EMPLOYCO USA
The Power to Compete

HR COMPLIANCE BULLETIN

California Employment Laws Effective Jan. 1, 2023

In general, once approved by both the state legislature and the state governor, a new bill in California becomes effective on Jan. 1 of the following year (some exceptions are possible for emergency measures and when the bills specifically appoint a different effective date).

This Compliance Bulletin provides an overview of California labor and employment laws that become effective on Jan. 1, 2023. Specific labor and employment updates include the following topics:

- Minimum wage rate and overtime salary exemption requirements
- COVID-19 regulations
- Arrest and conviction record relief
- Bereavement leave
- CFRA and paid sick leave definitions
- Contraceptive and reproductive health
- Hate imagery in places of employment
- Consumer personal information protection
- Restroom access

Action Steps

Employers should review these laws and update their employment policies, practices and procedures to remain in compliance. Employers should seek the advice of a knowledgeable legal professional for specific situations and counsel on how to implement required changes.

Employers should also continue to monitor California's Department of Industrial Relations (DIR) communications for updates on these and additional labor and employment topics. Please contact Employco USA, Inc. for more information on these updates and other labor and employment issues.

Highlights

Bereavement Leave

Employer cannot refuse to grant a request by an eligible employee to take up to five days of bereavement leave upon the death of a family member.

Arrests and Convictions

This bill prohibits using some old convictions for possession of specified controlled substances from being used to deny some credentials and makes relief available to some defendants.

Hate Imagery at Work

This bill expands offenses for the purpose of terrorizing a person.

Restroom Access

If certain conditions are met, a place of business that is open to the general public must allow any individual who is lawfully on the premises to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the general public.

2023 Minimum Wage (Annual Announcement)

On July 27, 2022, the Director of the Department of Finance certified that based on the annual inflation rate from July 1, 2021 to June 30, 2022, under Labor Code section 1182.12(c)(3)(A), the state hourly minimum wage must be increased, effective Jan. 1, 2023, to $15.50 an hour (regardless of the number of workers employed by an employer).

2023 Overtime Exemption for Computer Employees (Annual Announcement)

In accordance with Labor Code Section 515.5(a)(4), the DIR has adjusted the computer software employee's minimum hourly rate of pay exemption from $50.00 to $53.80, the minimum monthly salary exemption from $8,679.16 to $9,338.78 and the minimum annual salary exemption from $104,149.81 to $112,065.20 effective Jan. 1, 2023, reflecting the 7.6% increase in the California consumer price index for urban wage earners and clerical workers.

Arrest and Conviction Record Relief (SB 731)

Existing law establishes the Commission on Teacher Credentialing to, among other things, issue teaching and services credentials. Existing law requires the commission to appoint a Committee of Credentials and requires allegations of acts or omissions for which adverse action may be taken against applicants or holders of teaching or services credentials to be reported to the committee, including conviction for a controlled substance offense, as defined. Existing law requires the commission to deny an application for the issuance of a credential or the renewal of a credential for a person who has been convicted of a controlled substance offense.

This bill prohibits the record of a conviction for possession of specified controlled substances that is more than five years old and for which relief was granted from being presented to the committee or from being used to deny a credential.

Existing law authorizes a defendant who was sentenced to a county jail for the commission of a felony and who has met specified criteria to petition to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty after the completion of their sentence, as specified. Existing law requires the court to dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense, except as specified.

This bill makes this relief available to a defendant who has been convicted of a felony, as long as that conviction does not require registration as a sex offender.

Bereavement Leave (AB 1949)

The California Family Rights Act, which is a part of the California Fair Employment and Housing Act, makes it an unlawful employment practice for an employer, as defined, to refuse to grant a request by an eligible employee to take up to 12 workweeks of unpaid protected leave during any 12-month period for family care and medical leave, as specified.

This bill additionally makes it an unlawful employment practice for an employer to refuse to grant a request by an eligible employee to take up to five days of bereavement leave upon the death of a family member, as defined. The bill requires that leave be completed within three months of the date of death. The bill requires that leave be taken pursuant to any existing bereavement leave policy of the employer. Under the bill, in the absence of an existing policy, the bereavement leave may be unpaid. However, the bill authorizes an employee to use certain other leave balances otherwise available to the employee, including accrued and available paid sick leave.

This bill requires, if an existing leave policy provides for less than five days of bereavement leave, a total of at least five days of bereavement leave for the employee, as prescribed. The bill makes it an unlawful employment practice for an employer to engage in specified acts of discrimination, interference or retaliation relating to an individual's exercise of

rights under the bill. The bill requires the employer to maintain employee confidentiality relating to bereavement leave, as specified. The bill does not apply to an employee who is covered by a valid collective bargaining agreement that provides for prescribed bereavement leave and other specified working conditions.

In addition, existing law requires the Department of Fair Employment and Housing to create a small employer family leave mediation pilot program for alleged violations of specified family care and medical leave provisions, applicable to employers with between five and 19 employees.

This bill requires the Department of Fair Employment and Housing to expand the program to include mediation for alleged violations of these provisions.

Finally, existing law grants specified permanent employees of the state up to three days of bereavement leave, with up to two additional days of bereavement leave upon request if the death is out of state. Existing law specifies that these two additional days are to be without pay or are to be charged against existing sick leave credits.

This bill recasts those provisions to specify that the first three days of bereavement leave are to be paid leave and to remove the condition that the death be out of state for the additional two days.

Call Center Cal/WARN Amendments (AB 1601)

Existing law prohibits an employer from ordering a mass layoff, relocation or termination at a covered establishment without giving a written notice of the order to certain parties and entities, including the employees, the Employment Development Department and specified local officials.

Existing law authorizes the DIR to examine the books and records of an employer in any investigation or proceeding under provisions governing the relocation, termination or mass layoff of employees.

This bill authorizes the DIR to enforce certain notice requirements concerning a mass layoff, relocation or termination of employees, including call center employees. The bill grants the DIR the authority to investigate an alleged violation, order appropriate temporary relief to mitigate a violation pending completion of a full investigation or hearing and issue a citation in accordance with certain procedures.

This bill prohibits call center employers from ordering a relocation of its call center (or one or more of its facilities or operating units within a call center) unless notice of the relocation is provided to the affected employees and the Employment Development Department, local workforce investment board and the chief elected official of each city and county government within which the termination, relocation or mass layoff occurs, as specified.

This bill establishes remedies for a call center employer's failure to provide notice regarding a relocation of its call center facilities and makes a call center employer who appears on the department's list, or who should appear on the list but failed to provide notice, ineligible to be awarded or have renewed state grants or state-guaranteed loans for five years, as specified. The bill also makes that call center employer ineligible to claim a tax credit for five taxable years beginning on and after the date that the list is published. The bill authorized an appropriate agency, as defined, to waive ineligibility for specified reasons.

CalSavers Eligible Employers (SB 1126)

The CalSavers Retirement Savings Trust Act, administered by the CalSavers Retirement Savings Board, establishes the CalSavers Retirement Savings Program and the CalSavers Retirement Savings Trust. Under existing law, the trust consists

of a program fund and an administrative fund with trust moneys that are continuously appropriated and administered by the CalSavers Retirement Savings Board for the purpose of promoting greater retirement savings for California private employees. The law requires eligible employers to offer a payroll deposit retirement savings arrangement so that eligible employees may contribute a portion of their salary or wages to a retirement savings program account in the program, as specified.

Existing law defines "eligible employer" for purposes of the act to mean a person or entity engaged in a business, industry, profession, trade or other enterprise in the state, excluding specified federal, state and local governmental entities, with five or more employees and that satisfies certain requirements to establish or participate in a payroll deposit retirement savings arrangement.

This bill expands the definition of "eligible employer" to include a person or entity, as described above, that has at least one eligible employee and that satisfies the requirements to establish or participate in a payroll deposit retirement savings arrangement. In addition, the bill excludes from the definition of "eligible employer" sole proprietorships, self-employed individuals or other business entities that do not employ any individuals other than the owners of the business. By expanding eligibility under the act, the bill removes a restriction limiting expenditure of funds and authorize the expenditure of continuously appropriated moneys for a new purpose, thereby making an appropriation.

Existing law authorizes an employer to choose to have a payroll deposit retirement savings arrangement to allow employee participation in the program under the terms and conditions prescribed by the board. Existing law requires eligible employers with more than 100 eligible employees and those with more than 50 eligible employees, that do not offer a retirement savings program, to have a payroll deposit retirement savings arrangement to allow employee participation in the program within 12 or 24 months, respectively, as prescribed. Existing law requires all other eligible employers that do not offer a retirement savings program, within 36 months after the board opens the program for enrollment, to have a payroll deposit retirement savings arrangement to allow employee participation in the program.

This bill instead requires eligible employers with five or more employees that do not offer a retirement savings program to have a payroll deposit savings arrangement to allow employee participation in the program within 36 months after the board opens the program for enrollment. By Dec. 31, 2025, the bill will require eligible employers with one or more eligible employees that do not provide a retirement savings program, to have a payroll deposit savings arrangement to allow employee participation in the program.

CFRA and Paid Sick Leave Definitions (AB 1041)

The California Family Rights Act, makes it an unlawful employment practice for a California public employer or an employer with five or more employees to refuse to grant a request from an employee who meets specified requirements to take up to a total of 12 workweeks in any 12-month period for family care and medical leave, as defined.

This bill expands the class of people for whom an employee may take leave to care for to include a designated person. The bill defines "designated person" to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. The bill authorizes a designated person to be identified at the time the employee requests the leave. The bill authorizes an employer to limit an employee to one designated person per 12-month period.

The Healthy Workplaces, Healthy Families Act of 2014, generally entitles an employee who works in California for the same employer for 30 or more days within a year to paid sick days, as specified, including the use of paid sick days for diagnosis, care or treatment of an existing health condition of or preventive care for, an employee or an employee's family

member. Existing law defines "family member" for this purpose to include individuals who share a prescribed relationship with the employee.

This bill expands the definition of the term "family member" to include a designated person, which, for purposes of these provisions, means a person identified by the employee at the time the employee requests paid sick days, subject to limitation by the employer, as prescribed.

Civil and Criminal Liability Prohibition for Facilitating Abortion (AB 2223)

Existing law, the Reproductive Privacy Act, provides that every individual possesses a fundamental right of privacy with respect to their personal reproductive decisions. Existing law prohibits the state from interfering with a pregnant person's right to choose or obtain an abortion before the fetus is viable or when it is necessary to protect the life and health of the pregnant person. Under existing law, an abortion is unauthorized if either the person performing the abortion is not a health care provider that is authorized to perform an abortion or the fetus is viable.

Existing law, the Tom Bane Civil Rights Act, authorizes an individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States or of rights secured by the Constitution or laws of this state, has been interfered with or attempted to be interfered with, to institute or prosecute in their own name and on their own behalf an action for damages, as prescribed.

This bill prohibits a person from being subject to civil or criminal liability or otherwise deprived of their rights, based on their actions or omissions with respect to their pregnancy or actual, potential or alleged pregnancy outcome or based solely on their actions to aid or assist a woman or pregnant person who is exercising their reproductive rights. The bill clarifies that an abortion is unauthorized if performed by a person other than the pregnant person and either the person performing the abortion is not a health care provider that is authorized to perform an abortion or the fetus is viable. The bill authorizes a party whose rights are protected by the Reproductive Privacy Act to bring a civil action against an offending state actor when those rights are interfered with by conduct or by statute, ordinance or other state or local rule, regulation or enactment in violation of the act, as specified and required a court, upon a motion, to award reasonable attorneys' fees and costs to a prevailing plaintiff. The bill also authorizes a person aggrieved by a violation of the Reproductive Privacy Act to bring a civil action pursuant to the Tom Bane Civil Rights Act. The bill provides for the indemnification of employees or former employees of public agencies who were acting within the scope of their employment.

Contraceptive Equity Act (SB 523)

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law establishes health care coverage requirements for contraceptives, including, but not limited to, requiring a health care service plan, including a Medi-Cal managed care plan or a health insurance policy issued, amended, renewed or delivered on or after Jan. 1, 2017, to cover up to a 12-month supply of federal Food and Drug Administration approved, self-administered hormonal contraceptives when dispensed at one time for an enrollee or insured by a provider or pharmacist or at a location licensed or authorized to dispense drugs or supplies.

This bill, the Contraceptive Equity Act of 2022, makes various changes to expand coverage of contraceptives by a health care service plan contract or health insurance policy issued, amended, renewed or delivered on and after Jan. 1, 2024,

including requiring a health care service plan or health insurer to provide point-of-sale coverage for over-the-counter FDA-approved contraceptive drugs, devices and products at in-network pharmacies without cost sharing or medical management restrictions. The bill requires health care service plans and insurance policies offered by public or private institutions of higher learning that directly provide health care services only to its students, faculty, staff, administration and their respective dependents, issued, amended, renewed or delivered, on or after Jan. 1, 2024, to comply with these contraceptive coverage requirements. The bill also requires coverage for clinical services related to the provision or use of contraception, as specified. The bill revises provisions applicable when a covered, therapeutic equivalent of a drug, device or product is deemed medically inadvisable by deferring to the provider, as specified.

This bill also prohibits a health care service plan contract or disability insurance policy issued, amended, renewed or delivered on or after Jan. 1, 2024, with certain exceptions, from imposing a deductible, coinsurance, copayment or any other cost-sharing requirement on vasectomy services and procedures, as specified, under conditions similar to those applicable to other contraceptive coverage.

This bill requires a health benefit plan or contract with the Board of Public Relations of the Public Employees' Retirement System to provide coverage for contraceptives and vasectomies consistent with the bill's requirements, commencing Jan. 1, 2024. The bill prohibits the California State University and the University of California from approving a health benefit plan that does not comply with the contraceptive coverage requirements of the bill on and after Jan. 1, 2024.

Because a willful violation of the bill's requirements by a health care service plan would be a crime, the bill imposes a state-mandated local program.

In addition, this bill revises the Fair Employment and Housing Act (FEHA) to include protections for reproductive health decisionmaking, as defined, with respect to the opportunity to seek, obtain and hold employment without discrimination. Among other provisions, the bill prohibits specified discriminatory practices, based on reproductive health decisionmaking, by employers, labor organizations, apprenticeships and training programs and licensing boards. The bill also makes it unlawful for an employer to require, as a condition of employment, continued employment or a benefit of employment, the disclosure of information relating to an applicant's or employee's reproductive health decisionmaking.

COVID-19 Case Notice and Reporting Requirements (AB 2693)

The California Occupational Safety and Health Act of 1973, authorizes the Division of Occupational Safety and Health to prohibit the performance of an operation or processor entry into that place of employment when, in its opinion, a place of employment, operation or processor any part thereof, exposes workers to the risk of infection with COVID-19, so as to constitute an imminent hazard to employees.

The law requires a notice of the prohibition to be posted in a conspicuous location at the place of employment and makes violating the prohibition or removing the notice, except as specified, a crime. The prohibition must be issued in a manner so as not to materially interrupt the performance of critical governmental functions essential to ensuring public health and safety functions or the delivery of electrical power, renewable natural gas or water. These provisions cannot prevent the entry or use, with the division's knowledge and permission, for the sole purpose of eliminating the dangerous conditions. Existing law repeals those provisions Jan. 1, 2023.

This bill extends those provisions until Jan. 1, 2024.

In addition, under existing law, if an employer or representative of the employer receives a notice of potential exposure to COVID-19, the employer is required to take specified actions within one business day of the notice of potential exposure, including providing written notice to all employees on the premises at the same worksite that they may have been exposed to COVID-19. Existing law repeals those provisions on Jan. 1, 2023.

This bill revises and recasts those notification requirements to, among other things, authorize an employer to satisfy the notification requirements by prominently displaying a notice in all places where notices to employees concerning workplace rules or regulations are customarily posted that includes the dates on which an employee with a confirmed case of COVID-19 was on the worksite premises within the infectious period and the location of the exposure. The bill requires the notice to remain posted for 15 days. The bill also requires an employer to keep a log of all the dates the notice was posted and to allow the DIR to access those records. The bill extends these provisions until Jan. 1, 2024.

Finally, existing law requires an employer, if they are notified of the number of cases that meets the definition of a COVID-19 outbreak, to notify the local public health agency within 48 hours, except as specified. The law also requires the State Department of Public Health to make workplace industry information received from local public health departments pursuant to these provisions available on its internet website in a manner that allows the public to track the number and frequency of COVID-19 outbreaks and the number of COVID-19 cases and outbreaks by industry reported by any workplace. Existing law requires local health departments and the division to provide a link to this page on their internet websites.

This bill deletes those provisions.

COVID-19 Workplace Posters (AB 2068)

Existing law requires citations orders and special orders issued by the DIR, in enforcing occupational safety and health standards, to be prominently posted at or near each place a violation referred to in the citation or order occurred, in accordance with specified timeframes and procedures. Existing law makes certain violations of specified posting or recordkeeping requirements enforceable by a civil penalty.

This bill requires an employer to post an employee notification containing specified information when the above-described citations or orders are issued. The bill requires this notification, in addition to English, to be made available in specified languages. The bill makes a violation of these provisions enforceable by a civil penalty, as specified. The bill also includes related legislative findings.

Extension of COVID-19 Presumption of Compensability (AB 1751)

Existing law defines “injury” for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until Jan. 1, 2023. Existing law creates a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. Existing law requires an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters and other specified employees, a leave of absence. Existing law also make a claim relating to a COVID-19 illness presumptively compensable after 30 days or 45 days, rather than 90 days. Existing law, until Jan. 1, 2023, allows for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing and whose employer has five or more employees.

This bill extends the above-described provisions relating to COVID-19 until Jan. 1, 2024. The bill also expands the above-described provisions applicable to firefighters and police officers to include active firefighting members of a fire department at the State Department of State Hospitals, the State Department of Developmental Services, the Military Department and the Department of Veterans Affairs and to officers of a state hospital under the jurisdiction of the State Department of State Hospitals and the State Department of Developmental Services.

Family Temporary Disability Insurance Benefits (SB 951)

Existing unemployment compensation disability law provides a formula for determining benefits available to qualifying disabled individuals.

This bill revises compensation formulas by extending the formula applicable for periods of disability commencing on and after Jan. 1, 2018, but before Jan. 1, 2023, through periods of disability commencing before Jan. 1, 2025.

In addition, existing law establishes, within the above state disability insurance program, a family temporary disability insurance program, also known as the paid family leave program, for the provision of wage replacement benefits for up to 8 weeks to workers who take time off work to care for a seriously ill family member or to bond with a minor child within one year of birth or placement, as specified. Existing law defines "weekly benefit amount" for purposes of both employee contributions and benefits under this program to mean the amount of weekly benefits available to qualifying disabled individuals pursuant to unemployment compensation disability law, calculated pursuant to specified formulas partly based on the applicable percentage of the wages paid to an individual for employment by employers during the quarter of the individual's disability base period in which these wages were highest, but not to exceed the maximum workers' compensation temporary disability indemnity weekly benefit amount established by the DIR.

This bill revises the formula for the weekly benefit amount under the family temporary disability insurance program to conform to the changes for periods of disability commencing before Jan. 1, 2025. The bill also revises the formula for periods of disability commencing on or after Jan. 1, 2025.

Hate Imagery in Places of Employment (AB 2282)

Existing law establishes various offenses for a person who places or displays certain symbols, marks, signs, emblems and other physical impressions, including, but not limited to, a Nazi swastika, hangs nooses or burns or desecrates crosses or other religious symbols on private and nonprivate property, as specified, with the intent to terrorize a person, as specified.

Under state law the first conviction is punishable with imprisonment in county jail not to exceed one year, a fine not more than $5,000 or both the fine and imprisonment. Subsequent violations are punishable with imprisonment in county jail not to exceed one year, a fine not to exceed $15,000 or both the fine and imprisonment. Similarly, under the law, a person who engages in a pattern of conduct by placing or displaying certain symbols, as specified, may see the punishment increase to imprisonment of 16 months or two or three years, a fine not more than $10,000 or both. Existing law punishes a person convicted of burning or desecrating a religious symbol with imprisonment for 16 months or two or three years, by a fine of not more than $10,000 or by both the fine and imprisonment or imprisonment in a county jail not to exceed one year, by a fine not to exceed $5,000 or both the fine and imprisonment for the first conviction and the same punishment for a subsequent conviction except the misdemeanor fine increases to $15,000.

This bill expands these offenses to include hanging a noose, placing or displaying a sign, mark, symbol, emblem or other physical impression, including, but not limited to, a Nazi swastika and burning, desecrating or destroying a religious symbol, such as a cross, at schools and public places, generally, as specified, for the purpose of terrorizing a person, as

specified. The bill also amends punishment for these violations and states the intent of the legislature is to criminalize, for the purpose of terrorizing a person, the display or placement of the Nazi swastika and not swastikas associated with Hinduism, Buddhism and Jainism.

Leave During Emergency Conditions (SB 1044)

This bill prohibits an employer, in the event of an emergency condition, as defined, from taking or threatening adverse action against any employee for refusing to report to or leaving, a workplace or worksite within the affected area because the employee has a reasonable belief that the workplace or worksite is unsafe, except as specified. The bill also prohibits an employer from preventing any employee, including employees of public entities, from accessing the employee's mobile device or other communications device for seeking emergency assistance, assessing the safety of the situation or communicating with a person to confirm their safety.

In addition, the bill requires an employee to notify the employer of the emergency condition requiring the employee to leave or refuse to report to the workplace or worksite, as specified. The bill clarifies that these provisions are not intended to apply when emergency conditions that pose an imminent and ongoing risk of harm to the workplace, the worksite, the worker or the worker's home have ceased.

Pay Transparency and Pay Data Reporting (SB 1162)

Existing law establishes the Civil Rights Department within the Business, Consumer Services and Housing Agency to enforce civil rights laws with respect to housing and employment and to protect and safeguard the right of all persons to obtain and hold employment without discrimination based on specified characteristics or status.

Existing law requires a private employer that has 100 or more employees and is required to file an annual Employer Information Report (EEO-1) pursuant to federal law to submit a pay data report to the department that contains specified employee information on or before March 31, 2021, and on or before March 31 each year thereafter. Existing law prescribes the information that must be included in the pay data report, including the number of employees by race, ethnicity and sex in specified job categories. Existing law requires employers with multiple establishments to submit a report for each establishment and a consolidated report that includes all employees. Existing law permits the department to develop, publish on an annual basis and publicize aggregate reports, provided that the aggregate reports are reasonably calculated to prevent the association of any data with any individual business or person.

Existing law provides that an employer is in compliance with the requirement that it submit a pay data report if it submits an EEO-1 to the department containing the same or substantially similar pay data information. Existing law permits the department to seek an order requiring an employer to comply with these provisions and permits it to recover the costs associated with seeking the order for compliance.

This bill, instead, requires a private employer that has 100 or more employees to submit a pay data report to the department. This bill revises the timeframe in which a private employer is required to submit this information to require that it be provided on or before the second Wednesday of May 2023 and for each year thereafter on or before the second Wednesday of May. This bill also requires a private employer that has 100 or more employees hired through labor contractors, as defined, to also submit a separate pay data report to the department for those employees in accordance with the above timeframe.

In addition, this bill requires the pay data reports to include the median and mean hourly rate for each combination of race, ethnicity and sex within each job category. This bill deletes a provision requiring employers with multiple

establishments to submit a consolidated report and the provision authorizing an employer to submit an EEO-1 in lieu of a pay data report. This bill permits a court to impose a civil penalty not to exceed one $100 per employee upon any employer who fails to file the required report and not to exceed two hundred dollars $200 per employee upon any employer for a subsequent failure to file the required report. The bill requires those penalties to be deposited in the Civil Rights Enforcement and Litigation Fund.

Existing law creates the Division of Labor Standards Enforcement, under the direction of the DIR to enforce labor laws. Existing law requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment. Existing law defines pay scale for these purposes to mean salary or hourly wage range.

This bill also requires an employer, upon request, to provide to an employee the pay scale for the position in which the employee is currently employed. The bill requires an employer with 15 or more employees to include the pay scale for a position in any job posting. The bill requires an employer to maintain records of a job title and wage rate history for each employee for a specified timeframe, to be open to inspection by the DIR. The bill creates a rebuttable presumption in favor of an employee's claim if an employer fails to keep records in violation of these provisions. The bill requires an employer with 15 or more employees that engages a third party to announce, post, publish or otherwise make known a job posting to provide the pay scale to the third party and requires the third party to include the pay scale in the job posting. The bill requires the DIR to investigate complaints alleging violations of these requirements and authorizes the commissioner to order an employer to pay a civil penalty upon finding an employer has violated these provisions. The bill also authorizes a person aggrieved by a violation of these provisions to bring a civil action for injunctive and any other appropriate relief.

Finally, this bill requires deposit of the civil penalties collected pursuant to these provisions into the Labor Enforcement and Compliance Fund and authorizes these funds to be used, upon appropriation by the Legislature, for administration and enforcement of these provisions.

Proposition 1 - Reproductive Privacy Amendment (2022 Ballot Measure)

Proposition 1 changes the California Constitution to say that the state cannot deny or interfere with a person's reproductive freedom and that people have the fundamental right to choose whether to have an abortion and whether to use contraceptives.

Proposition 24 - Consumer Personal Information Law and Agency Initiative (2020 Ballot Measure)

On Nov. 3, 2020, California voters approved Proposition 24. Proposition 24 (1) changes existing consumer data privacy laws, (2) provides new consumer privacy rights, (3) changes existing penalties and limits the use of penalty revenues, and (4) creates a new state agency to oversee and enforce consumer data privacy laws. Most of this proposition will take effect in Jan. 2023. However, some portions of the proposition, such as the creation of the new state agency and requirements for developing new regulations, went into effect immediately.

This proposition changes which businesses are required to meet state consumer data privacy requirements. These changes generally reduce the number of businesses required to meet these requirements. For example, consumer data privacy requirements currently apply to businesses that buy, sell, or share for business purposes the personal data of 50,000 or more consumers, households, or devices annually. The proposition (1) no longer counts devices and (2) increases the annual threshold to 100,000 or more consumers or households.

Changes Existing Consumer Data Privacy Requirements: This proposition changes the consumer data privacy requirements that businesses must meet. In some cases, it adds new requirements. For example, the proposition requires businesses to now notify consumers of the length of time they will keep personal data. In other cases, it removes requirements. For example, businesses could refuse to delete student grades or other information under specific conditions.

Provides New Consumer Privacy Rights: This proposition provides consumers with new data privacy rights. These include the right to:

- ***Limit Sharing of Personal Data.*** Consumers could direct businesses to not share their personal data.
- ***Correct Personal Data.*** Consumers could direct businesses to take reasonable efforts to correct personal data that they possess.
- ***Limit Use of "Sensitive" Personal Data.*** The proposition defines certain pieces of personal data as sensitive. Examples include social security numbers, account logins with passwords, and health data. Consumers could direct businesses to limit use of their sensitive personal data only to (1) provide requested services or goods and (2) fulfill key business purposes (such as providing customer service).

Changes Existing Penalties and Limits Use of Penalty Revenues: This proposition permits a new penalty of up to $7,500 for violations of the consumer privacy rights of minors. The proposition also eliminates the ability of businesses to avoid penalties by addressing violations within 30 days of being told of the violation. In addition, the proposition makes data breaches of email addresses along with information that permits access to an account (such as a password) subject to penalties. The proposition also specifies that businesses which suffer a data breach because reasonable security procedures were not in place can no longer avoid penalties by putting them in place within 30 days after the breach.

In addition, the proposition limits the Legislature's ability to use CPF revenues for purposes other than consumer privacy. After paying for state trial court and DOJ costs each year, the proposition requires 91 percent of the remaining funds be invested by the state with any interest or earnings sent to the state General Fund. The remaining 9 percent of funds will support public education on consumer privacy and fighting fraud resulting from data breaches.

Creates New State Enforcement Agency: This proposition creates a new state agency, the California Privacy Protection Agency (CPPA), to oversee and enforce the state's consumer privacy laws. CPPA will be governed by a five-member board and have a wide range of responsibilities. For example, the agency will investigate violations, assess penalties, and develop regulations. Any CPPA decision related to a complaint against a business or a penalty could be reviewed by the state trial courts. This proposition provides $10 million annually (adjusted over time) from the state General Fund to support the agency's operations. Some of DOJ's current responsibilities will be shifted to CPPA, such as developing regulations. The proposition requires the development of a wide range of new regulations. For example, this includes rules for correcting consumer personal data and determining whether businesses must carry out a review of their ability to protect data. However, DOJ could still enforce consumer data privacy laws by prosecuting crimes and filing lawsuits in the state trial courts. If DOJ chooses to take such action or pursue an investigation, DOJ could direct CPPA to stop any investigations or enforcement activities the agency might be pursuing at the same time.

Employer Exemption Expiration: Although not part of Proposition 24, employers should also note that the CCPA employer exemptions will expire on Jan. 1, 2023. Beginning in 2023, employee data will be treated as any other commercial information. This means that covered employers will need to update their data protection policies for employee data and employee privacy notifications to comply with the law.

Under the CCPA, "personal information" is defined broadly to include information that "identifies, relates to, describes, is reasonably associated with, or could reasonably be linked, directly or indirectly, with a particular consumer household." For employers and HR departments, personal information may include employee information regarding insurance and benefits elections, direct deposit, emergency contacts, dependents, employment history, wage and hour records and performance evaluations.

Reproductive Health Coverage Information (AB 2134)

The Reproductive Privacy Act prohibits the state from denying or interfering with a person's right to choose or obtain an abortion prior to viability of the fetus or when the abortion is necessary to protect the life or health of the person. The act defines "abortion" as a medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

The Knox-Keene Health Care Service Plan Act of 1975 provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law requires group health care service plan contracts and disability insurance policies to cover contraceptive services and methods without cost sharing. Existing law authorizes a religious employer to request a contract or policy that does not include contraception coverage for its employees.

This bill requires a health care service plan or health insurer that provides health coverage to employees of a religious employer that does not include coverage and benefits for both abortion and contraception to provide an enrollee or insured with written information at specified times on the abortion and contraception benefits or services that may be available at no cost through the California Reproductive Health Equity Program.

In addition, this bill requires the DIR to post on its internet website information regarding abortion and contraception benefits or services that may be available at no cost through the California Reproductive Health Equity Program to employees whose employer-sponsored health coverage does not include coverage for both abortion and contraception.

Restroom Access (AB 1632)

Existing law sets forth various requirements for providing restroom access in the workplace, place of public accommodation or elsewhere, under specified circumstances, including, among others, provisions relating to employees, disabled travelers, baby diaper changing stations and all-gender toilet facilities.

If certain conditions are met, this bill requires a place of business that is open to the general public for the sale of goods and that has a toilet facility for its employees to allow any individual who is lawfully on the premises of that place of business to use that toilet facility during normal business hours, even if the place of business does not normally make the employee toilet facility available to the general public. A willful or grossly negligent violation of this requirement is subject to a civil penalty, not exceeding $100 per violation, without creating or implying a private right of action and without applying to an employee. Under the bill, an employee is not subject to discharge or any other disciplinary action by their employer for a violation of this requirement, unless the employee's action is contrary to an expressed policy developed by their employer pursuant to these provisions.

Under the bill, conditions for the above requirement include, among others, that the individual has an eligible medical condition or uses an ostomy device, that a public restroom is not immediately accessible to the individual and that providing access does not create an obvious health or safety risk to the individual or obvious security risk to the place of

business. The bill defines “eligible medical condition” as Crohn’s disease, ulcerative colitis, other inflammatory bowel disease, irritable bowel syndrome or another medical condition that requires immediate access to a toilet facility.

The bill permits the place of business to require the individual to present reasonable evidence of an eligible medical condition or use of an ostomy device. The bill authorizes the individual to satisfy that evidence requirement through a signed statement by a licensed physician, nurse practitioner or physician assistant, on a specified form to be developed by the State Department of Public Health and posted on its internet website.