MUNGER TOLLES & OLSON LLP

CLIENT ALERT

New Employment Laws Taking Effect January 1, 2024

Starting on January 1, 2024, several new employment laws will take effect in California, including state minimum wage increases, expansion of paid sick leave, and new laws relating to non-compete agreements and off-duty cannabis use. In addition, several COVID-19 related laws will sunset in 2024, while others will extend to 2025.

More information on the new employments laws is available below. Please reach out to Katherine M. Forster and Margaret G. Maraschino of Munger, Tolles & Olson for more information.

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Non-Compete Agreements: SB 699 and AB 1076: Two new laws will address non-compete agreements in California beginning in 2024.

SB 699 adds section 16600.5 to the Business and Professions Code and specifically states that any non-compete agreement is void and unenforceable regardless of where and when the non-compete agreement was signed (i.e., including if the employment was maintained outside of California). Employers who attempt to enter into or enforce a non-compete agreement commit a civil violation and employees, former employees, or prospective employees may bring a private action for injunctive relief, recovery of actual damages, and reasonable attorney's fees and costs.

AB 1076 amends section 16600 and adds section 16600.1 to the Business and Professions Code. The amendment codifies existing case law which holds that the provision is to be read broadly to void non-compete agreements and clauses in an employment contract if they do not satisfy an exception. Section 16600.1 will make it unlawful to include a noncompete clause in an employment contract or to require an employee to enter into a noncompete agreement that does not satisfy an exception. Further, employers are required to notify in writing, by February 14, 2024, all current and former employees who were employed after January 1, 2022, and whose contracts included a noncompete clause or who were required to enter into a noncompete agreement that do not satisfy an exception that the noncompete clause or agreement is void. The notice must be delivered to the last known address and email address of the employee or former employee. Violation of Section 16600.1 shall be considered an act of unfair competition.

Minimum Wage Increase: California state minimum wage will increase to $16 per hour for employers of all sizes. As a result, the monthly salary for California exempt-status employees will increase to $5,546.67 per month, or $66,560 annually.

Updated Wage Theft Notice: AB 636: Employers are now required to provide written notification, at the time of hire, of the existence of a federal or state emergency or disaster declaration applicable to the county or counties where the employee will be employed that may affect the employee's health and safety during employment and that was issued within the 30 days prior to the employee's first day of employment. This information will require employers to update their Wage Theft Notice. Templates for this notice requirement will be provided by the Labor Commissioner. Further, pursuant to AB 636, beginning on March 15, 2024, employers of

agricultural workers who are brought to California under the federal H-2A agricultural worker visa program must notify employees admitted under this visa program of their additional rights and protections under California law. Templates for this notice requirement will be provided by the Labor Commissioner no later than March 1, 2024. Employees covered by valid collective bargaining agreements are generally not covered by these provisions.

Expansion of Paid Sick Leave: SB 616: California's Healthy Workplaces, Healthy Families Act of 2014 will now require almost all California employees to receive 40 hours or 5 days of paid sick leave per year.

Employers may still use either a front-load or accrual method for sick leave. The standard accrual method remains one hour per 30 hours worked. An employer using an alternative accrual method must ensure that its employees accrue at least 24 hours (or 3 days) of leave by the 120th day of employment *and* an additional 16 hours (for a total of 40 hours or 5 days) by the 200th calendar day of employment. The permitted cap on an employee's total accrual has increased to 80 hours or 10 days per year. Employers must also allow employees to carry over at least 40 hours or 5 days of sick leave each year, unless the employer provides 5 days or 40 hours of sick leave at the beginning of each year of employment, calendar year, or 12-month period.

SB 616 also extends section 246.5 to include employees covered by collective bargaining agreements and specifies procedural requirements on the use of sick days (such as specifying the purposes for which sick leave can be used, preventing the employer from requiring the employee to find coverage when using sick leave, and prohibiting discrimination or retaliation for using the sick days). Finally, state law will now preempt many local ordinances with contrary requirements.

Reproductive Loss Leave: SB 848: California employers with more than five employees will be required to provide up to five days of reproductive loss leave following a reproductive loss event (defined to include a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction). The law is a subset of California's Bereavement Leave Law and will be available to individuals who have been employed for at least 30 days. The leave must begin within 3 months of the triggering event (unless another leave is in progress prior to or immediately after the loss) and it need not be taken on consecutive days. Unless an applicable policy provides pay (e.g., PTO or sick leave), the leave is unpaid. If more than one loss occurs, individuals may take up to 20 total days of reproductive loss leave in a 12-month period. The employer shall maintain the confidentiality of any employee requesting reproductive leave and may not retaliate or discriminate against an individual who uses this leave.

Privileged Communications in Incidents of Sexual Assault, Harassment or Discrimination: AB 933: This law seeks to protect individuals who make a statement or complaint (without malice) about their own experience of sexual assault, workplace harassment or discrimination, or cyber sexual bullying from defamation liability. It makes such communications privileged as long as the individual has, or had, a reasonable basis to file a complaint, regardless of whether or not the complaint was filed. Also, a prevailing defendant in a defamation case may recover their

reasonable attorney's fees and costs, treble damages for any harmed caused to them by the defamation action, punitive damages under section 3294 and any other relief permitted by law.

Rebuttable Presumption of Retaliation: SB 497: Sections 98.6 and 1197.5 of the Labor Code were amended to create a rebuttable presumption of retaliation if an employee is disciplined or terminated within 90 days of invoking or assisting in the enforcement of specified Labor Code provisions or exercising rights under the Equal Pay Act. Section 1102.5(f) also now provides for a civil penalty of up to $10,000 per employee who is retaliated against.

Workplace Violence Prevention: SB 553 and SB 428: Two new laws have been enacted to create workplace violence prevention safety requirements. SB 553 (effective July 1, 2024) adds Section 6401.9 to the California Labor Code and requires employers to develop a workplace violence prevention plan as part of their Injury and Illness Prevention plan. This plan is not required if employees telework from a location of their choice which is not under the control of the employer or for places of employment with less than 10 employees if the location is not accessible to the public. Employers may consult section 6401.9 for the information to include in their plan. The law also requires employers to maintain various records such as workplace violence hazard identification, evaluation, and correction, training records, violent incident logs, and workplace incident investigation records.

SB 428 also make several revisions to section 527.8 of the California Civil Code, which will go into effect on January 1, 2025, and which will allow employers to seek a temporary restraining order on behalf of an employee who is suffering harassment.

No Automatic Stay During an Appeal of Arbitration Order: SB 365: SB 365 amends section 1294 of the Code of Civil Procedure and provides that a party appealing an order denying a motion to compel arbitration is not entitled to an automatic stay; rather, such a stay will be at the discretion of the court. Challenges to this statute are expected on federal preemption grounds.

Labor Code Enforcement by Public Prosecutor: AB 594: AB 594 authorizes a public prosecutor to enforce certain provisions of the Labor Code through a civil or criminal action until January 1, 2029. This includes conducting investigations, hearings, or civil actions related to contractor misclassification issues. It also amends Section 226.8 to modify enforcement options and remedies. Finally, the bill adds section 182 to the Labor Code, which provides that employee arbitration agreements that limit representative actions or mandate private arbitration shall not affect the authority of the public prosecutor or Labor Commission to enforce the Labor Code.

Electronic Employee Notifications: AB 1355: AB 1355 authorizes employers to provide specified documents related to benefit claims, such as unemployment insurance, and California earned income tax credits, by email, if the employee opts into receipt of electronic notification. The employee must affirmatively opt in to receive such notices via email. This amendment applies to notices furnished on or after January 1, 2024, and remains in effect until January 1, 2029, when a new version of the law will go into effect. Employers may not discriminate or retaliate against employees who do not opt into electronic materials.

COVID-19 Rehire Rights: SB 723: This bill extends to December 31, 2025, an existing law that requires employers to provide rehire preference to employees who were laid-off for reasons related to the COVID-19 pandemic. This bill also redefines laid-off employee to include an individual who was employed for at least 6 months and whose separation from employment occurred on or after March 4, 2020, and was due to a reason related to the COVID-19 pandemic. This section will now also create a presumption, which can be rebutted by a preponderance of the evidence, that a separation of employment due to a lack of business, reduction in force, or other economic, non-disciplinary reason was due to a reason related to the COVID-19 pandemic.

Off-Duty Cannabis Use: AB 2188: AB 2188 makes it unlawful for employers to discriminate against an applicant or employee in any term or condition of employment, or to otherwise penalize a person, based on the person's use of cannabis off the job and away from the workplace, or based on an employer-required drug screening. Employers may still require scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites.

This section does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, and does not affect the rights or obligations of an employer to maintain a drug and alcohol free workplace. This section does not apply to:

1. Employees in the building or construction trades;
2. Applicants or employees hired for positions that required a federal government background investigation or security clearance in accordance with the US Department of Defense pursuant to the Code of Federal Regulations or equivalent regulations applicable to other agencies.

AB 2188 also does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances.

INDUSTRY SPECIFIC CHANGES

Increased Minimum Wage for Health Care Workers: SB 525: SB 525 establishes five separate minimum wage schedules for covered healthcare employees based on the nature and/or size of the employer.

The minimum wage increases will begin on June 1, 2024, and will continue until June 1, 2033, for some employers. The increases will initially range from $18 to $23 per hour. The salary basis for exempt employees will also increase to a monthly salary equivalent of no less than 150% of the health care worker minimum wage or 200% of the applicable minimum wage, whichever is greater, for full-time employment. The Department of Industrial Relations must develop a waiver program on or before March 1, 2024, that would allow covered health care facilities to apply for and receive a temporary pause or alternative phase for the healthcare minimum wage schedule.

Increased Minimum Wage for Fast Food Workers: AB 1228: Beginning on April 1, 2024, the hourly minimum wage for fast food restaurant employees will be $20 per hour. Fast food restaurants are defined as a limited service restaurant in California that are part of a national fast food chain (as defined by statute).

Food Handler Cards: SB 476: Employers may not condition employment on the possession of an existing food handler card and must consider the time that it takes for the employee to complete the food handler training and examination as compensable hours worked. Employees shall be relieved of all other work duties while taking the training course and exam. Employers must also reimburse the employee for any necessary expenses associated with obtaining the card.

Preferential Hiring in Grocery Establishments: AB 647: Under existing law, when there is a change in control of a grocery establishment, the incumbent employer must provide the successor employer with a list of grocery workers who are eligible for preferential hiring within 15 days. AB 647 will now authorize successor employers to obtain this information from a collective bargaining representative if the incumbent employer does not timely provide it. The law also updates the definition of covered establishments to exclude retail stores that ceased operations for 12 months or more, and to include distribution centers that fall under the definition of grocery establishments. It also adds section 2517, which excludes incumbent grocery employers and successor grocery employers when both cumulatively have less than 300 grocery employees nationwide immediately prior to the change in control. In addition, AB 647 authorizes an aggrieved employee or employee representative to bring action for violations and creates remedies.

Disclosure of Sexual Harassment in Post Secondary Education Hiring: SB 791: SB 791 requires the governing board of a community college district, the trustees of California State University, and the Regents of University of California to require, as part of the hiring process for an appointment to an academic or administrative position, that the applicant disclose any final administrative or final judicial decisions issued within the prior seven years determining that the applicant committed sexual harassment. Applicants are permitted to disclose if they have filed an appeal with the previous employer with the United States Department of Education. The community college district, California State University or the University of California are not to ask the applicant to disclose information concerning any final administrative or final judicial decision, including an inquiry about an applicable decision on any employment application, until the entity has determined that the applicant meets the minimum employment qualifications stated in the notice issued for the position.

Meal/Rest Break Exemption for Certain Airline Flight Crew Members: SB 41: Effective immediately, the requirement to provide a meal or rest period to an airline cabin crew employee does not apply if: (1) the employee is covered by a valid collective bargain agreement under the Railway Labor Act and the agreement addresses the employee's meal and rest periods, or (2) the employee is part of the craft or class of employees that is represented by a labor organization pursuant to the Railway Labor Act, but is not yet covered by a valid collective bargaining agreement. Further, no person shall file a new legal action for violation of meal or rest breaks after

December 5, 2022, if the airline cabin crew employee is covered by a collective bargaining agreement under the Railway Labor Act and the agreement addresses the employee's meal and rest periods.

LAWS THAT SUNSET ON JANUARY 1, 2024

COVID-19 Exposure Notifications: Section 6325 of the Labor Code, which addresses the Division of Occupational Safety and Health's authority to prohibit the use of a place of employment or equipment when there is a risk of exposure to COVID-19 which constitutes an imminent hazard to employees, and that requires an employer to post a notice of the prohibition in a conspicuous place, will sunset on January 1, 2024.

Section 6409.6 of the Labor Code, which addresses notification requirements for employers when there has been COVID-19 exposure in the workplace will also sunset on January 1, 2024.

COVID-19 Rebuttal Presumption for Workers' Compensation Purposes: Existing workers' compensation law makes a claim related to COVID-19 presumably compensable as a workers' compensation injury if liability is not rejected after 30 or 45 days, rather than 90 days, and allows for a presumption of injury for all employees whose fellow employees at their workplace experience specified levels of positive COVID-19 testing and whose employer has five or more employees. Existing law also provided special COVID-19 provisions to firefighters, police officers, employees at the State Department of State Hospitals, the State Department of Developmental Services, the Military Department, and the Department of Veteran Affairs, and other specified employees. These provisions, as outlined in Labor Code section 3212.86, 3212.87, and 3212.88 are set to sunset on January 1, 2024.