

News You Can Use



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Business and Economy

Top 10 California Laws, Regs for 2023

ASLEW OF new laws and regulations that will affect California businesses are taking effect for 2023.

Last year was a busy one, with ground-breaking new laws on employee pay disclosures, a law prohibiting discrimination against cannabis-using employees and another expanding the circumstances when employees can take leave to care for a loved one.

The following are the top 10 laws and regulations that employers in the Golden State need to stay on top of.

1. Pay disclosure

This sweeping law in part requires more disclosure of pay information by employers. Under current law, employers are required to provide the pay scale for a position upon reasonable request by a job applicant. SB 1162 goes a step further by:

- Requiring employers, upon request by a current employee, to provide the pay scale of the position they are employed in.
- Requiring employers with 15 or more workers to include pay scale in any job postings for open positions.
- Requiring employers to maintain records of job titles and wage rate history for each employee while employed for the company, as well as three years after their employment ceases.

Note: The law defines "pay scale" as the salary or hourly wage range that the employer "reasonably expects" to pay for the position.

Penalties range from \$100 to \$10,000 per violation. This law took effect Jan. 1, 2023.

2. State of emergency and staff

This new law, SB 1044, bars an employer, in the event of a state of emergency or emergency condition, from taking or threatening adverse action against workers who refuse to report to, or leave, a workplace because they feel unsafe.

"Emergency condition" is defined as:

- Conditions of disaster or extreme peril to the safety of persons or property caused by natural forces or a criminal act.
- An order to evacuate a workplace, worksite or worker's home, or the school of a worker's child due to a natural disaster or a criminal act.

SB 1044 also bars 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 law, which took effect Jan. 1, 2023, does not cover first responders and health care workers.

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Law Bars ‘Discrimination’ Against Cannabis-Using Employees

3. Cannabis use and discrimination

This law bars employers from discriminating in hiring, termination or other conditions of employment based on employees using cannabis while off duty.

The bill’s author says the legislation is necessary because THC (tetrahydrocannabinol), the active ingredient in marijuana, can stay in a person’s system after they are no longer impaired. As a result, drug testing may detect THC in an employee’s system even if they used it weeks earlier and it is having no effect on their job performance.

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. This law takes effect Jan. 1, 2024.

4. Leaves of absence

The California Family Rights Act and the state’s paid sick leave law allow employees to take leave to care for a family member, defined as a spouse, registered domestic partner, child, parent, parent-in-law, grandparent, grandchild or sibling.

The definition has been expanded to include “any individual related by blood or whose association with the employee is equivalent of a family relationship.”

5. Contractor workers’ comp

Starting July 1, the following contractors must carry workers’ compensation coverage regardless of if they have employees or not:

- Concrete (C-8 license),
- Heating and air conditioning (C-20),
- Asbestos abatement (C-22), and
- Tree service (D-49).

Starting Jan. 1, 2026, all licensed contractors must have coverage.

6. OSHA citation postings

Under current law, employers that receive citations and orders from OSHA are required to post them in or near the place the violation occurred, in order to warn employees about a potential hazard.

Starting Jan. 1, 2023, they must post the notice not only in English, but also: Spanish, Chinese (Cantonese, Mandarin), Vietnamese, Tagalog, Korean, Armenian and Punjabi.

7. Protections for pregnant, nursing staff

In the waning days of 2022, Congress passed a bipartisan \$1.7-trillion spending bill that includes legislation that expands rights for pregnant and nursing employees.

The Pregnant Workers Fair Act – The law requires employers with 15 or more workers to make reasonable accommodations to limitations the worker conveys related to pregnancy, childbirth or a related medical condition.

Like under the ADA, employers are required to enter into an interactive process with an employee covered by the PWFA to determine what kinds of reasonable accommodations they need

Providing Urgent Maternal Protections for Nursing Mothers Act – This new law requires employers to provide employees who are nursing “reasonable time” and a private space to express milk.

8. CalSavers expanded

SB 1126 requires any person or entity with at least one employee to either provide them with access to a retirement program like a 401(k) plan or enroll them in the state-run CalSavers program.

Prior to this new law only companies with five or more employees that do not offer a retirement plan are required to enroll their workers in CalSavers.

9. Bereavement leave

Employers with five or more workers are required to provide up to five days of bereavement leave upon the death of a family member, under a new law starting in 2023.

This leave may be unpaid, but the law allows workers to use existing paid leave available to them, such as accrued vacation days, paid time off or sick leave. Employers are authorized to require documentation to support the request for leave.

10. PFL wage replacement

This law was passed last year, but does not take effect until 2025. Existing California law allows employees to apply for Paid Family Leave and State Disability Insurance, both of which provide partial wage replacement benefits when employees take time off work for various reasons under the California Family Rights Act.

Starting in 2025, low-wage earners (those who earn up to 70% of the state average quarterly wage) will be eligible for a higher percentage of their regular wages under the state’s PFL and SDI benefit programs. ❖



Online Threat

Growing Risks of Benefits, Payroll Platforms

THERE IS a growing threat to companies that use online services to administer their employee benefits and payroll as cyber criminals increasingly exploit these cloud service platforms.

The results of a hacker gaining access to the company's payroll systems, sloshing with cash, as well as employees' personally identifiable information can be devastating both to the employer as well as its workers, according to a blog by the law firm McLane Middleton.

Do not assume that the system you are using has safeguards in place to prevent these types of attacks. Sometimes you may need to activate them on your account or configure your account a certain way.

PLATFORM VULNERABILITIES

Cyber criminals can gain access to sensitive employee information:

- Social Security numbers
- Government identifications and numbers
- Bank account information for employees and dependents
- Health information

Cyber criminals may gain access to funds that go through:

- Payroll
- 401(k) and other retirement accounts
- Health insurance
- Other benefits

Attacks on online benefits and payroll services can result in huge losses as well as liabilities for an employer. Damage can be extensive:

- The criminals can divert large financial transactions like payments to retirement funds and smaller ones like payroll payments, to a fraudulent account, which they promptly drain.
- The criminals steal personal information of employees. They can then demand the employer pay a ransom in exchange for not selling the information on the dark web. If the employer refuses to pay, they can demand individual employees pay a ransom.

What you can do

Often hackers will gain entry to a benefits and payroll website not through any fault of your own.

McLane Middleton recommends that you look for online benefits and payroll platforms that protect their clients' accounts with:

Multi-factor authentication – Besides a password, a platform worth its salt will include multi-factor authentication. Typically, that entails sending an authentication message to a pre-specified e-mail or mobile phone number that can accept text messages every time there is a log-in attempt.

Other systems may use certificates that the employer installs only on computers used by employees authorized to access the platforms.

Multi-user notification and authorization – This entails notifying key personnel if an employee's profile information (such as physical address, phone number or bank account number) is changed inside the payroll or benefit system. The website would then send an e-mail to a secondary person in the organization to approve the change.

Different levels of access privileges – One common approach is for hackers to target employees in an organization with administrator access to the benefits and payroll system. All of the employees that use the system often do not need access to all of it.

You can limit access of your human resources staff to only those functions necessary for them to do their jobs. This prevents them from accessing files and information they have no business seeing.

Logs of access and activity – If possible, try to find a vendor that saves log files that can record dates and times of a breach, what the criminals were doing in the system and what data they accessed.

The takeaway

If you are using an online platform to administer your benefits and payroll, you should ensure that the vendor is taking the appropriate steps to protect itself, and you, from cyber attacks.

You may want to discuss with your vendor what kind of security they have in place and any extra steps you can take as an organization to reduce the chances that information and funds in your accounts are safe from abuse. ❖



Economic Spillover

Labor Crunch Adds to Construction Risks, Liabilities

THE ASSOCIATED Builders and Contractors estimates that the construction industry needs 650,000 additional workers on top of the normal hiring in order to meet demand.

That's forcing many construction firms and contractors to work short-staffed or take on and train employees new to the trade, a combination that can lead to a host of problems, from more workplace injuries to shoddy workmanship. Those effects often translate into higher insurance and out-of-pocket costs for construction firms, which are already dealing with rising material costs and unpredictable supply chains.

The following are the risks of working short-staffed or with newly minted workers.

Workplace safety

When fully staffed, workers and supervisors are better able to identify safety issues.

Studies have found that experienced workers are less likely to suffer workplace accidents than those who are new to the job. Inexperienced workers are:

- Not as familiar with safety protocols, increasing the risk of accidents.
- Less likely to notice dangerous work practices or safety issues.
- Often loath to speak up if they see a problem.
- A potential danger to the public if they are on worksites that are near sidewalks or heavily trafficked areas.

Finally, contractors that are not operating at full capacity may pressure employees to get more done in less time and/or work overtime. That can lead to workers cutting corners and working faster than is safe to get the job done.

Quality and defects

Quality can suffer when short-staffed. An inexperienced or overworked worker who misunderstands what needs to be done, can repeat a mistake again and again. They may also cut corners, possibly leading to future construction defect claim.

Quality issues and defective work can lead to:

- Tearing out their work and redoing it. This can be costly depending on how many times the same mistake was made. These costs are borne by the construction firm and their insurer.
- Construction defects. Some mistakes may not be readily apparent and may manifest themselves months or years after a project is completed. Once discovered, the client may file a construction defect claim against the contractor.

The next steps

While getting staffing levels up to meet your demand may be difficult, you should strive to ensure that all new workers are properly trained in how to do their jobs, and in particular how to perform their job safely.

Besides being able to safely do their jobs, they should be trained about other hazards on the worksite, including moving equipment or material and knowing when to ask for assistance of someone to observe their work in hazardous situations.

Before each shift, hold a quick safety meeting as well as a longer tailgate-style meeting on a weekly or bi-weekly basis.

Even experienced workers need to refresh their safety knowledge, so all of your workforce should be in attendance.

Finally, besides your mandatory workers' compensation coverage, you should make sure that you have in place construction liability insurance. This common liability coverage protects your business if it's held responsible for events like property damage, bodily injury or defective work. ❖