California Employment Law Update: What's on the Horizon for 2025 for California Workplaces

Presented By:

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2025 Changes

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Local Enforcement of Discrimination Claims

- **SB 1340**
  - Enables local governments to enforce anti-discrimination laws when employees obtain a right-to-sue from the Civil Rights Department (CRD)
  - Any city, county, or locality can enforce any local anti-discrimination law, if:
    - An employment complaint has been filed with the CRD
    - The CRD has issued a RTS Notice
    - The time to file a civil action has not expired
    - The local law at issue is at least as protective as the FEHA
    - Local governments can now enforce the FEHA and Unruh Civil Rights Act in addition to any more stringent local anti-discrimination laws
  - Tolls the time to file a civil action until a RTS is issued by the CRD

Intersectional Discrimination

- **Senate Bill 1137: Intersectional Discrimination**
  - **"Intersectionality is an analytical framework that sets forth that different forms of inequality operate together, exacerbate each other, and can result in amplified forms of prejudice and harm."**
  - **Clarifies that the Fair Employment and Housing Act bars discrimination not only on the basis of individual protected characteristics, but on a combination of two or more protected traits.**
    - **E.g., Black Women**
    - **Although federal courts are split on the subject of intersectional discrimination, the EEOC recognizes that discrimination motivated by two protected characteristics can violate Title VII (e.g., Black Women, Old Women)**
  - **Also applies to the Unruh Civil Rights Act and provisions of the Education Code**

Driver's License Requirements

- **SB 1100**
  - **Amends the FEHA**
  - **Employers must satisfy a two-part test before including a statement in a job advertisement, posting, application or other materials relating to the job that requires an applicant to have a driver's license:**
    - **The employer must *reasonably expect* driving to be one of the job functions for the position; and**
    - **The employer must *reasonably believe* that satisfying the job function using an alternative form of transportation (e.g., Uber, Lyft, taxis, carpooling, bicycling, walking or subways) would not be comparable in travel time or cost to the employer's business**
  - **Violations of the statute can subject employers to injunctive relief, compensatory damages, punitive damages, attorney's fees and costs.**

Expanded Protections for Victims of Violence

- **AB 2499, effective January 1, 2025**
  - Adds Section 12945.8 to the California Government Code
  - Recasts jury, court, and victim time off provision as unlawful practices under the FEHA
    - Effect is to place enforcement of claims under the authority of the CRD
  - Prohibits discrimination or retaliation
  - Expands an employer's obligation to provide reasonable accommodations to an employee who is a victim or who has a family member who is a victim of violence
  - Recasts jury, court, and victim time off provision as unlawful practices under the FEHA
  - Employees can use accrued time off (vacation, paid sick leave or compensatory time, if available

Freelance Worker Protection Action Act

- **SB 988: Freelance Worker Protection Act**
  - **Minimum requirements between a hiring party and a "freelance worker"**
    - **"Freelance Worker" is a person or organization composed of no more than one person, that is hired or retained as a bona fide independent contractor by a hiring party to provide professional services in exchange for an amount equal to or greater than $250**
  - **Requires a written contract be provided to the freelance worker, containing at a minimum:**
    - **Name and mailing address of each party.**
    - **Itemized list of all services to be provided, including the value and rate of such services and method of compensation**
    - **When the hiring party must pay the compensation or the mechanism by which the date of payment is determined, or if unspecified, no later than 30 days after completion of services.**
    - **When the freelance worker must submit a list of services to the hiring party to meet any internal processing deadlines for timely payment**

Freelance Worker Protection Action Act

- **Prohibits** requiring the freelance worker to accept less compensation than what is specified by the contract, to provide more goods or services, or to grant additional intellectual property rights as a condition of timely payment.
- **Prohibits** discrimination Against a Freelance Worker for asserting rights under the Act
- Creates a private right of action with injunctive relief, damages, fees, and costs available.
  - Action may be brought by aggrieved freelance worker or a public prosecutor
  - Authorizes damages up to twice the amount of unpaid compensation for failure to pay contracted compensation in a timely manner
- Hiring Party must retain written contract for at least 4 years.
- Codified in the Business and Professions Code

The California Worker Freedom from Employer Intimidation Act

- **SB 399: Captive Audience Prohibitions**
  - Creates protections for employees who decline to attend "employer-sponsored meetings" or who decline to participate in, receive, or listen to any employer communications regarding "religious or political matters"
    - "Political matters" are defined as those concerning "elections for political office, political parties, legislation, regulation, and the decision to join or support any political party or political or labor organization."
    - "Religious matters" are "matters relating to religious affiliation and practice and the decision to join or support any religious organization or association."
  - Prohibits discrimination, discharge, retaliation or other adverse employment actions against such employees or threats of discharge, discrimination or retaliation

The California Worker Freedom from Employer Intimidation Act

- **SB 399: Captive Audience Prohibitions**
  - Prohibits employers from mandating employee attendance at employer information sessions regarding a labor organization even if the meeting takes place during work hours and employees are paid for their time attending.
  - SB 399 may be enforced by private court action or by the California Labor Commissioner (the DLSE).
  - Available relief: damages, temporary and permanent injunctive relief, punitive damages, and a civil penalty of $500 per employee per violation
- **Are Captive Audience Laws Constitutional?**
- **Are Captive Audience Laws Preempted by the NLRA?**
- **What Steps Should Employers Take?**
  - Update policies and train supervisors
  - Memorialize voluntary nature of potential captive audience meetings.

Changes to Paid Family Leave

- **AB 2123**
  - California's PFL, administered by the Employment Development Department, provides wage replacement benefits to workers who take time off to:
    - Care for a covered family member with a serious health condition
    - Bond with a minor child within one year of the birth, adoption or foster care placement of the child with the employee
    - Participate in qualified exigency leave related to the active duty or call to active duty of certain family members
  - The law currently allows employers to require employees to use up to 2 weeks of any accrued but unused vacation before employees can receive PFL benefits
  - AB 2123 amends the Unemployment Insurance Code to eliminate this option for employers, i.e., employers can no longer require employees to use up two weeks of accrued vacation prior to receiving PFL benefits.

Voluntary Social Compliance Audits

- **AB 3234**
  - Requires employers who voluntarily subject their business to a "social compliance audit" to post to the company's website a report detailing the audit's findings regarding compliance with child labor laws
  - AB 3234 defines "social compliant audit" as inspections of any production house, factory, farm or packaging facility of a business to verify that it complies with social and ethical responsibilities as well as health and safety regulations regarding **child labor**.
  - The post must include:
    - The year, month, day and time the audit was conducted, and whether conducted during day or night shift
    - Whether the employer did nor did not engage in or support the use of child labor
    - A copy of any written policies and procedures the employer has regarding child employees
    - Whether the employer exposed children to any workplace situations that were hazardous or unsafe to their physical and mental health and development
    - Whether children worked within or outside regular school hours, or during night hours, for the employer.
    - A statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

Retaliation Poster

- **SB 2299**
  - Requires the California Labor Commissioner to develop, and an employer to post a model list of employees' rights and responsibilities under California whistleblower laws
  - Employers who post the model list will be considered compliant with the posting requirement
  - The list describes who is a protected employee under California Labor Code Section 1102.5, what is a "whistleblower," and the protections afforded to whistleblowers.
  - The list also explains how to report improper acts to the Attorney General's Whistleblower Hotline
  - https://www.dir.ca.gov/dlse/WhistleblowersNotice.pdf

Minimum Wage/Salary Changes

- **Effective January 1, 2025, California's minimum hourly wage will increase from $16 to $16.50**
  - **Proposition 32 would raise the minimum wage to $17 for the remainder of 2024 for employers with 26 or more employees, increasing it to $18 per hour in 2025.**
- **New minimum salary threshold for CA exempt employees**: $68,640 annually
- **New salary threshold for CA computer professionals**. $118,657.43 annually or an hourly wage of $56.97 for every hour worked
- **Health Care Workers Minimum Wage:** Effective, October 16, 2024, health care workers are eligible to receive the higher minimum wage of at least $18 up to $23 depending upon the health care facility they work in.
- **AB 610: Fast Food Industry**
  - **Effective April 1, 2024, AB 1228 increased the minimum wage for certain "fast food restaurant employees" to $20 per hour.**
  - **AB 610 exempts certain restaurants: those located in airports, on certain public lands, or those operated in conjunction with a hotel, event center, theme park, public or private museum, gambling establishment, or a campus used for office purposes primarily or exclusively by a single for-profit corporation if certain other conditions met**

DOL's New Rule: Salary Basis Increases

Exemption	Before 7/1/24	7/1/24 – 1/1/25	1/1/25 – 7/1/27
Executive	$684 per week	$844 per week	$1,128 per week
Administrative	$684 per week	$844 per week	$1,128 per week
Professional	$684 per week	$844 per week	$1,128 per week
Outside Sales	N/A	N/A	N/A
Computer	$684 per week	$844 per week	$1,128 per week
Highly Compensated	$107,432 per year	$132,964 per year	$151,164 per year

What Didn't Pass? Automated Decision Tools

- **AB 2930: Automated Decision Tools**
  - **This bill would have regulated the use of automated decision tools (ADT) in making or playing a substantial role in "consequential decisions"**
    - **Consequential decisions are decisions that have a significant effect on an individual's life related to, among other things, employment, and includes decisions about employment pay, promotion, hiring, termination, or task allocation for purposes of determining employment terms or conditions**
  - **Would have required an impact assessment or bias audit be performed by AI developers and deployers (users) of any ADT before the tool is first employed, and annually thereafter, to identify and eliminate "algorithmic discrimination."**
  - **Would have required deployers to notify any individual subject to a consequential decision by an ADT that an ADT is being used and would have required that a summary of the impact assessment be provided to individuals subject to decisions by the ADT.**

New in 2024

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PAGA Reform

July 1, 2024: Governor Newsom signed PAGA reforms (Assembly Bill 2288 and Senate Bill 92) into law. The new law applies to cases based on PAGA notices filed on or after June 19, 2024. It does not apply to existing cases.

Changes:

- **Standing:** A PAGA plaintiff must now show they personally experienced each specific Labor Code violation(s) they are seeking to recover on a representative basis in order to have standing.
- **One-Year Statute of Limitations:** The one-year PAGA statute of limitations applies to the personal Labor Code violation the plaintiff alleges.
- **Manageability:** Courts may limit the evidence to be presented at trial or otherwise limit the scope of claims to ensure claims may be effectively tried.
- **Employee Share of PAGA funds:** Increased from 25% to 35%, LWDA's portion decreases from 75% to 65%.

PAGA Reform

PAGA Penalties: The most far-reaching and impactful reforms in AB 2288 are the sections related to PAGA penalties as follows:

- **Good Faith Dispute:** Relying on the recent Naranjo v. Spectrum, Inc. decision, the bill recognizes that a good-faith dispute can eliminate, or significantly reduce, PAGA penalties for: (1) failure to pay all wages due upon termination of employment (also known as "waiting time penalties"); and (2) wage statement violations that were not willful or intentional (but not when no wage statement is provided at all).

- **"Stacking" of Certain Violations Prohibited:** Allows courts to reduce "stacked" penalties for violations arising from the same payroll errors resulting in a failure to timely pay wages during employment, a failure to timely pay wages upon termination of employment and any derivative wage statement violations arising from these errors.

- **Reduction In Subsequent Penalties:** Clarifies that the default $100 penalty applies to all violations unless (1) a court or the Labor Commissioner finds that the employer's practice or policy violated the law within the last five years, or (2) a court determines that the employer acted "maliciously, fraudulently, or oppressively." (There is no definition of what constitutes malicious, fraudulent or oppressive behavior in AB 2288.) If either are found, the default penalty increases to $200 for subsequent violations.

PAGA Reform

- **Reduction in Wage Statement Penalties:** Previously, wage statement violations could result in $100 for an initial violation and $200 for a subsequent violation per employee per pay period. AB 2288 provides for caps for other technical violations.

- **No PAGA "Penalty" For Weekly Payrolls:** AB 2288 reduces the penalties by 50% for employers that pay weekly.

- **"All Reasonable Steps" to Comply With the Law May "Cap" PAGA Penalties:** The PAGA reform recognizes that an employer can cap PAGA penalties by showing they have taken "all reasonable steps" to comply with the law.

- **Ability to Cure:** The PAGA reforms expand the list of violations that an employer can "cure," to include failure to provide meal and rest breaks, minimum wage and overtime violations, expense reimbursements, and additional wage statement violations.

Workplace Violence Prevention Plans

- **By July 1, 2024, covered employers must have established and provided initial training on a Workplace Violence Prevention Plan (WVPP) to their employees.**
  - **Must record information about every workplace violence incident in a violent incident log.**
  - **Must review plans and provide effective training.**
- **The WVPP must conform with the requirements of new Labor Code Section 6401.9:**
  - **The plan must be written – it can be standalone or incorporated into an Injury and Illness Prevention Plan.**
  - **The plan must be easily accessible to employees, their authorized representatives, and Cal/OSHA representatives at all times.**
  - **Must be specific to the hazards and corrective measures for each work area and operation.**
  - **Employers must involve employees in creating and implementing the plan.**

Additional Requirements

- **Provide training to employees initially (by July 1, 2024), to new employees, whenever a new hazard is introduced in the workplace, and annually and retain records**
- **Maintain records of workplace violence hazard identification, evaluation and correction**
- **Record information in a violent incident log**
- **Review the effectiveness of the plan and revise it as needed at least annually**
- **Companies that are not in compliance can be cited by Cal/OSHA, and violations will include civil penalties and misdemeanors.**

Pregnant Workers Fairness Act

- **Federal law, effective June 27, 2023**
- **Requires covered employers to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."**
  - **Employees are entitled to reasonable accommodation even if they cannot perform the essential functions of the job with the accommodation, so long as they can perform the essential functions "in the near future."**
- **Several examples of possible reasonable accommodations in EEOC regulations:**
  - **Ability to sit or drink water**
  - **Closer parking**
  - **Flexible hours**
  - **Additional break time**
  - **Leave**
  - **Be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy, including temporary suspension of essential functions**
  - **Light duty assignment**
  - **Telework**
- **Note: The PWFA is not tied to "medical disability" like the California PDL Law**

Pregnant Workers Fairness Act (PWFA)

- **What else does the PWFA prohibit? Covered employers cannot:**
  - Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
  - Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
  - Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
  - Retaliate against an individual for reporting/opposing unlawful discrimination under the PWFA or interfering with employee rights under the PWFA.

- **EEOC: What You Should Know About the Pregnant Workers Fairness Act**
  - https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act

Employee Mobility and Restrictive Covenants: Protecting Competing Interests

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FTC's Final Rule

- **On April 23, 2024, the FTC issued its final rule, which provided that:**
  - **"it is an unfair method of competition—and therefore a violation of section 5 of the Federal Trade Commission Act—for persons to, among other things, enter into noncompete clauses ("noncompetes") with workers on or after the final rule's effective date (September 4, 2024).**
  - **With respect to existing noncompetes—i.e., noncompetes entered into before the effective date—the final rule adopted a different approach for senior executives than for other workers.**
    - **For senior executives, existing noncompetes were allowed to remain in force, while existing noncompetes with other workers were not enforceable after the effective date**

NLRB Position

- **On February 23, 2023, the National Labor Relations Board (NLRB) issued a decision in *McLaren Macomb,* returning to longstanding precedent holding that employers may not offer employees severance agreements that require employees to broadly waive their rights under the National Labor Relations Act. On March 22, 2023, Jennifer Abruzzo, GC at the NLRB, sent a memo to the agency's field offices clarifying that all non-disparagement agreements and noncompete clauses in severance contracts are now null and void and that this applies retroactively.**

NLRB Position

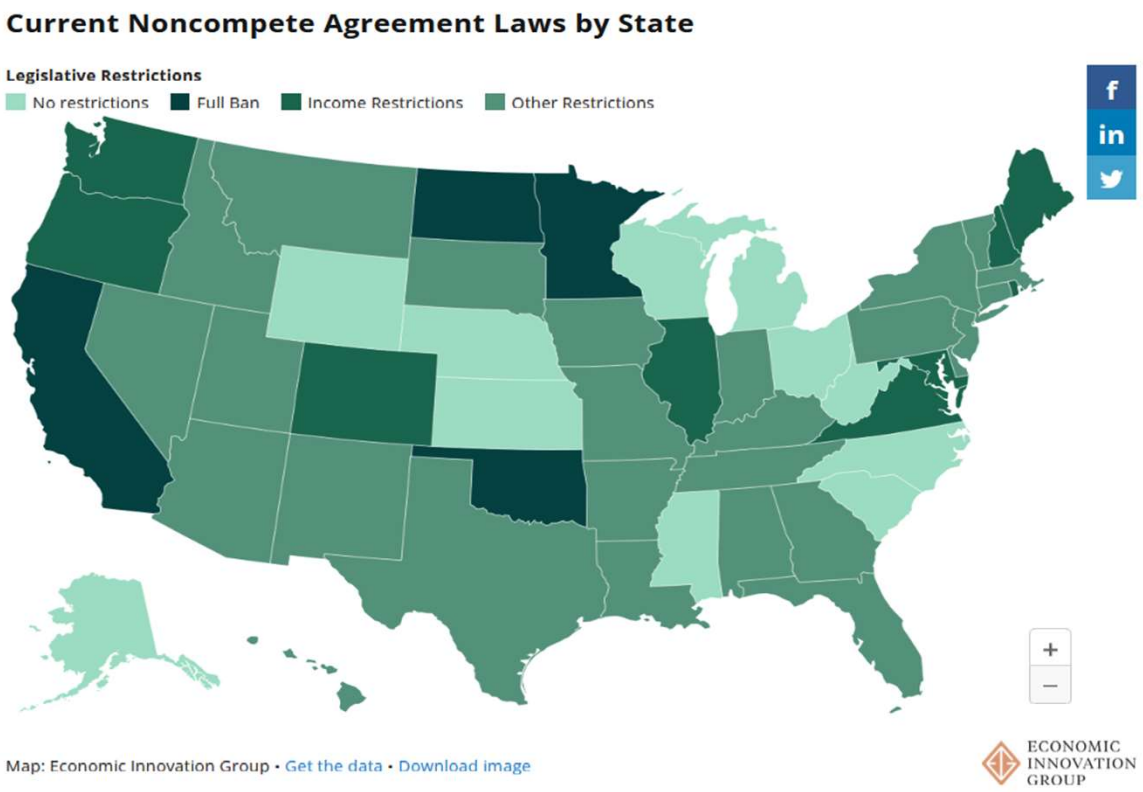
- **On June 13, 2024, an administrative law judge (ALJ) for the National Labor Relations Board (NLRB) ruled that overly broad noncompete and nonsolicitation provisions in an employment agreement violated an employee's labor rights in what could be the first NLRB ruling to find such provisions unlawful under the National Labor Relations Act (NLRA).**
- **A key part of the ruling was the ALJ's finding that three challenged provisions in the employee's employment agreement related to noncompetition and nonsolicitation terms were unlawful under the NLRB's employee-friendly standard for evaluating work rules and policies adopted in its August 2023 decision in *Stericycle, Inc*.**

State Treatment of Noncompetes

- **Generally disfavored, and even outlawed in some states (e.g. California). However, courts have traditionally accepted 3 justifications for noncompetes:**
  1. **Protect intellectual property rights of an employer**
  2. **Protect employer investment in training**
  3. **Protect from potential loss of customers due to solicitation by former employee**
- **In states where noncompetes are enforceable, they must also be reasonable in scope, duration, and narrowly tailored to protect a legitimate business interest.**

"Upset at you for breaching the non-compete? Of course not."

There Is a Trend Moving Away From Noncompetes



Thank You

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