabis metabolites.” Explore options for such testing.
- May continue to prohibit employees to possess, be impaired by, or use cannabis on the job or on the jobsite and may still maintain a drug- and alcohol-free workplace.

Flexibilities re: Inspection of Form I-9 Documents (**Special Alert**)



Employers participating in E-Verify: confirm remote inspection of I-9 documents complies with new procedures (including live video interaction, proper annotation of Form I-9, and retention of document copies).



Employers who do not meet the requirements for the new flexibility must inspect documents in person.

ADDITIONAL HANDBOOK/POLICY UPDATES

Provide updated Wage Theft Prevention Act Notices (AB 636)

- Include information about federal/state emergency or disaster declarations. Check DLSE website for updated template: [Wage Theft Protection Act \(ca.gov\)](#).

Review Employment Rules for Possible Chilling Effect on Employee Rights to Take Concerted Action (*Stericycle, Inc. and Teamsters Local 628*)

- Review handbooks, policies, and rules and consider possible revision if they could be interpreted to violate the National Labor Relations Act (NLRA) under standard announced in August 2023:

- Employer rules are presumptively *invalid* if they tend to chill employees from exercising their rights to engage in protected activity under the NLRA, like talking with co-workers about wages or working conditions, participating in a concerted refusal to work in unsafe conditions, or talking to the media about problems in the workplace (among other things);
- Employer can defend rule only by showing it advances a legitimate and substantial business interest that cannot be achieved by a more narrowly tailored rule.

- New standard may implicate a wide range of employer policies and rules, including (but not limited to) rules about confidentiality, non-disparagement of the company, restrictions on the use of social media, restrictions on taking photos in the workplace, and personal conduct rules (like civility/insubordination rules).

Review Remote Work Reimbursement Policies and Practices ([Thai v. International Business Machines](#))

- Ensure remote work expenses are reimbursed even if remote work is caused by government order (e.g., COVID-19 stay-at-home order). Consider including reimbursement to cover some space, internet and utility expenses, as well as cell phone cost reimbursement, necessary equipment and any other business-related expenses that may be incurred when working remotely.
- Exercise caution and consult counsel regarding denial of remote work expense reimbursement under any circumstances, including for employees who work from home voluntarily.

Third Party Agent Liability for FEHA Violations ([Raines v. U.S. Healthworks Medical Group](#))

- Companies with 5 or more employees that act as business-entity agents, conducting FEHA-regulated activities:* review practices and procedures for FEHA compliance and consider extent of insurance coverage.
- Business-entity agents and the companies who hire business-entity agents:* review contracts to assess how responsibility and control for FEHA-regulated activities are defined and whether to add or revise indemnification provisions.

Religious Accommodation ([Groff v. DeJoy](#))

- Review policies and procedures to ensure denial of religious accommodation based on “undue hardship” meets new standard – requested accommodation would result in substantial increased costs in overall context of employer’s business.

Federal Pregnant Workers Fairness Act ([42 U.S.C. 2000gg](#), went into effect June 27, 2023)



Applicable to employers with 15 or more employees nationwide.



Review handbooks, policies, and procedures re: accommodation of pregnancy, childbirth, or related medical conditions to ensure compliance with federal (and state) law. California employers who already comply with state law should:

- Exercise caution re: requesting certification from a medical professional, as there are circumstances under which accommodations must be provided without medical certification.
- Ensure employees are not denied accommodation if *temporarily* unable to perform the essential functions of the job (and note that EEOC has indicated “temporarily” may mean for 40 weeks or even 1 year).

Federal PUMP Act ([29 U.S.C. 218d](#), went into effect April 28, 2023; and [DOL Guidance](#))



Applicable to all employees, with slightly different requirements for employers with fewer than 50 employees.



Review handbooks, policies, and procedures re: lactation breaks to ensure compliance with federal (and state) law. California employers who already comply with state law should:

- Ensure break time is paid if employee is not completely relieved from duty.
- Exercise caution in denying breaks based on state law exception for “serious disruption of operation,” as that exception does not appear in the federal law.

Final Pay (Including Vacation Payout)

- Revise policies and practices if necessary to pay vested, accrued vacation time at the “final rate” of pay. This may include shift differentials. Consult with counsel if in doubt concerning calculation of the “final rate” of pay. ([Mills v. Target Corp.](#))
- Issue final pay (including vested, accrued vacation time) upon temporary layoff/furlough if there is no specific return date within the same pay period. Consult with counsel if in doubt re: whether a workplace closure constitutes a “discharge.” ([Hartstein v. Hyatt Corp.](#))

Hospitality and Business Services – Rehiring of Displaced Workers (SB 723)

- Applicable to: Hotels, private clubs, event centers, airport hospitality operations, airport service providers, and building services, as defined. (Same employers who have had to comply with Labor Code section 2810.8 since 2021.)
- Review policies and practices re: rehire rights for laid off employees.
 - Extend effective date through December 31, 2025.
 - Expand definition of “laid off employees” to include all employees:
 - Employed for at least 6 months; and
 - Whose most recent separation from active service occurred on or after March 4, 2020.
 - Document the reason for any separation, as there will be a presumption that any separation due to a non-disciplinary reason is due to COVID-19 and will thus activate re-hire rights.
 - Ensure required records are retained for all newly-defined laid-off employees for at least three years.

ARBITRATION AGREEMENTS

- Review all agreements signed at the same time/as part of the same transaction with Arbitration Agreement – eliminate unconscionable terms in any such agreements. ([Alberto v. Cambrian Homecare](#))
- Consider whether to make arbitration agreements mandatory in light of federal preemption of state rule prohibiting mandatory employment arbitration agreements. ([Chamber of Commerce v. Bonta](#))
- Consider whether and how to provide for arbitration of *individual* PAGA claims in light of remaining risk that representative PAGA claims may be litigated in court. ([Adolph v. Uber Technologies, Inc.](#))

SEPARATION/SEVERANCE AGREEMENTS

- Review confidentiality and non-disparagement agreements in separation/severance agreements and consider revision if they could be interpreted to violate the National Labor Relations Act (NLRA) under standard announced in February 2023 ([McLaren Macomb and Local 40 RN Staff Council](#)):

- Broad confidentiality and non-disparagement agreements in severance agreement for non-supervisors violate NLRA (even for non-union employees and former employees), because these provisions may dissuade employees from exercising their rights under Section 7 of the NLRA to discuss the terms and conditions of their employment, criticize or complain about their employer or their conditions of employment, and to enlist the assistance of other (or assist others) in addressing employment matters.

ADDITIONAL LEGISLATIVE CHANGES

There were additional legislative changes impacting employers in specific industries. Please contact counsel to be sure you are in compliance with the changes that will go into effect on January 1, 2024.

- Increased flexibility for religious and cultural observances for State employees (SB 461)
- Required procedures if employers provide electronic notification of tax credits and/or unemployment benefit claims (AB 1355)
- Expansion of businesses required to post human trafficking notices to include pediatric care facilities (AB 1740)
- Flight crews covered by collective bargaining agreements exempted from meal and rest period requirements (SB 41)
- Employers must pay for time spent by employees obtaining food handling cards (SB 476)
- Revision to payroll records requirements for Public Works Projects (AB 587)
- Extension of authorization to deposit workers' compensation disability indemnity payments in prepaid cards (AB 489)
- Proposed standard to require women's restrooms on construction jobsites (AB 521)
- Changes to protections for grocery workers upon change in control of grocery establishment (AB 647)
- New required notice of acquisition of retail grocery and drug stores (AB 853)

OTHER SUGGESTED “TO DO” ITEMS TO MITIGATE RISK

- Implement policies in line with changes to employment laws and regulations; communicate those policies, and provide training, particularly to supervisors, recruiters, and HR.
- Document all adverse employment actions, performance issues, evaluations, and disciplinary issues.
 - Be aware that adverse employment action taken within 90 days of wage-related complaint or Equal Pay Act Complaint will create rebuttable presumption of illegal retaliation. (SB 497)
- Evaluate employee workdays to ensure you are paying for all time worked (all time an employee is subject to the control of the employer). This should include things like time spent waiting for computers to boot up, COVID screening, waiting for an employer’s required exit search, waiting to be let out of the workplace, time spent setting the alarm or walking co-workers to their car and potentially commuting time if employees are using personal vehicles to carry tools and supplies.
- Stop rounding time punches, including for meal periods.
- Conduct a classification audit and an exemption audit to ensure all workers classified as independent contractors and all employees classified as exempt from overtime meet legal requirements to be classified in this manner.
- Conduct a payroll audit (including review of the calculation of the regular rate of pay) to ensure compliance with California’s myriad wage and hour laws.



Review prior Checklists to ensure necessary steps have been implemented:

[2023 Checklist](#)

[2022 Checklist](#)

[2021 Checklist](#)

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