

DECEMBER 21, 2023 | STATE & LOCAL TRENDS

Employers Take Note: New Employment Laws for 2024

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This year, Governor Newsom signed into law employment bills on disparate subjects such as paid sick leave, reproductive loss leave, non-competes, and more. These new laws take effect on January 1, 2024, unless otherwise noted.

SB 525 (Minimum Wage Increase for Healthcare Workers)

SB 525 increases the minimum wage for healthcare industry workers over the next few years, working toward a minimum wage of \$25 per hour. The precise schedule for the increases depends on the type of facility. The bill broadly covers employees working for a healthcare facility who provide patient care, health care services, or services supporting the provision of health care (for example, groundskeepers, guards, ancillary services workers, and more). 

SB 525 also requires exempt employees be paid no less than 150% of the healthcare minimum wage or 200% of the applicable minimum wage, whichever is greater.

SB 497 (Retaliation Presumption)

California law already protects employees from retaliation for engaging in protected activity.

SB 497 creates a presumption of retaliation if an employee is disciplined or terminated within 90 days of protected activity. The new law also makes an employer liable for a civil penalty of up to \$10,000 for violating this provision, to be awarded to an employee who was subject to retaliation.

SB 616 (Paid Sick Leave)

California law already requires employers to provide 24 hours/three days of paid sick leave to employees per year. 

SB 616 adjusts the accrual of sick leave, increasing the required paid sick leave to 40 hours/five days a year. It also increases the accrual cap from 48 hours/six days to 80 hours/ten days.

Employers should also reference municipal sick leave laws for any enhanced requirements. (i.e. San Francisco, Los Angeles, etc.)

SB 848 (Reproductive Loss Leave)

SB 848 requires employers with five or more employees to provide up to five days of leave for reproductive loss events, defined as “the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.” If the employee is subject to multiple reproductive loss events in one 12-month period, the employer is not required to provide more than 20 days of leave. The leave is subject to an employer’s existing applicable leave policy. In the absence of an existing policy, the leave may be unpaid, except that an employee may use vacation, personal leave, accrued and available sick leave, or compensatory time off that is otherwise available to the employee. The bill also contains antiretaliation provisions and requires the employer to maintain employee confidentiality.

AB 1076/SB 699 (Non-Competes)

AB 1076 codifies existing case law in *Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937 (2008) and voids the application of any non-compete agreement in an employment context, or any noncompete clause in an employment contract, no matter how narrowly tailored, unless a specific exemption under Business and Professions Code section 16600, *et seq.*, applies. By February 14, 2024, employers must notify in writing current and former employees who were employed after January 1, 2022, and whose contracts include a void non-compete clause, or who were required to enter a void non-compete agreement. 

SB 699 makes it a civil violation for employers and former employers to 1) attempt to enforce a non-compete that is void under Business and Professions Code section 16600, *et seq.*, regardless of whether the contract was signed, and the employment was maintained outside of California or 2) enter a contract with an employee or prospective employee that contains a void non-compete provision. Employees, former employees, or prospective employees may bring a private action and a prevailing plaintiff may recover injunctive relief and/or actual damages and reasonable attorney’s fees and costs.

AB 2188/SB 700 (Marijuana Discrimination and Testing)

AB 2188 and SB 700 make it unlawful for employers with five or more employees to discriminate against a person in hiring, termination, or any other term or condition of employment, or otherwise penalize a person based on 1) the person’s use of cannabis off-the-job, away from the workplace; 2) an employer-required drug screening test that found the person to have non-psychoactive cannabis metabolites in hair, blood, urine, or other bodily fluids. This portion of the new law does not apply to building and construction trades. The new law further makes it unlawful to request information from an applicant for employment relating to the applicant’s prior use of cannabis. 

AB 2188 and SB 700 exempt positions requiring a federal government background investigation or security clearance under the US Dept. of Defense regulations or “equivalent regulations applicable to other agencies” and do NOT preempt state or federal laws that require testing of applicants or employees as a condition of employment.

Background Check Regs

California made significant changes to its Fair Chance Act regulations this year, all of which went into effect on October 1, 2023.

The updated regulations expanded coverage to employees whose backgrounds are checked in connection with a change in control of the company and according to the employer's policies and practices. 

The new regulations also clarify that the waiting period for an applicant to respond to the notice of adverse action is five days after the applicant receives the notice, not five days after the employer sends the letter. This essentially requires that the letter be sent certified, return receipt requested.

Lastly, the new regulations radically change the individualized assessment process the employer must undertake before deciding to revoke a conditional offer based on criminal history. Employers must now consider extensive specified factors as part of this individualized assessment. A list of these factors are available [here](#).

Takeaways for Employers

As a result of these legislative developments, we recommend that California employers promptly take the following steps:

1. Review minimum wage for compliance with California law.
2. Review paid sick leave policies.
3. Review leave policies for compliance with the new reproductive loss leave requirements.
4. Revise employment agreements to eliminate void non-competes and provide notice to past and current employees as required by law.
5. Review drug testing policies.
6. Revise background check policies, particularly the procedures for the individualized assessment process.

Please [contact us](#) with any questions about this update.