

# CALIFORNIA ENACTS FAR REACHING AND COSTLY NEW EMPLOYMENT LAWS

December 07, 2023

**The California Legislature passed a broad range of employment laws that apply to practically all businesses operating in the state and to many operating outside of the state. They have been signed into law and will become effective on Jan. 1, 2024, unless otherwise noted. The subject matters of the new laws include non-competes, workplace violence, sick leave, minimum wages for health care and fast-food employees, reproductive loss leave, off-duty marijuana use and inquiries about job applicants use of marijuana.**

## **New Non-compete Law**

New non-compete law invalidates out of state non-competes and gives employees and prospective employees a cause of action against employers that try to enforce non-competes.

The most far-reaching new law is on non-competes. Assembly Bill 1076 purports to codify existing non-compete law—most restrictive covenants are void; but Senate Bill 699 actually takes the law much farther by adding Section 16600.5 to the Business and Professions Code. Section 16600.5 declares any contract that is void under Section 16600 is unenforceable regardless of whether the contract was signed and the employment was maintained outside of California. In other words, California's non-compete law undertakes to trump the non-compete laws of other states. The law purports to apply to California employers, including those with operations in other states and invalidates a non-compete between a California employer and its employee who works and resides in a state other than California and whose non-compete is valid in the other state. The law also purports to apply to non-California employers. So, if an employee, who works and resides in another state signs an enforceable non-compete in that state with a non-California employer, seeks or finds employment in California, then California laws decrees his non-compete to be unenforceable. In other words, this law allows both employees to walk away from

valid contractual obligations, using this statute as a protective shield. This is a form of political imperialism that raises federal and state constitutional issues.

Section 16600.5 also creates a private cause of action for an employee or prospective employee for damages, injunctive relief and attorneys' fees against an employer that tries to enforce a contract void under Section 16600. This would include both of the hypothetical employees discussed in the preceding paragraph.

Finally, employers that have non-competes with their employees are required to issue notices to all current employees and former employees employed after Jan. 1, 2022 that their non-compete agreements or clauses are void. The deadline for doing so is Feb. 14, 2024.

### **Workplace Violence Prevention**

Senate Bill 553 requires almost all employers to implement and add a workplace violence prevention plan to their existing injury and illness prevention plans by July 1, 2024. The plan must include:

1. the names of the persons responsible for implementing the plan;
2. procedures to obtain the active involvement of employees and their authorized representatives;
3. methods to coordinate implementation of the plan with other employers, when applicable;
4. procedures for the employer to accept and respond to reports of workplace violence and to prohibit retaliation against employees making such reports;
5. procedures to ensure that supervisory and nonsupervisory employees comply with the plan;
6. procedures to communicate with the employees regarding workplace violence matters;
7. procedures to respond to actual or potential workplace violence emergencies;
8. procedures to develop and provide the training required by the new code provision;
9. procedures to identify and evaluate workplace violence hazards;
10. procedures to correct workplace violence hazards;
11. procedures for post incidence response and investigation;
12. procedures to review the effectiveness of the plan and revise the plan as needed (must be done at least annually)

Employers are also required to keep detailed records of workplace violence incidents, investigations, hazard identification, training and training records.



Beginning Jan. 1, 2025, employers and the employee's collective bargaining agent will be able to seek temporary restraining orders on behalf of employees suffering harassment as defined under the Code; but the employer or bargaining agent must allow the employee to decline to be named in the temporary restraining order. Currently an employer can only seek a temporary restraining order on behalf of an employee who has suffered unlawful violence or a credible threat of violence.

## **Sick Leave Expanded**

Currently, employees are entitled to three days (24 hours) of paid sick leave for each 12-month period. Senate Bill 616 increases it to five days (40 hours). Additionally, the bill increases the cap on how much sick leave an employee can accrue and carry over. Currently it is six days (48 hours) a year. Senate Bill 616 increases it to ten days (80 hours). Senate Bill 616 does not preempt local laws requiring employers to provide more sick days more than what the bill requires.

## **New Minimum Wages for All Health Care Workers**

Senate Bill 525 creates new minimum wage schedules for health care workers. The schedules are dependent upon the type and size of the employer. The lowest minimum wage will be \$18.00 an hour starting June 1, 2024 to May 31, 2033 for rural facilities and hospitals with government payors; and the hourly rates for those employees will increase to \$25.00 an hour starting June 1, 2033. For employers with less than 10,000 employees the minimum wage will be \$21.00 an hour beginning June 1, 2024; \$23.00 an hour starting June 1, 2026 and \$25.00 an hour starting June 1, 2028. For employers with more than 10,000 employees, the minimum wage will be \$23.00 an hour beginning June 1, 2024; \$24.00 an hour beginning June 1, 2025 and \$25.00 an hour beginning June 1, 2026. Once each group hits \$25.00 an hour wages can be adjusted annually for inflation.

This law applies to ALL health care workers, including but not limited to nurses, doctors, caregivers, residents, fellows, patient care technicians, janitors, housekeeping staff, groundskeepers, guards, clerical workers, nonmanagerial administrative workers, food service workers, gift shop workers, technical and ancillary service workers, medical coding and billing personnel, schedulers, call center and warehouse workers, laundry workers and contracted and subcontracted employees.

## **Fast-Food Workers Minimum Wages (Conditional)**

In 2022 California passed a law creating a Fast-Food Council that was empowered to impose binding minimum standards on wages and hours for fast food workers. The fast-food industry responded by filing a referendum petition to overturn the law; and the referendum is on the ballot for 2024. In response California passed Assembly Bill 1228, the effectiveness of which is dependent upon the withdrawal of the referendum before Jan. 1, 2024.

If Assembly Bill 1228 becomes effective, the minimum wages of fast-food workers for national fast-food chains (having more than 60 establishments nationally) will be \$20.00 an hour effective April 1, 2024. Bill 1228 also limits the Fast Food Council to making only recommendations on standards for wages and hours.



## **Reproductive Loss Leave**

As of Jan. 1, 2024, employers with five or more employees must provide up to five days off to an employee who suffers a reproductive loss event—a failed adoption, a failed surrogacy, miscarriage, still birth or unsuccessful assisted reproduction (does not include sexual intercourse). The leave must be taken within three months of the event and need not be paid, but the employee can use certain other leave balances, including sick leave. The days of the leave can be non-consecutive, and there can be more than one qualifying event, but an employer is not required to grant a total amount of reproductive loss leave in excess of 20 days in a 12-month period.

## **Non-Discrimination for use of Marijuana**

Last year California amended its Fair Employment and Housing Act, effective Jan. 1, 2024, to prohibit employers from discriminating against employees for off the job marijuana use. Under this law, employers cannot refuse to hire an applicant or discriminate against an employee on account of off duty marijuana use or for the discovery of non-psychoactive cannabis metabolites in a drug test. Employers can still screen for THC, the chemical that has psychoactive effects, including impairment. There are also carve outs in the law for the building and construction trade and for filling positions that require a federal background check or security clearance and drug testing under state and federal law.

Also in 2023, California passed Senate Bill 700 that prohibits employers from asking applicants about prior marijuana use or using an applicant's marijuana use obtained from a criminal background check to discriminate against applicants.

All of these legislative changes are going to require both California and out-of-state employers to promptly review their policies and procedures, as well as their employment contracts and non-competes to ensure that they take the appropriate actions with respect to these laws. If you have any questions about these new laws and their implications, please do not hesitate to contact our labor and employment team.

## **Related Practices**

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## **Practice Area Contact**

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