

Capitol Alert

Three Measures Worrying Employers

THREE MEASURES progressing in the state Capitol have the employer community on edge. If they become law, they would add new areas of liability for businesses to contend with.

The bills passed their houses of origin by the legislative deadline of May 27 and are slated to be heard in the other house's committees. Here are the bills that could affect your operations:

SB 1044 (Author: Maria Elena Durazo, D-L.A.)

This controversial legislation would prohibit an employer, in the event of a state of emergency or an emergency condition, from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace within the affected area because they feel unsafe.

Also, employees would be allowed to leave work regardless of existing health and safety standards and regardless of whether or not the employer has provided health and safety protections.

Under the measure, workers could also walk off the job during an "emergency condition," which is defined as:

- An event that poses a serious danger to the structure of a workplace or to a worker's immediate health and safety, or
- An order to evacuate a workplace, a worker's home or the school of a worker's child.

SB 1044 would also bar employers from preventing employees from using their mobile phones to seek emergency assistance, assess the safety of the situation or communicate with another person to confirm their safety.

The bill has teeth: Employers that dispute a worker's decision to leave or not show up for work if they feel unsafe could be subject to Private Attorneys General Act (PAGA) lawsuits (see related story on page 1).

Further, employers that fire and replace employees who have chosen not to work during the emergency could also be sued for retaliation.

SB 1162 (Author: Monique Limón, D-Goleta)

Under this bill, employers and contractors would have to report to the state Department of Fair Employment and Housing race, ethnicity and gender data for all employees, including top management.

Already, firms with 100 or more workers are required to submit pay data reports to the agency, which cross-references race, ethnicity and gender information. The new bill would require that those reports be made public over time, depending on the size of the organization.

Bill author Limón says SB 1162 would help identify employment pay and gender pay disparities through the collection and publication of pay data.

A number of employer groups, like the California Chamber of Commerce, have come out against the legislation saying that it "encourages litigation against employers based on the publication of broad, unreliable data collected by the state."

The chamber further says: "[The bill] undermines employers' ability to hire, imposes burdensome administrative and record keeping requirements, and subjects employers to a private right of action and penalties under the PAGA."

AB 2188 (Author: Bill Quirk, D-Hayward)

This bill would bar employers from "discriminating" in hiring, termination or other conditions of employment based on employees using cannabis while off duty.

The author says the legislation is necessary because the active ingredient in marijuana can stay in a person's system for weeks after the effects have worn off. During that time, the worker can test positive for cannabis use.

AB 2188 does not require employers to permit employees to be high while working.

The bill would exempt construction trade employees and would not preempt state or federal laws that require employees to submit to drug testing. ❖