KRONICK

REFERENCE GUIDE

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2021 LEGISLATIVE UPDATES

An Employer's Guide to New Laws Impacting the Workplace in 2020 and Beyond

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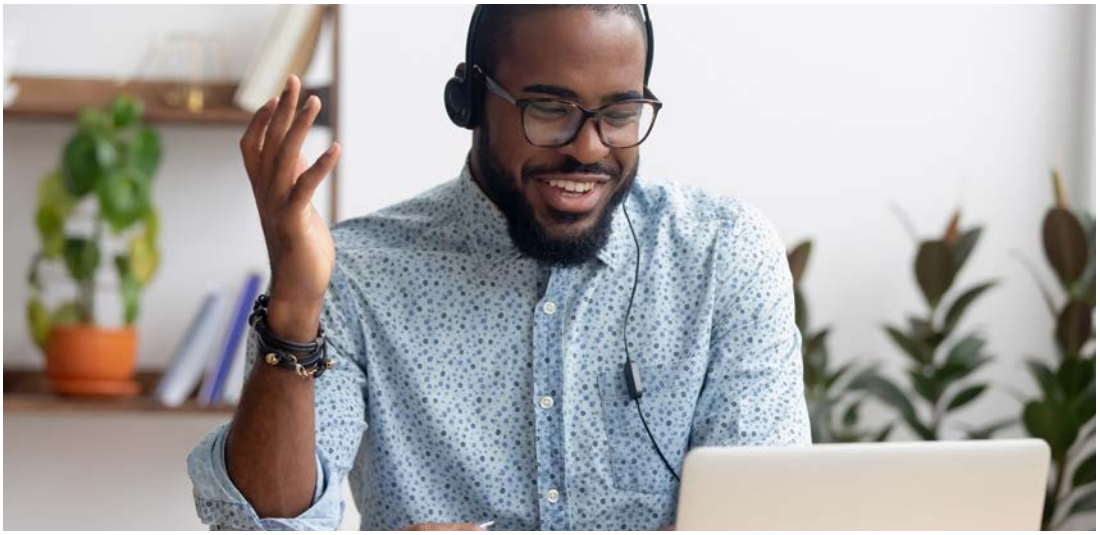

New Employment-Related Legislation for 2021

As with nearly everything else in 2020, the California Legislature's legislative calendar was impacted by the COVID-19 pandemic. This was evidenced in two ways. First, the largest number of, and arguably the most significant, bills passed in 2020 dealt with the impact of COVID-19 in one form or another. Second, the legislative output was reduced by the fact that the California Legislature did not meet from March 16, 2020 through May 4, 2020 due to the shutdown occasioned by the pandemic. The Legislature's summer recess also was lengthened for two weeks when two members tested positive for COVID-19. As noted by the Sacramento Bee on July 17, 2020, these circumstances resulted in reduced committee hearings and pared down legislation. Nevertheless, the Legislature still managed to enact new laws that will require employers' attention as they move into 2021. A summary of these new laws follows.

I. COVID-19 Related Legislation.

A. SB 1159 (HILL) – WORKERS' COMPENSATION; COVID-19 PRESUMPTION.

SB 1159 was enacted as an urgency measure and, therefore, is already in effect. It enacts new Labor Code sections 77.8, 3212.86, .87, and .88.

The bill revises the definition of "injury" for workers' compensation purposes to include illness or death resulting from COVID-19 if the employee tested positive or was diagnosed with COVID-19 within 14 days after of providing labor or services at the employee's place of employment. If the positive test or diagnosis occurred after July 6, 2020, the employee's positive test or diagnosis must also have occurred during an outbreak at the worksite as that term is defined. An "outbreak" exists if within 14 calendar days a worksite with fewer than 100 employees experiences four positive tests or a worksite with more than 100 employees experiences positive tests equal to four percent of the total number of employees at that worksite.

An employee who suffers an "injury" as defined is entitled to the full panoply of workers' compensation benefits. However, the bill requires that all COVID-19 related benefits, such as Emergency Paid Sick Leave ("EPSL") and Emergency Family and Medical Leave Expansion Act ("EFMLEA") leave under the Families First Coronavirus Response Act ("FFCRA"), be exhausted prior to workers' compensation benefits applying.

The bill provides that any "injury" as defined is presumed to arise out of and in the course of employment. The presumption is "disputable" and may be controverted by evidence such as facts showing measures in place at the worksite designed to reduce the transmission of the COVID-19 virus and evidence of the employee's non-occupational risks of exposure. The bill also makes a claim for benefits related to a COVID-19 related injury or illness presumptively compensable if it is not rejected within 30 days (for fire, law enforcement, and healthcare workers) or 45 days (for all other employees) following submission of the workers' compensation claim form.

B. AB 685 (REYES) – NOTICE TO EMPLOYEES OF POTENTIAL COVID-19 EXPOSURE.

AB 685 amends Labor Code sections 6325, 6432, and section 6409.6 to impose requirements on employers for reporting cases of COVID-19. The provisions will remain in effect until January 1, 2023.

Notification of Employees

First, if an employer receives notice of a positive COVID-19 case or notice of a potential exposure in the workplace, the employer must notify its employees, and any exclusive representative of any represented employees, as well as employers of subcontracted employees, within one business day. The notification must be in writing, and it must be given to all employees who may have been exposed to COVID-19 and to their exclusive representative if applicable. The employer must also provide employees with information about COVID-19 benefits and resources, such as workers' compensation, sick leave, and other leave available. The notice must also advise employees of the employers' planned safety and disinfection protocol. The notice can be personally served, emailed, or texted, as long as it is reasonably anticipated to be received by the employee within one business day.

For notification purposes, "notice of potential exposure" means any of the following:

- A public health official or licensed medical provider notifies the employer that an employee was exposed to a qualifying individual at the worksite;
- An employee or the employee's emergency contact notifies the employer that the employee is a qualifying individual;
- The employer discovers through its own testing protocol that the employee is a qualifying individual; or
- A subcontracted employer notifies the employer that a qualifying individual was on the worksite of the employer receiving notification.

A "qualifying individual" is someone who has a confirmed case of COVID-19, has been diagnosed with COVID-19 by a healthcare provider, is under a COVID-19-related order to isolate, or has died due to COVID-19.

Notification of Public Health Agency

In addition to notifying employees and their exclusive representative, employers must also notify the worksite's local public health department of COVID-19 outbreaks within 48 hours of learning of the outbreak. An "outbreak" is currently defined by California State Department of Public Health to be three or more cases in a 14-day period. Employers must provide the public health department the names, numbers, occupations and worksite of all individuals who are qualifying individuals. The employer must also report the business address and North American Industry Classification System (NAICS) code of the worksite where the qualifying individuals work. An employer experiencing an outbreak must continue to give notice to the local health department of any subsequent laboratory-confirmed cases of COVID-19 at the worksite.

Closure of Workplaces That Constitute an "Imminent Hazard to Employees"

AB 685 also amends Labor Code section 6325 to permit the Division of Occupational Safety and Health ("Cal-OSHA") to close workplaces that "constitute an imminent hazard to employees" due to COVID-19. Cal-OSHA must limit the closure to the immediate area where the harm exists, cannot prohibit operations that do not expose employees, and cannot interfere with critical government function such as the delivery of power or water. Cal-OSHA must post a notice in a conspicuous place at the place of employment upon making this determination. Entry must still be permitted for eliminating the dangerous condition. Cal-OSHA must also

post notice of such closure in a conspicuous place in the closed area, and the notice must remain in place until the area has been made safe and it has been removed by Cal-OSHA.

Citations for Violations

This bill also fast-tracks the citation process for enforcing violations. It amends Labor Code section 6432 to exempt the new COVID-19 requirements from a "pre-citation" notice which would normally give an employer time to respond prior to receiving an actual citation. This bill gives Cal-OSHA the authority to issue a citation immediately.

C. AB 2043 (RIVAS) – CAL-OSHA COVID-19 DOCUMENTATION.

This COVID-19 related bill adds section 6725 to the Labor Code, which directs Cal-OSHA to disseminate and enforce its Guidance Documents on COVID-19. It specifically directs Cal-OSHA to work with community organizations to conduct targeted outreach to agricultural employees and requires that material be disseminated in English and Spanish. The bill also directs Cal-OSHA to compile data and report information relating to COVID-19 illness and injuries at workplaces of agricultural employees.

D. AB 2043 (RIVAS) – AGRICULTURAL EMPLOYEES; COVID-19.

This bill adds new section 6725 to the Labor Code. It was enacted as an urgency measure and thus already has taken effect.

The bill requires Cal-OSHA to disseminate guidelines for protecting agricultural workers from COVID-19 in both English and Spanish and to update its guidelines regularly as conditions warrant.

II. Employee Leaves.

A. EXECUTIVE ORDER N-51-20 – PAID SICK LEAVE FOR FOOD WORKERS.

On April 16, 2020, Governor Newsom issued Executive Order N-51-20 which put in place immediate protections for food sector workers. This order was in response to the federal FFCRA, which required employers with few than 500 employees to provide emergency paid sick leave benefits to employees who were unable to work for reasons related to COVID-19. This order provided benefits to food service employees who worked for employers who had more than 500 employers and were therefore not eligible for leave under the FFCRA. This order was codified by AB 1867, which adopted its protections for food service workers, as described below.

B. AB 1867 (COMMITTEE ON BUDGET) – FOOD WORKERS' SAFETY AND LEAVES.

This bill enacts Government Code section 12945.21, Health and Safety Code section 113963 and Labor Code sections 248 and 248.1. The bill also amends Labor Code section 248.5.

The primary focus of AB 1867 is the implementation of paid leave for workers designated as "food sector workers" under the bill. The bill defines "food service workers" as anyone who works for a private business that employs more than 500 employees and meets one of the following criteria:

(i) Works in one of the industries or occupations defined in Industrial Welfare Commission ("IWC") Wage Order 3-2001 § 2(B) (the canning, freezing, and preserving industry); IWC Wage Order 8-2001 § 2(H) (industries processing agricultural products after harvest); IWC Wage Order 13-2001 § 2(H) (facilities on a farm that prepare products for market); or IWC Wage Order 14-2001 § 2(D) (general agricultural occupations);

(ii) Works for a business that runs a food facility, which includes grocery stores, fast-food restaurants, and distribution centers; or

(iii) Delivers food from a food facility for or through a hiring entity.

Food sector workers become eligible for this leave when they are unable to work because, as a result of concerns related to COVID-19, they are subject to a government-mandated quarantine, are advised to self-quarantine by a health care provider, or are prohibited by their employer from coming to work.

When any of those requirements are triggered, eligible workers are entitled to the approximate equivalent of two weeks of that worker's normal pay. If the worker is "full time" or works 40 hours per week or more on average, the worker

will receive 80 hours of paid leave. If the worker works a variable amount of hours, he or she is entitled to 14 times the average number of hours worked each day in the six months preceding the leave. In either case, the employer is not required to pay the worker more than $511 per day or $5,110 in total. This is in addition to any other sick leave available under Labor Code section 246.

This bill also provides supplemental paid leave for health care providers and first responders employed by a private business or a public entity that has elected to exclude health care workers from the Emergency Paid Sick Leave Act ("EPSLA") portion of the FFCRA. The allotted hours, calculations methods, and maximum payment amount are the same as those provided above for food service workers. The leaves will expire on December 31, 2020 or upon the expiration of any federal extension of the EPSLA, whichever is later.

The bill gives the Labor Commissioner the authority to enforce the bill and provides for remedies if sick days are unlawfully withheld including back pay, reinstatement, and a penalty of up to $4,000.

The bill also amends Health and Safety Code section 11369 to require employers to allow food employees who work in food facilities to wash their hands every 30 minutes and additionally as needed.

Finally, the bill establishes a "small employer family leave mediation pilot program" for employers with between 5-19 employees. Under this program, if an employee obtains a right to sue notice from the Department of Fair Employment and Housing ("DFEH") for a violation of family leave rights, the employer or the employee has 30 days to request mediation. Once mediation is requested, the employee cannot pursue civil action until the mediation is complete, as determined by DFEH.

C. AB 2017 (MULLIN) – DESIGNATION OF SICK LEAVE AS "KIN CARE" IS AT SOLE DISCRETION OF EMPLOYEE.

This bill makes a slight change to existing "kin care" policies by amending Labor Code section 233. Under existing law, employers are required to permit an employee to use in any calendar year the employee's accrued ad available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's current rate of entitlement, to attend to the illness of a family member. AB 2017 now makes the designation of the use of paid sick leave for purposes permitted by the statute solely within the discretion of the employee. The intent of this bill is to prevent employers from designating all leave as "kin care" leave even when it is leave taken due to the employee's own illness.

D. AB 2399 (COMMITTEE ON INSURANCE) – CLARIFICATION OF PAID FAMILY LEAVE FOR ACTIVE DUTY MILITARY.

The bill amends Unemployment Insurance Code sections 3302 and 3307.

In 2018, the Legislature passed SB 1123 to expand paid family leave benefits to employees who take leave due to a qualifying exigency arising of the covered active duty or call to covered active duty or notification of an impending call or order to covered active duty of an employee's spouse, domestic partner, child or parent in the Armed Forces of the United States. The bill delayed the effective date to January 1, 2021. This bill identifies the "qualifying exigencies"

that will support requests for temporary disability leave benefits under the state's Paid Family Leave program to include:

- Activities undertaken within seven calendar days from the date that a spouse, domestic partner, child, or parent has been notified of an impending call or order to covered active duty to address any issue that arises from the call or order;
- Attendance at an official military ceremony, program, an event related to the military member's active duty, or a family support program supported by the military or American Red Cross;
- Activities related to the care of a child or disabled dependent of a military member on active duty;
- Making financial and/or legal arrangements related to a qualified military member's active duty;
- Attending counseling provided by someone other than a health care provider, provided that the need for counseling arises from the covered active duty or call to covered active duty of the spouse, domestic partner, child, or parent in the Armed Forces of the United States;
- Accompanying a military member on rest and recuperation leave during the period of deployment in a foreign country for up to 15 days;
- Attending arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered active duty of the spouse, domestic partner, child, or parent in the Armed Forces of the United States;
- Addressing issues that arise from the death of the spouse, domestic partner, child, or parent in the Armed Forces of the United States while on covered active duty status, including meeting and recovering the body of the spouse, domestic partner, child, or parent in the Armed Forces of the United States, making funeral arrangements, and attending funeral services;
- Addressing concerns regarding the injury or incapacitation of a military member; and
- Any other activities to address other events that arise out of the covered active duty or call to covered active duty of the spouse, domestic partner, child, or parent in the Armed Forces of the United States, provided that the employer and employee agree that this leave shall qualify as an exigency, and agree to both the timing and duration of this leave.

This bill clarified the language in SB 1123 to specify that participating in an exigency qualifies for leave and defines the term "military member" to include a child, spouse, domestic partner, or parent of the employee, where the military member is on covered active duty or call to active duty in the Armed Forces of the United States as defined in subdivision (a) of Section 3302.1. The bill further clarifies that the documentation required to support a request for temporary disability leave benefits under any of the above qualifying exigencies includes active duty orders.

E. AB 2992 (WEBER) – EXPANSION OF LEAVE FOR CRIME VICTIMS.

This bill amends sections 230 and 230.1 of the Labor Code to expand employment protections for victims of crimes. The law previously made it unlawful for employers to discharge or discriminate against victims of sexual assault, domestic violence, and stalking for taking time off from work to obtain relief or ensure the health, safety, or welfare of the victim and the victim's child. Under this bill, not only do victims of sexual assault, domestic violence, and stalking receive those protections, but victims of any crime that caused physical injury or that caused mental injury and a threat of physical injury also are entitled to the same protections. In addition, the protections are extended to any person whose immediate family member is deceased as the direct result of a crime. The statute also specifies that a person is subject to these protections regardless of whether any person is arrested for, prosecuted for, or convicted of committing the crime.

Labor Code section 230.1 applies to employers with 25 or more employees. Such employers are prohibited from

terminating or discriminating against employees who are victims of crimes for additional related activities, including: seeking medical treatment for injuries caused by crime or abuse, seeking assistance from a domestic violence or victims services organization, obtaining mental health services, and participating in safety planning or taking steps to increase safety, such as relocating.

F. SB 1383 (JACKSON) – EXPANSION OF PAID FAMILY LEAVE.

This bill amends Government Code section 12945.2, the Moore-Brown-Roberti Family Rights Act, known as the California Family Rights Act or "CFRA." The bill also repeals Government Code section 12945.6, known as the New Parent Leave Act.

This bill dramatically expands the California Family Rights Act ("CFRA") in several respects:

- Covered employers are now defined as persons or entities employing five or more employees as opposed to the 50 or more employee standard under the old law. Public employers continued to be covered regardless of size.
- The new law defines an eligible employee as a person who has (1) worked for the employer for at least 12 months of service with the employer and (2) worked at least 1,250 hours in the 12-month period prior to taking CFRA leave.
- The new law expands the list of qualifying reasons for leave to include:
    - Care for an employee's adult child, parent, grandparent, grandchild, or sibling; and
    - Leave because of a qualifying exigency related to the covered active duty or call to covered active duty of an employee's spouse, registered domestic partner, child, or parent in the United States Armed Forces.

There are two additional changes that will impact all employers subject to the law. First, SB 1383 eliminates the "key employee" exception that allowed employers to deny reinstatement to the highest paid 10% of their employers under certain conditions. Now, all employees have the same right to reinstatement, regardless of their pay or position.

Second, SB 1383 eliminates the existing restriction in CFRA that allows an employer who employs both parents to limit their total amount of CFRA leave for both individuals to a total of 12 weeks for bonding with a newborn child, adopted child or foster care placement. Now, both parents are allowed up to 12 weeks each.

(Note: With these changes to the CFRA, there are now several new situations in which employee leaves under the CFRA will not run concurrently with FMLA leave. For example, leave taken to care for a grandparent, grandchild, or sibling with a serious health condition is a CFRA-only leave and would not implicate the employee's FMLA leave entitlement. Employers must analyze leave situations separately under the FMLA vs. the CFRA to determine if only one or both are applicable to a given situation.)

III. Independent Contractors.

A. AB 2257 (GONZALEZ) – REVISIONS TO AB 5.

AB 2257 repeals Labor Code section 2750.3 and enacts new Article 1.5 of Chapter 2 of Division 3 of the Labor Code, commencing with section 2775 and running through 2787.

Following the passage of AB 5, there were a number of groups who sought to obtain revisions to the new law for their specific industries. (See discussion of Proposition 22

below.) AB 2257 represents the results of those lobbying efforts.

The new bill makes few substantive revisions to AB 5. It still imposes the ABC test based on the *Dynamex* decision for classifying workers as independent contractors. It still contains numerous exceptions for various relationships (e.g., business-to-business, professional services, referral agencies) as well as for specific occupations. This bill adds a number of new occupations to those for which exceptions to the ABC apply, e.g., musicians, single-engagement live performance events, and performing artists. For those situations and occupations excepted from the ABC test, the test contained in the *S. B. Borello & Sons* case still applies for determining whether the relationship qualifies for independent contractor status.

Accordingly, the principle impact of AB 2257 is to reorganize AB 5 from a single (and rather unwieldy) code section into a dozen code section in which the various exceptions to the ABC test are codified in separate statutes.

A. PROPOSITION 22.

Proposition 22, which passed overwhelmingly (57%-43%) on November 3, 2020, enacts the new Protect App-Based Drivers and Services Act contained at Business and Professions Code sections 7448-7467. Section 5 of the new act provides that its provisions are to be liberally construed.

The new act contains extensive statements of its intent and purpose. Chief among those is the declaration that the purpose of the act is "to protect the basic legal right of Californians to choose to work as independent contractors with rideshare and delivery network companies throughout the state." The act provides that notwithstanding any other provision of law, app-based drivers are independent contractors.

The act provides an earning guarantee by which an app-based driver's net earnings may not be below the "net earnings floor," which is defined as the total of (i) 120 percent of the applicable minimum wage for all engaged time and (ii) the per-mile compensation for vehicle expenses multiplied by the total number of engaged miles. The per-mile vehicle expense is $.30 per mile for 2021 and thereafter is adjusted annually based on the Consumer Price Index for All Urban Consumers. In addition, app-based drivers receive a quarterly healthcare subsidy. For app-based drivers working an average of 25 weeks or more, the subsidy is 100% of the average ACA contribution for the applicable average monthly Covered California premium for each month in the quarter. For app-based drivers who average between 15 and 25 hours per week, the subsidy is 50% of that amount.

The act contains anti-discrimination provisions based on the same provisions found in the Unruh Civil Rights Act. The anti-discrimination provisions contain a specific requirement that app-based transportation companies develop programs to protect drivers from sexual harassment.

The act also contains rest requirements for drivers prohibiting them from driving more than a cumulative total of 12 hours in any 24-hour period, unless that driver has already logged off for an uninterrupted period of 6 hours.

C. AB 323 (RUBIO) – NEWSPAPER CARRIERS.

The bill adds additional provisions to those contained in AB 2257 above by exempting from the ABC test newspaper carriers regardless of whether they are working under contract with either a newspaper publisher or distributor. The exemption from the ABC test for newspaper carriers expires on January 1, 2022.

IV. Racial Equity and Inclusion.

A. AB 979 (HOLDEN) – UNDERREPRESENTED COMMUNITIES' REPRESENTATION ON CORPORATE BOARDS.

The bill amends section 301.3 of the Corporations Code and adds sections 301.4 and 2115.6 to that same code.

The bill contains extensive legislative findings and declarations demonstrating the underrepresentation of racial minorities and members of the LGBTQ+ community on corporate boards. Based on these findings, the bill requires that publicly held domestic or foreign corporations whose principal executive offices, according to their SEC 10-K form, are located in California must have a minimum of three directors from underrepresented communities if the number of directors on the company's board is nine or more; two directors from underrepresented communities if the board consists of between four and nine directors; or one such director if the total number of directors is less than four. The phrase "director from an underrepresented community" means an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender

V. Wages and Benefits.

A. SB 973 (JACKSON) – PAY DATA REPORTS.

This bill amends section 12930 of the Government Code and adds Chapter 10 (commencing with section 12999) to Part 2.8 of Division 3 of Title 2 of the Government Code.

The bill contains extensive legislative findings and declarations regarding the persistent gender pay gap that results in "billions of dollars in lost wages for women each year in California."

The bill requires that private employers with 100 or more employees that are required to file an annual EEO-1 report shall submit a pay data report to the DFEH covering the prior calendar year. The report, which must be in a searchable electronic format, must include the following information:

- The number of employees by race, ethnicity, and sex in each of the following job categories: executive or senior-level officials and managers; first or mid-level manager; professionals; technicians; sales workers; administrative support workers; craft workers; operatives; laborers and helpers; service workers. This number shall be calculated by taking a "snapshot" of the employer's workforce taken during a single pay period between October 1 and December 31;
- The number of employees by race, ethnicity, and sex, whose annual earnings fall within each of the pay bands used by the US Bureau of Labor Statistics This number shall be calculated based on the earnings reflected in the employees' W-2 statements for the "snapshot" period;
- The total number of hours worked by each employee counted in each pay band;
- Reports must be submitted for each establishment operated by the employer as well as a consolidated report;
- Any clarifying remarks the employer wishes to include.

The bill authorizes the DFEH to take enforcement action to obtain reports not submitted as well as taking enforcement actions for any unlawful pay disparities revealed by the report. If an employer submits to the DFEH a copy of the employer's EEO-1 Report containing the same or substantially similar pay data information as required under this section, then the employer is in compliance with this section.

Finally, the bill directs the DFEH to maintain the reports for 10 years.

B. AB 1512 (CARRILLO) – REST PERIODS FOR SECURITY OFFICERS.

This bill amends section 226.7 of the Labor Code. It was enacted as an urgency matter and thus is already in effect.

The bill permits private security companies to require private security guards to remain on premises and to carry a device by which they can be contacted during rest periods. If a private security guard's rest period is interrupted, the security officer shall be permitted to restart the rest period anew as soon as practicable. If the security officer is then able to take a full rest period, the employer will be deemed to have satisfied its obligation. If not, the employee is entitled to an additional hour of wages.

C. AB 2479 (GIPSON) – REST PERIODS FOR PETROLEUM FACILITIES WORKERS.

The bill amends Labor Code section 226.75.

Certain employees in safety-sensitive positions in petroleum facilities are exempt from the requirement that they be relieved of all duties during a rest period. The exemption was set to expire on January 1, 2021. This bill extends the exemption to January 1, 2026.

D. AB 3075 (GONZALEZ) – ENFORCEMENT.

This bill adds new sections 1502, 2117, and 17702.09 to the Corporations Code; adds new section 200.3 to the Labor Code; and amends section 1205 of the Labor Code.

Under existing law, business entities such as limited liability companies, limited liability partnerships, and corporation must register with the California Secretary of State. In so doing, these business entities must file a statement of information. Beginning January 1, 2022, this bill requires the statement of information to include a statement indicating whether any officer, director, or managing agent of the business entity has an outstanding final judgment against them for the violation of any wage order or provision of the Labor Code.

The bill further provides that a successor to a judgment debtor is liable for any wages, damages, and penalties owed to any judgment debtor's former workforce pursuant to a final judgment, after the time for appeal has expired and for which no appeal is pending. "Successorship" is based on the following factors:

- use of substantially the same facilities or substantially the same workforce as the judgment debtor;
- substantially the same owners or managers that control labor relations as the judgment debtor;
- employment of any managing agent who directly controlled the wages, hours, or working conditions of the affected workforce of the judgment debtor;
- operation of a business in the same industry and the business has as an owner, partner, officer, or director, an immediate family member of any owner, partner, officer, or director of the judgment debtor.

Finally, the bill specifically authorizes local jurisdictions to enforce labor standards in that jurisdiction that are greater than comparable state labor standards.

E. AB 1947 (KAIRA) – STATUTE OF LIMITATIONS ON COMPLAINTS TO LABOR COMMISSIONER.

This bill amends sections 98.7 and 1102.5 of the Labor Code.

The bill extends the time period in which an employee can file a complaint with the Labor Commissioner alleging they have been discriminated against or terminated in violation

of any law under the jurisdiction of the Labor Commissioner from six months following the occurrence giving rise to the complaint to one year from the occurrence. Furthermore, the bill provides that the one-year period may be extended for good cause.

The bill also amends California's so-called "whistleblower" statute, Labor Code section 1102.5, by providing that a plaintiff who successfully brings an action under that statute is entitled to recover reasonable attorneys' fees and costs.

F. AB 1124 (MAIENSCHEIN) – HEALTH CARE SERVICE PLANS.

The bill add section 1343.3 to the Health and Safety Code.

The bill authorizes the creation of two pilot programs, one in Southern California and one in Northern California, whereby health care providers can undertake risk-bearing arrangements with a voluntary employees' beneficiary association with enrollment of greater than 100,000 lives, or a trust fund that is a welfare plan with enrollment of greater than 25,000 lives. The purpose of the pilot program is to demonstrate the control of costs for health care services and the improvement of the quality of those services.

V. Miscellaneous.

A. AB 2143 (STONE) – SETTLEMENT AGREEMENTS.

The bill amends section 1002.5 of the Code of Civil Procedure.

The bill clarifies that in order for the prohibition against so-called "no rehire" provisions in settlement agreements to apply, the settling employee must have filed the action in good faith.

The bill also clarifies that the exception to the above prohibition for individuals about whom the employer has made a good faith determination that they engaged in sexual harassment or sexual assault requires that the employer have documented such a determination prior to the aggrieved employee having filed their action. The bill also expands the exception to the prohibition against "no rehire" clauses to include a documented determination by the employer that the aggrieved employee has engaged in any criminal conduct.

B. AB 1963 (CHU) – HUMAN RESOURCES PROFESSIONALS AS MANDATED REPORTERS.

This bill amends section 11165.7 of the Penal Code.

The bill imposes mandated reporting duties on two new classes of individuals: (1) human resources professionals who work for a business with five or more employees that employs minors; and (2) adults whose duties require direct contact with and supervision of minors in the workplace. The bill further requires employers who employ such individuals to provide mandated reporter training.

Kronick is a full-service law firm serving clients throughout California that provides the full spectrum of employment law services. The firm works closely with its labor relations and employment law clients to implement comprehensive policies and practices that help them avert potential employee relations problems along with the distractions and discontent that these problems often cause. We have developed highly effective tools for our clients such as employee handbooks, employee training sessions, and troubleshooting efforts that raise awareness, deter improprieties, and evidence employer preparedness. Should a specific issue arise, we defend our clients vigorously before public oversight agencies and, when necessary, in the courts. While we are highly proficient and costeffective litigators, we know that it is in helping our clients avoid litigation in the first place that we render them the greatest service.

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