



Reminder – Important New California Requirements For 2023

As we closeout 2022, we want to remind contractors of the new employment and contractor related laws that they need to be aware of for the new year. Below is a summary of the most important items.

December 21, 2022

California's Minimum Wage to Increase to \$15.50 per Hour

California's minimum wage will increase to \$15.50 per hour for all employers on January 1, 2023.

In 2016, California passed a law to raise the minimum wage to \$15.00 per hour statewide by 2022 for large businesses with 26 or more employees, and by 2023 for small businesses with 25 or fewer employees.

The expanded minimum wage also contained an annual review of the United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W) by the Department of Finance. This past July, the Department of Finance found the inflation rate had increased by 7.9%, which required an increase in the minimum wage by 3.5%, resulting in the \$15.50 per hour rate for 2023.

After 2023, the minimum wage will increase based on the lesser of 3.5 percent and the rate of change in the averages of the two most recent U.S. CPI-W unless those averages are negative. If the averages are negative, there shall be no increase or decrease in the minimum wage for the following year.

The change in minimum wage has a domino effect on other California employment compliance areas that are linked to the state minimum wage. Many of the exemptions afforded to construction employers' signatory to a collective bargaining agreement (CBA) are dependent on the CBA providing for "premium" wage rates. The following are some of the key areas the minimum wage increase may impact construction employers.

- **Collective Bargaining Agreements – Hours and Days of Work**

Under California Industrial Welfare Commission Wage Order 16, construction employers and unions are permitted to bargain hours and days of work different from those required by the Wage Order so long as their employees are covered by a valid CBA designating wages, hours and working conditions and the employees' regular hourly rate of pay is not

less than 30 percent more than the state minimum wage. Contractors should determine whether their union agreements or other procedures are affected.

- **California Paid Sick Leave**

Construction employers in California must provide paid sick days to their employees, unless the employees are covered by a valid CBA and fall under the exemptions included in Labor Code Section 245.5. The construction exemption to California's paid sick leave law requires that a premium regular hourly rate of pay of not less than 30 percent more than the state minimum wage be paid to exempt employees.

- **Tools or Equipment**

Employers who require employees to provide their own tools or equipment may also be affected pursuant to Industrial Welfare Commission Wage Order 16. Generally, when tools or equipment are required by the employer or are necessary to the performance of a job, they must be provided and maintained by the employer. However, an employee receiving wages that are at least two times the state minimum wage can be required to provide and maintain their own hand tools and equipment customarily required by the trade or craft. If employers are taking advantage of this provision, they should ensure they are paying employees twice the new state minimum wage.

CSLB Contractor's Bond Increased to \$25,000

Contractor's license bonds are increasing to \$25,000 on January 1, 2023. The increase was passed in 2021 in SB 607 but had a delayed implementation date.

The increase applies to:

The contractor license bond (from \$15,000 to \$25,000) and;

The bond of qualifying individual (from \$12,500 to \$25,000)

The increase occurred due to a license bond study that the CSLB conducted as required by state law. The study determined that the \$15,000 amount of the contractor bond is not sufficient to protect consumers and an increase was necessary. More info on the Boards efforts to keep contractors in compliance with the increase can be found [here](#).

Non-Emergency COVID-19 Prevention Regulations

The Occupational Safety and Health Standards Board voted to adopt non-emergency COVID-19 Prevention regulations. These regulations will take effect once they are approved by the Office of Administrative Law in the month of January 2023.

DIR has issued a [news release](#) providing details about the new provisions and Cal/OSHA has created a new [COVID-19 Prevention Non-Emergency Regulation webpage](#) that contains a [fact sheet](#) on "What Employers Need to Know" that will soon include additional resources, such as frequently asked questions and a model written program for employers to use as an example.

The most controversial provision in the previous iterations of the COVID-19 Prevention regulations has been the "exclusion pay." This provision requires employers to pay employees, if

they are exposed to COVID-19 at work, to stay home and isolate while they await a positive or negative COVID-19 test. Exclusion pay has been eliminated from the non-emergency COVID-19 prevention regulations.

AB 1041 - Expanded Use of CFRA Leave

Beginning January 1, 2023, AB 1041 requires California employers with 5 or more employees to allow their employees to use unpaid leave under the California Family Rights Act (CFRA) to care for a “designated person.” Under the new law, a designated person is defined as any individual related by blood, or whose association with the employee is equivalent to a family relationship. An employee can designate this person at the time they request leave. An employer can limit an employee to one designated person in a 12-month period.

AB 1751 - Extension of COVID Workers’ Compensation Presumption

AB 1751 extends the COVID-19 presumption under California’s workers’ compensation law until January 1, 2024. Under the COVID-19 presumption, which was originally created by [Executive Order N-62-20](#) and codified in state law in 2020, there is a rebuttable presumption that an employee’s illness related to COVID is an occupational injury and thus eligible for workers’ compensation benefits, [so long as certain criteria are met](#), making it easier for employees to receive coverage for COVID. These claims continue to be excluded from the experience rating calculations of employers.

AB 1949 - California’s New Bereavement Leave Law

California has enacted a new bereavement leave requirement into law, effective January 1, 2023. The new law requires employers with five or more employees, including those covered by a collective bargaining agreement, to provide up to five days of **unpaid** leave to eligible employees for the death of a family member. The bill defines “family member” as a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law of the employee.

To be clear, AB 1949 does not provide any new state mandated paid time off. With that in mind, while on bereavement leave, an employee can use other available paid time off such as vacation pay, personal leave, or sick leave they may have accrued.

Under the new law, bereavement leave is only available to employees who have worked for the employer for at least thirty days prior to the commencement of the leave. The five days of leave do not need to be taken consecutively but must be completed within three months of the death of the family member.

Employers are allowed to confirm the need for leave by asking for documentation, such as a death certificate, a published obituary, or a written verification of death, burial, or memorial services from a funeral home or other applicable entity. The request from the employer for documentation must occur within thirty days of the employee’s first day of leave.

The bill includes enforcement provisions that allow employees to file claims against employers who prevent them from taking bereavement leave or who take adverse employment actions against employees who take their leave. However, an especially crucial point for employers is

that the bill is codified under the California Government Code and not the California Labor Code. This means that, while employers may see retaliation claims stemming from this new law, employees will not be able to file claims under the Private Attorneys General Act (PAGA) for any alleged violations.

AB 2693 - COVID-19 Exposure Notification Requirements Modified and Extended

AB 2693 takes effect January 1, 2023, and amends and extends COVID-19 workplace notice requirements until January 1, 2024. The main modification provides that an employer may now satisfy the notice requirement by prominently posting a notice that includes the dates on which an employee with a confirmed case of COVID was on the premises within the infectious period, and the location of the exposure. The notice must remain posted for 15 days in a location where workplace rules and regulations are usually posted, as well as on an employee portal (if applicable). Employers must also keep a log of all the dates the notice was posted at each of its worksites and allow the Labor Commissioner to access these records.

One other key change is that notice to the local public health agency will no longer be required in the event of an outbreak

SB 1044 - Employee Rights in Emergency Conditions

Under SB 1044, beginning next year, employers with 5 or more employees are prohibited during an emergency condition from taking or threatening adverse action against any employee for refusing to report to, or leaving, a workplace or worksite. An “emergency condition” is defined as (1) a condition of disaster or extreme peril to the safety of persons or property at the workplace or worksite caused by natural forces or a criminal act, or (2) an order to evacuate a workplace, a worksite, a worker’s home, or the school of a worker’s child due to natural disaster or a criminal act. The law specifies that an emergency condition does not include a health pandemic.

SB 1044 also prohibits an employer from preventing any employee 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.

The law 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.

Notably, SB 1044 does not apply to an employee of a company providing utility, communications, energy, or roadside assistance while the employee is actively engaged in or is being called upon to aid in emergency response. This includes maintaining public access to services such as energy and water during the emergency.

SB 1162 - Pay Data & Transparency

Current California law requires employers to provide job applicants with pay scale information upon request. California law also currently requires employers with 100 or more employees to file an annual pay data report with the California Civil Rights Department (CRD) that contains information about the race, ethnicity, and sex of their workforce in various job categories.

SB 1162 creates additional pay data reporting and transparency obligations. The law has three main components: (1) employers with 15 or more employees will now be required to include a pay scale in all job postings; (2) all employers will be required to disclose to their existing employees, upon request, a pay scale for their positions; and (3) employers with 100 or more employees will be required to comply with new pay data reporting requirements and submit those reports to the CRD, separate and apart from an employer's filing of the federal EEO-1 Report.