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LEGISLATIVE UPDATE: 2023 Employment Law Changes

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As always, there are new employment laws that will affect your business next year. Below is a summary of the new laws. Please reach out to us if you would like assistance incorporating these laws into your existing policies and handbook.

Pay Transparency: SB 1162 (all employers with 15 or more employees)

California law currently prohibits employers from asking job applicants about their salary history and 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”), previously the Department of Fair Employment and Housing (“DFEH”), that contains information about the race, ethnicity, and sex of their workforce in various job categories—a requirement that overlaps with the federal EEO-1 report filing requirement.

SB 1162 creates new pay transparency obligations and creates a new CRD pay data reporting obligation. 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 EEO-1 Report.

Bereavement Leave: AB 1949 (all employers with 5 or more employees)

This bill amends the California Family Rights Act (CFRA) to require that covered employers provide employees with up to five days of unpaid bereavement leave for the death of a qualifying family member. To be eligible for bereavement leave, an employee must have been employed for at least 30 days. This obligation is separate and apart from the 12 weeks of leave employees

are eligible to take under the CFRA for their own serious health condition or that of a family member.

Leave may be taken for the death of an employee's spouse, domestic partner, parent, parent-in-law, grandparent, grandchild, child, or sibling. The leave must be taken within three months of the family member's death and can be taken all at once or intermittently. Employers may require that employees take this leave pursuant to any existing bereavement leave policy. If the employer does not have an existing policy, the leave may be unpaid; however, employees may elect to use accrued vacation, personal leave, sick leave, or other compensatory time off.

CFRA Caregiver Leave: AB 1041 (all employers with 5 or more employees)

This bill expands the class of people for whom an employee may take caregiver leave under the California Family Rights Act to include a "designated person." The law defines this term to include any individual related by blood or whose association with the employee is the equivalent of a family relationship. An employee can identify a designated person at the time the employee requests CFRA leave. AB 1041 also allows an employee to take paid sick leave to care for a "designated person" under the California Health Workplaces, Healthy Families Act of 2014.

No Discrimination Based on "Reproductive Health Decision Making": SB 523

This bill applies to all employers with 5 or more employees and amends the California Fair Employment and Housing Act by adding "reproductive health decision making" as a new protected classification. The term is defined to include, but is not limited to, a decision to use or access a particular drug, device, product, or medical service for reproductive health, such as contraceptives or an abortion procedure. The law also prohibits an employer from requiring an employee or applicant to disclose information relating to the person's reproductive health decision making.

No Adverse Employment Action During States of Emergency: SB 1044

This bill applies to all employers with 5 or more employees and prohibits an employer, in the event of a state of emergency or an emergency condition, 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. An "emergency condition" is defined to mean (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. An "emergency condition" does not include a health pandemic.

No Discrimination for Off-Duty Cannabis Use: AB 2188 (Effective January 1, 2024)

Effective January 1, 2024, through an amendment to the California Fair Employment and Housing Act, AB 2188 will make it unlawful for all employers with 5 or more employees to discriminate

against an employee in hiring, termination, or any term or condition of employment, or otherwise penalize an employee, if the adverse action taken is based upon the employee's use of cannabis off-duty and away from the workplace. The law does not prohibit an employer from taking adverse action against an employee for cannabis use based on scientifically valid pre-employment drug screenings conducted through methods that do not screen for non-psychoactive cannabis metabolites. Conversely, no employee may be penalized as a result of a drug test imposed by the employer that finds the employee to have non-psychoactive cannabis metabolites in his or her hair, blood, urine, or other bodily fluids.

Employees and applicants in the building and construction trades and those who are subject to mandatory federal background checks are exempt from the protections of AB 2188. The law also does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

Increased Wage Replacement Rates Under Paid Family Leave Program: SB 951

Effective January 1, 2025, all low-wage earners (those who earn up to 70 percent of the state average quarterly wage) will be eligible for a higher percentage of their regular wages under the state's PFL and SDI benefit programs (if they are otherwise eligible). The increase in benefits paid under the two programs may result in more employees taking advantage of job-protected leaves.

Minimum Wage Increase

Effective January 1, 2023, the California state minimum wage will increase to \$15.50 for employers of all sizes. This will have an effect on the minimum salaries for exempt employees. In addition, many municipalities and counties have their own minimum wages. It is a good time to check and confirm that your company is in compliance with applicable minimum wages.

For more information about any of these employment legal updates, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smwb.com, Caitlin Kaufman at ckaufman@smwb.com, or Rachael Brown at reb@smwb.com.



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

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