

2025 Labor & Employment Law Update

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What's New in California?

1. Hot Off The Press!
2. ALRB Card Check Regulations
3. Employer Speech
4. Employee Notices/Disclosures
5. Leaves of Absence
6. Wage & Hour
7. Discrimination
8. Minimum wage
9. Workplace safety
10. AI



Hot Off The Press!



Trump Fires NLRB GC and Member!

- Trump fires National Labor Relations Board General Counsel Jennifer Abruzzo – this was expected.
- Trump also fires Board Member Gwynne Wilcox which was unprecedented. Wilcox's removal also leaves the Board without a quorum and thus unable to issue decisions in cases until a new member is appointed to the five-seat Board and confirmed by the U.S. Senate. Installing a new Board member usually takes months.
- Legal challenges are already in the process regarding Wilcox firing.
- The Board now consists of two members: Democrat David Prouty and Republican Marvin Kaplan. Kaplan was appointed Chair on Jan. 21, 2025.



SB 399

“Captive Audience” Limitations

Background: Employees AND Employers Have NLRA Rights

- Section 7: EMPLOYEE can engage in protected concerted activities, refrain from participating in unions
- Section 8: EMPLOYER can express view, argument, or opinion without committing Unfair Labor Practice, if such expression contains no threat of reprisal or force or promise of benefit
- Recent NLRB decision involving captive audience meetings



Under NLRA, Employer Could Call Employee Meeting to Address Union Organizing

“The Company believes that we don’t need a third-party representative here to have a great place to work. We prefer to communicate directly with you. It is your choice whether or not to seek outside representation. But get all of the facts first before making up your mind.”

“Here are some facts... [*insert facts - without threats or promises*].”



SB 399: CA Worker Freedom from Employer Intimidation Act

- Is the meeting required?
- Is the meeting about religious or political matters?
- If yes, the employee can refuse to attend
- And you still have to pay them!
- Employee cannot be retaliated against
- Civil penalty of \$500...and
- **A private right of action**



What's a Meeting on a "Political Matter"?

- Meetings relating to elections for political office, political parties, legislation, regulation, and the **decision to join or support** any political party or political or **labor** organization
- Tilts the balance of power to labor unions by preventing employers from exercising their protected free speech rights

Under SB 399, Employee Could Refuse to Attend Employee Meeting to Address Union Organizing

- Employer may not take adverse action against employee for refusing to attend “captive audience” meetings regarding “political” or “religious” matters
- Employer may not require employee to listen to or receive communications regarding such matters



Expect legal challenges!



Trump's Executive Orders - Immigration

President Donald Trump promised sweeping changes to the U.S. immigration system, with a focus on ramping up enforcement actions and the removal of undocumented immigrants.

Immediately following his inauguration on January 20, 2025, he took swift action with executive orders across many areas. This is just one of those areas!

Trump's Executive Orders - Immigration

Following his inauguration on Jan. 20, 2025, President Donald Trump signed several executive orders designed to advance his immigration agenda. The orders include:

- Ending Birthright Citizenship (challenged)
- Enhanced Vetting
- Creating “Homeland Security Task Forces”
- Reinstating the “Remain in Mexico” Policy, Ending “Catch and Release,” and Eliminating the “CBP One App”
- Suspending Refugee Resettlement
- Clarifying the Military’s Role in “Protecting the Territorial Integrity of the United States”
- Designating Cartels as Foreign Terrorist Organizations
- Denying Asylum to Individuals Apprehended Between Ports of Entry
- Restoring the Death Penalty When a Law Enforcement Officer Is Murdered

When ICE Knocks

- In addition to a Form I-9 audit, ICE may conduct a worksite enforcement action at a business location.
- These actions may seek not only company Form I-9s and other records, but officials may also intend to arrest unlawful employees at the business site. In potential criminal cases, ICE also may serve a judicial warrant to search specific areas, and possibly to seize certain records or persons.
- Such ICE enforcement action implicates potential civil and criminal charges – talk with counsel!

California Style: What To Do in the Event of an ICE Enforcement Action

1. Ask for the ICE officers to identify themselves. Ask for their names and business cards.
2. If ICE has obtained a judicial search warrant, examine the judicial search warrant to ensure that it is properly signed.
3. Immediately transmit the search warrant to your legal counsel.
4. If ICE does not have a search warrant, they cannot enter the premises without consent of an authorized representative.
5. **For Employers in California: Under California law, it is unlawful for an employer to grant ICE access to any non-public area **except if presented with a judicial warrant.****

What To Do in the Event of an ICE Enforcement Action

6. Ask if counsel can come to the employer's premises while the raid is occurring. However, ICE will not delay a raid while waiting for your attorney to arrive.
7. Assign manager to accompany ICE officers as they go around the facility and takes notes what they are doing and saying
8. Advise assigned staff not to block or interfere with the ICE officers as they go about their activities. They should remain calm and composed and not engage in any hostilities toward the agents.
9. Your staff and employees are not required to give any statements to ICE officers or allow themselves to be interrogated.

What To Do in the Event of an ICE Enforcement Action

10. You should inform employees that they have a right to talk with ICE officers or not talk to them if they like. However, do not direct employees not to speak to agents when questioned.
11. Do not engage in any activities that could support a potential harboring or obstruction charge. This includes hiding employees, aiding in their escape from the premises, providing false or misleading information, denying the presence of specific named employees, or shredding documents.
12. If agents want access to locked facilities within the warrant, unlock them — otherwise, agents will forcibly gain entry into locked closets or cabinets.
13. After the raid, contact the families of any detained employee(s) and recap with management.



ALRB Card Check Update

ALRB Card Check Implementing Regulations Are Coming!

- AB 2183, effective January 1, 2023
 - The “card check” law
- AB 113, effective May 15, 2023
 - AB 113 amended AB 2183
- Five card check elections to date.
- Regulatory package approved on Dec. 11, 2024; submitted to OAL on Jan. 10, 2025.
 - OAL has until Feb. 25, 2025, to make final determination.

What will the Regs *likely* say?

- **Service** – Personal service on:
 - Owner/director; or
 - Person apparently in charge of the office; or
 - “Other responsible person”; or
 - If service on those individuals not possible, then a supervisor.
- **Signatures** – Valid for one year and cannot be revoked.
- **Format and language of card** – Required to say “signature = vote.”

AUTHORIZATION FOR UNION REPRESENTATION

I, _____, authorize
(Employee's Name, Printed)

_____ to be my collective bargaining representative
(Labor Organization's Name, Printed)

for purposes of negotiating wages, hours, and other terms and conditions of

employment with _____.
(Employer's Name, Printed)

Employee Information

Address: _____

Telephone/Cell Phone: _____

Email: _____

Signature: _____

Date: _____

Witnessed by (if applicable), Printed Name: _____

Witness Signature (if applicable): _____

Signing this card is a vote for the named labor organization. A signature is valid for one (1) year from the date it is signed. A signature on this card cannot be revoked during this one (1) year period.



¡SI SE PUEDE!®
AUTHORIZATION
FOR UNION REPRESENTATION



I authorize the Union of Farm Workers of America to be my union representative to collectively negotiate an employment contract with my employer to improve my wages, working conditions and benefits.

NAME		DATE
		TELEPHONE
ADDRESS	CITY	ZIP CODE
COMPANY		GROUP

SIGNATURE

WITNESS

What will the Regs *likely* say?

- **Employer response** – Within 48 hours, employer must provide:
 - List of all Ag employees in preceding payroll period; plus
 - Each employees':
 - Full name
 - Current street addresses
 - Landline and cell phone numbers
 - **Email address**
 - Job classification
 - Crew or department
- **Includes Ag workers hired through FLCs!**

What will the Regs *likely* say?

- **Eligibility disputes –**
 - Authorized challenges:
 - Regional Director can challenge eligibility;
 - Union can allege employee is “not on list” (NOL); but
 - Employer has no similar challenge authorized by law/reg prior to the Regional Director’s determination
 - Time for deciding challenges:
 - Eligibility issues decided no later than five days after the 30-day cure period
 - Otherwise, employer’s only hope is objections
 - Ag worker names are never to be disclosed to employers
 - Hamstrings employer’s ability to defend NOL allegations



Required Disclosures To Employees

Extensions of the “Silenced No More” Act

In 2021: SB 331 (“Silenced No More Act”) amended the FEHA to require severance and release agreements to contain a provision *notifying the employee* or former employee that they have the *right to consult an attorney* regarding the agreement

AB 1870: *More* Legal Disclosures

- Amends the Labor Code to require employers to advise employees of their *right to consult with legal counsel* regarding their rights under *workers' compensation laws*
- Requires employers to post notice of workers' comp benefits and coverages
- *Now*: Must disclose your workers' comp carrier AND ten pieces of information...

New Workers' Comp Disclosures Required Under AB 1870

1. How to get medical treatment
2. Injured employee may consult attorney regarding their workers' comp rights; attorney's fees typically paid from an injured employee's recovery
3. Right to select your own physician
4. Antidiscrimination protections
5. - 10. More and more!

Failure to properly post/maintain the notice constitutes a misdemeanor, and shall be *prima facie* evidence of noninsurance by the employer

AB 1888: Department of Justice Labor Trafficking Unit- Effective January 1, 2025

Governor Newsome established a Labor Trafficking Unit to increase coordination among state agencies to combat labor traffic Governor Newsome established a Labor Trafficking Unit to increase coordination among state agencies to combat labor trafficking in California. AB 1888 added Government Code section 12530.5 which defines “labor trafficking” as depriving or violating the personal liberty of another person with the intent to obtain forced labor or services, further defined as labor or services “obtained or maintained through force, fraud, duress, coercion, or equivalent conduct that would reasonably overbear the will of the person.”

The unit will coordinate with the Department of Industrial Relations, the Civil Rights Department, the Employment Development Department, the State Department of Health Care Services, the State Department of Social Services, the Department of Food and Agriculture, the Department of Fish and Wildlife and other relevant state agencies, law enforcement, tribal law enforcement agencies and district attorneys’ offices. The unit will be responsible for collecting and tracking reports and complaints and report to the Department of Justice or other law enforcement agencies when a complaint should be further investigated. The unit will submit reports on the number and type of complaints, investigations and demographics of victims and accused traffickers to the Legislature on or before April 1, 2027 and annually thereafter.

AB 1888: Department of Justice Labor Trafficking Unit- Effective January 1, 2025

Under the new law, the Department of Industrial Relations and the Civil Rights Department shall report suspected labor trafficking to the unit immediately when, upon investigating business under their purview, they suspect labor trafficking is occurring or has occurred.

What This Means For Employers:

Employers (growers, shippers and farm labor contractors) should be very aware of what constitutes labor trafficking and should ensure its supervisors are trained not to engage in any labor trafficking. This is a top priority for California right now as evidenced by the fact that Governor Newsom signed three other non-employment-related human trafficking bills this year: AB 2020, SB 963, and SB 1414.

New Whistleblower Disclosures Required Under AB 2299

- Requires the Labor Commissioner to develop a model list of employee rights and responsibilities under existing whistleblower laws
- Employers posting the model notice are deemed in compliance with the law

AB 2738 – Recovery for Labor Code Violations by Public Prosecutor – Effective January 1, 20-25

Existing law requires money recovered by public prosecutors under certain sections of the Labor Code, including PAGA, to be applied first to payments, such as wages, damages or other penalties, due to affected workers. Existing law further requires all civil penalties recovered by a public prosecutor pursuant to those provisions to be paid to the General Fund of the state, unless otherwise specified. Existing law authorizes the court to award a prevailing plaintiff reasonable attorneys' fees and costs in an action under those provisions, as specified.

AB 2738 amends Labor Code 181 to require any funds recovered to go first to workers to cover any unpaid wages, damages or penalties owed to those workers, and any remaining civil penalties to go the General Fund of the state. The new law also **requires** the court to award a prevailing plaintiff reasonable attorneys' fees and costs, including expert witness fees and costs.

AB 2754 – Extends Labor Code provisions to Port Drayage Motor Carriers - Effective January 1, 20-25

AB 2754 amends the Labor Code to provide that a customer that, as part of its business, engages or uses a port drayage motor carrier shall share with the motor carrier or the motor carrier's successor all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor. The customer shall have no liability pursuant to this subdivision under either of the following circumstances:

- (1) The motor carrier utilizes its own employee drivers to perform services for the customer; or
- (2) The motor carrier utilizes bona fide independent contractors to perform services for the customer where each independent contractor possesses their own operating authority and has a business relationship with the motor carrier that meets the California legal standard for being determined an independent contractor.

What This Means For Employers:

Employers engaging a port drayage motor carrier should be careful to ensure that the contract provides for payment of the drivers and that the carrier complies with proper classification requirements to avoid liability to the employer.



Leaves of Absence

Handbook Updates for 2025!

- There are some key changes which may impact your employee handbooks. Some of areas employers are updating their employee handbooks are:
 - List of Protected Categories in EEO and Harassment, Discrimination and Retaliation Policies;
 - Victims of Harassment Qualifying Act of Violence
 - California Paid Sick Leave;
 - Paid Family Leave
 - Jury/Witness Dutyand more!

AB 2499: Victims of Qualifying Act of Violence

- Under existing law, California provides protections to employees for taking time off for jury duty or court appearances, as well as providing protection from harassment or retaliation to employees who are victims of crime or abuse.
- AB 2499 makes a number of enhancements to the current law, including replacing the words “crime or abuse” with “qualifying act of violence”.
- A qualifying act of violence is recognized regardless of whether an arrest, prosecution or conviction occurs.
- Victims of a **qualifying act of violence** include being a victim of:
 - Domestic violence
 - Sexual assault
 - Stalking
 - An act, conduct, or pattern of conduct that includes causing, or threatening to cause, bodily injury or death

AB 2499: Victims of Violence (Paid Sick Leave)

- Effective **January 1, 2025**.
- Expands the current law and allows all employees to use **paid sick leave** for (1) Jury Duty, and (2) To appear in court to comply with a subpoena or court order.
- In addition, employers of **25+ employees** must allow employees to use **paid sick leave** to assist their **family members** that are victims of a qualifying act of violence.
- There can be **no discrimination or retaliation** against any employee who is a victim from taking time off to serve on a jury, comply with a subpoena, or obtain relief related to a qualifying act of violence.
- There can be no discrimination or retaliation against an employee who assists a family member who is a victim if the employer has 25 or more employees.

SB 1105: Agricultural Employees (Preventive Care?)

- Amends the Healthy Workplaces Healthy Families Act which allows paid sick and “safe” time to care for employee/family member’s preventive care
- Paid sick leave for preventive care of agricultural employees who work outdoors when there is a smoke, heat, or flooding emergency (or worksite closure)
- Preventive care not defined!

AB 2123: Paid Family Leave (More Employee Options)

- Eliminates employers' ability to require employees to use up to *two weeks* of company-provided vacation before they start receiving PFL insurance benefits paid by the state



Discrimination

SB 1100: Driver's Licenses (Be Careful What You Require)

- Effective **January 1, 2025**.
- May not include a statement that a job applicant must have a driver's license unless the employer:
 - reasonably expects driving to be one of the job functions
 - reasonably believes using alternative transportation would not be comparable in travel time or cost to employer



What About Your Job Postings?

- Review all postings that “require” a license
- Driving to job site probably not enough – alternative methods of transportation can get you there!
- Consider differences in job requirements (*e.g.*, compare an attorney driving to court with a courier who drives a truck and delivers goods)

SB 1137: Intersectionality (Multiplier Effect)

- Effective **January 1, 2025**.
- Clarifies that the Unruh Civil Rights Act, the provisions of the Education Code prohibiting discrimination in public education, and the California Fair Employment and Housing Act (FEHA) all prohibit discrimination on the basis not just of individual protected traits, but also **on the basis of the intersectionality (e.g., combination) of two or more protected traits.**



AB 1815: Hairstyles (Heads Up!)

- Amends 2019 CROWN Act
- Race is “*inclusive of traits* associated with race, including but not limited to hair texture and protective hairstyles”; “Protective hairstyles...include such hairstyles as braids, locs, and twists”
- Removed “*historically* associated with race”
- Review your employee handbooks!
 - May impact existing policies dealing with acceptable dress/appearance in the workplace

SB 1340: Local enforcement of laws

- More localized enforcement of discrimination policies
- Stay informed about local ordinances to ensure compliance with both state and local anti-discrimination laws.





PAGA

New PAGA is Born (AB 2288, SB 92)



Deal Struck Between Governor and Business

- PAGA reform announced June 18, 2024
 - 560 PAGA letters submitted June 19-21
 - Took effect June 19, 2024
- Additional rights to cure
- Potential for reduced penalties if remediation shown
 - Reduced to 15% if **all reasonable steps** for compliance prior to notice
 - Reduced to 30% if compliance within 60 days of notice
- Reduced penalties for some wage statement violations

Deal Struck Between Governor and Business

- Increased Penalties for (i) unlawful finding by court within last 5 years or (ii) conduct was malicious, fraudulent or oppressive
- Early evaluation conference and mandatory stay (100 or more)
- Small employer cure proposal to LWDA (under 100)
- Claims limited to violation actually suffered by plaintiff
- Weekly and bi-weekly payrolls treated the same
- 65% to the LWDA; 35% to the aggrieved employees



Minimum Wage

Statewide

- State minimum wage to increase to **\$16.50 on January 1, 2025**, which also affects exempt employee pay.
 - \$68,640/year (\$5,720/month) = minimum salary to meet salary basis test for exempt status.
- Proposition 32, which would have increased MW to \$18/hour for “large employers” on 1/1/2025, and included cost of living adjustments, and no “offramp,” **did not get passed**.
- Collective Bargaining Exception for certain wage and hour areas is 30% more than the CA State minimum wage - \$21.45 for 2025
 - Unionized employers relying on a CBA exemption for overtime, sick leave and other areas should check their lowest rate. If not using CBA exemptions, no worries!

Local Minimum Wage – January 2025

Locale	Rate
Belmont	\$18.30
Burlingame	\$17.43
Cupertino	\$17.75
Daly City	\$17.07
East Palo Alto	\$17.45
El Cerrito	\$18.34
Foster City	\$17.40
Half Moon Bay	\$17.47
Hayward	\$17.36 for 26 or more employees \$16.50 for 25 or fewer employees
Los Altos	\$18.20

Locale	Rate
Menlo Park	\$17.10
Mountain View	\$19.20
Novato	\$17.27 for 100 or more employees \$17.00 for 26-99 employees \$16.50 for 25 or fewer employees [state minimum]
Palo Alto	\$18.20
Petaluma	\$17.97
Redwood	\$18.20
San Carlos	\$17.32
Santa Clara	\$18.20

Locale	Rate
San Diego	\$17.25
South San Francisco	\$17.70
San Jose	\$17.95
San Mateo	\$17.95
San Mateo County (unincorporated areas)	\$17.46
Sonoma	\$18.02 for 26 or more employees \$16.96 for 25 or fewer employees
Sunnyvale	\$19.00
West Hollywood	\$19.65

Industry Minimum Wages

- **Fast Food**

- As of April 1, 2024: \$20.00

- **Healthcare**

- As of October 16, 2024: Depends on type of health care facility
 - High: \$23.00
 - Low: \$18.00

Minimum Salary Requirement

California

- Minimum Salary at least \$1,320.00 per week = twice minimum wage (\$16.50 effective **January 1, 2025**)
- \$68,640.00 per year for exempt employees.

FLSA

- Minimum salary \$684.00 per week
- \$35,568.00 per year for exempt employees



Workplace Safety

Is the Legislature bossing around CalOSHA again?



Opioids – Narcan Soon to Be Required at Work!

- Last year, they took over with workplace violence. This year...
- AB 1976: The Legislature enacted a statute telling CalOSHA to create regulations requiring Narcan in First Aid Kits

Cal/OSHA Indoor Heat Illness Prevention Regulation

- Effective Date: **July 23, 2024**
- **Applies to indoor workplaces:**
 - Where temperature equals or exceeds 82° Fahrenheit when employees are present
 - Warehouses, distribution centers, manufacturing plants, and restaurants, as examples
 - Does NOT apply to teleworking employees
 - Does NOT apply to incidental heat exposure = less than 15 minutes in any 60-minute period when the temperature is about 82 degrees, and below 95 degrees Fahrenheit

Heat Illness Prevention - Employer Obligations

- Have a written heat illness prevention plan.
- Provide drinking water.
- Provide cool-down areas.
- Measure temperature and record the readings.
- Observe if employees are new to working in heat or there is a heat wave.
- Use control measures to minimize the risk of heat illness including engineering controls (such as air conditioning), and administrative controls (such as job rotation, acclimatization).
- Develop emergency response procedures.
- Conduct employee (incl. supervisors) training on various heat illness prevention topics, such as recognizing signs and symptoms of heat illness, contacting emergency medical services, and the employer's heat illness prevention program.

Sunset on COVID-19 Prevention Standard

- Regulations sunset on **February 3, 2025**
- Record-keeping required through **February 3, 2026**
- Reporting
 - No state-wide obligation to report cases to the health department, but there may be county-specific reporting requirements.
 - Exception: Reporting required if:
 1. work-related and results in death or serious illness or injury; or
 2. there is a major outbreak, defined as 20 or more cases in an exposed group visiting the worksite during their infectious period within a 30-day period.

Sunset on COVID-19 Prevention Standard

- Positive cases are excluded from the workplace during the infectious period.
- Cal / OSHA defers to the California Department of Public Health as to the definition of infectious period (in non-health care settings) which as of January 2024 is:
 - For symptomatic confirmed cases, from the day of symptom onset until 24 hours have passed with no fever, without the use of fever-reducing medications, AND symptoms are mild and improving.
 - For asymptomatic confirmed cases, there is no infectious period for the purpose of isolation or exclusion. If symptoms develop, the criteria above will apply.

Sunset on COVID-19 Prevention Standard

After infectious period, worker is allowed back to work but needs to mask until after 10 days from either a positive test or when symptoms first began.

Employers need to:

- Exclude workers during the infectious period
- Provide masks
- Provide notice of close contact within 1 business day with information regarding potential benefits (disability, workers comp)
- Provide testing for close contacts

SB 553 - Workplace Violence Safety Plan – Effective July 1, 2024

Last year Governor Newsom signed SB 553 which created Labor Code section 6401.9. The keys:

- (1) prepare an effective workplace violence prevention plan;
- (2) train employees on how to identify and avoid workplace violence;
- (3) maintain a violent incident log. These records must be maintained for at least five years and produced to Cal/OSHA upon request.

Employers are required to provide employees with initial training when the plan is established and annually.

SB 553 - Workplace Violence Safety Plan – Effective July 1, 2024

What This Means For Employers

Employers should have a workplace violence prevention policy as required by law and initiated training and hazard assessment protocols.

Cal/OSHA posted handouts, Frequently Asked Questions and made a template workplace violence prevention plan available to employers at: <https://www.dir.ca.gov/dosh/workplace-violence.html>

SB 428 - Workplace Restraining Order – Effective July 1, 2025

Although approved by Governor Newsom in 2023 the changes authorized by SB 428 do not become effective until January 1, 2025.

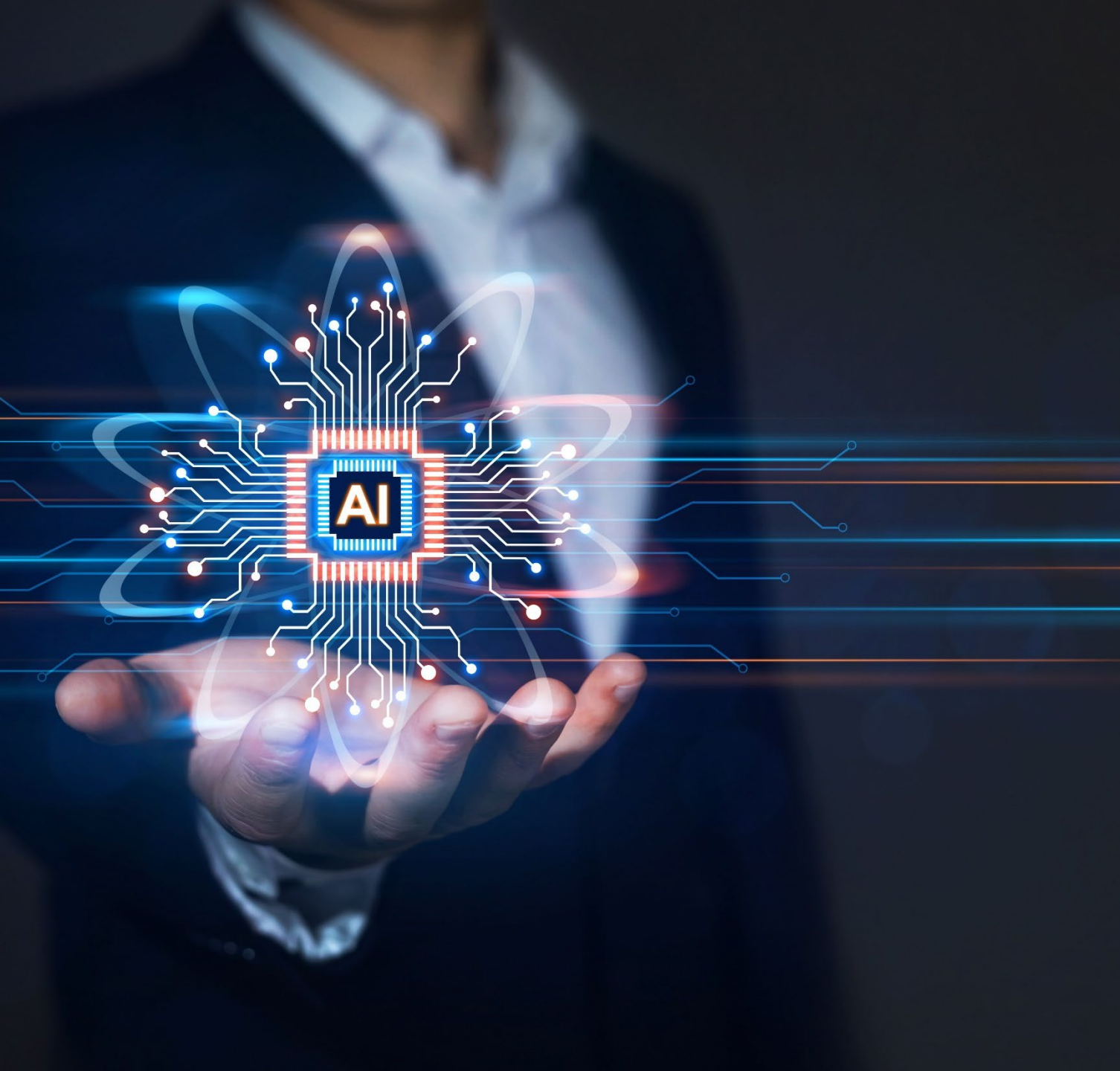
California law currently enables an employer to seek a temporary restraining order to protect employees from a person (employee or not) who has engaged in violence or has made a credible threat of violence.

SB 428 amended Code of Civil Procedure section 527.8 to expand the law to include not only violence and threats of violence, but also harassment.

“Harassment” is knowing and willful conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose.

Reasonable person to suffer substantial emotional distress and it must actually cause substantial emotional distress to the affected person.

Effective January 1, 2025, California employers may seek a temporary restraining order against an individual who has harassed their employees, in addition to the existing availability of workplace restraining orders for violence and threats of violence.



AI Update



Spoiler Alert:
It's not groundbreaking

Artificial Intelligence Bills

- So many bills, so few changes which actually impact the workplace.
- AI “decision making tools” bill dies for the second year in a row
- But – California did actually define AI!



AB 2885: Defining AI

The Artificial intelligence **definition:**

An engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

California AI Transparency Act

Identifies **AI-generated content** and must be clear, conspicuous, appropriate for the medium of the content, and understandable to a reasonable person.

A provider must include a **latent disclosure** in AI-generated image, video, audio, or other digital content audio content created by the covered provider's GenAI system.

The CRD *still* has pending AI regulations...

- First introduced in 2021
- New language in 2023
- Competed with AB 2930
- Public Hearing....
- More changes (agents, criteria for claims, definition of ADS)



But wait, there's more!

(Regulations, that is.)



SB 1223 – Expansion of California Privacy Protections – Effective January 1, 2025

As background, the California Consumer Privacy Act (the “CCPA”), passed in 2018, protects individual’s data privacy rights. The CCPA was amended in 2024 to expand consumer privacy rights to employees, revises data retention requirements for businesses and transfers enforcement authority from the Attorney General to the California Privacy Protection Agency.

The CCPA applies to businesses in California who collect consumer personal information and who satisfy one or more of the following:

- As of January 1, of a given year, the business had a gross annual revenue of over \$25 million in the preceding calendar year;
- The business buys, sells, or shares personal information of 100,000 or more California residents, households, or devices (note that in the context of CCPA, “sells” means disclosing information for monetary or other valuable consideration, while “shares” means disclosing personal information for “cross-context behavioral advertising,” whether or not for monetary or other valuable consideration); or

SB 1223 – Expansion of California Privacy Protections – Effective January 1, 2025

On March 20, 2023, the CCPA's initial set of regulations (the "Regulations") under the CPRA became effective.

Effective January 1, 2025, the CCPA protects "sensitive personal information" such as Social Security Numbers, driver's license, state identification card, passport number, account log-in, financial account, debit card or credit card number in combination with any required security or access code, password or credentials allowing access to an account, geolocation, racial or ethnic origin, citizenship or immigration status, religious or philosophical beliefs, union membership, genetic information, or the contents of mail, email or text messages, but also "neutral data."

Neutral data is defined as data "generated by measuring the activity of a consumer's central or peripheral nervous system, and that is not inferred from nonneural information."

SB 1223 – Expansion of California Privacy Protections – Effective January 1, 2025

What This Means For Employers:

If an employer is subject to the CCPA they should consult with their labor and employment counsel to ensure compliance with requirements for all California residents or “consumers,” including employees, job applicants, independent contractors and board members, as well as employee’s dependents who receive benefits through the employer.

Penalties for failing to comply with CCPA requirements can include hefty administrative fines of up to \$2,500 per violation, regardless of whether it was accidental or intentional.

Fine of up to \$7,500 for each intentional violation of CCPA provisions. The CCPA requires the California Attorney General’s Office to give a business a 30-day cure period before bringing an enforcement action.

CA Privacy and Protection Agency: Proposed Regs

80 pages of regulations!

TOP HITS:

- Applicant's/employee's **right to opt out of profiling**, which includes profiling an employee using **keystroke loggers, productivity or attention monitors, video or audio recording or live-streaming, facial or speech recognition or detection, automated emotion assessment, location trackers, speed trackers, and web-browsing, mobile-application, or social-media monitoring tools.**
- Notify an applicant if the business used automated decision making technology **and** the results formed the basis of a **denial** of an employment opportunity.

AB 3234 - Compliance Report Requirements

- Effective **January 1, 2025**.
- Imposes more transparency requirements for employers that audit their child labor practices.
- “Social Compliance Audit” is a voluntary, nongovernmental inspection or assessment of an employer’s operations and practices to verify that it complies with state and federal labor laws, including health and safety regulations regarding child labor.



AB 3234 - Compliance Report Requirements

The following information must be included within the compliance report:

- The year, month, day, and time the audit was conducted, and whether the audit was conducted during a day shift or night shift;
- Whether the employer engages in or supports the use of child labor;
- Whether children work within or outside regular school hours, or during night hours, for the employer; and
- A statement that the auditing company is not a government agency and is not authorized to verify compliance with state and federal labor laws or other health and safety regulations.

AB 2240 – Farmworker Housing – Effective January 1, 2025

AB 2240 added sections to the Health and Safety Code requiring the California Department of Health to “engage and solicit feedback from stakeholders on the definition of “migratory agricultural worker” for the purposes of updating the definition, including distance from residence,” and to develop a report that analyzes the feasibility and impact of transitioning housing units at Office of Migrant Services centers to year-round availability. It also prescribes various requirements on the Department of Health, including that the department conduct an annual inspection of each migrant farm labor center to determine whether health, safety and infrastructure standards are properly met.

What This Means For Employers:

There is no significant change for employers at this time, but subsequent reports may result in changes in the future as it relates to the migrant agricultural workers housing.



Local Updates

Fair Chance Ordinances

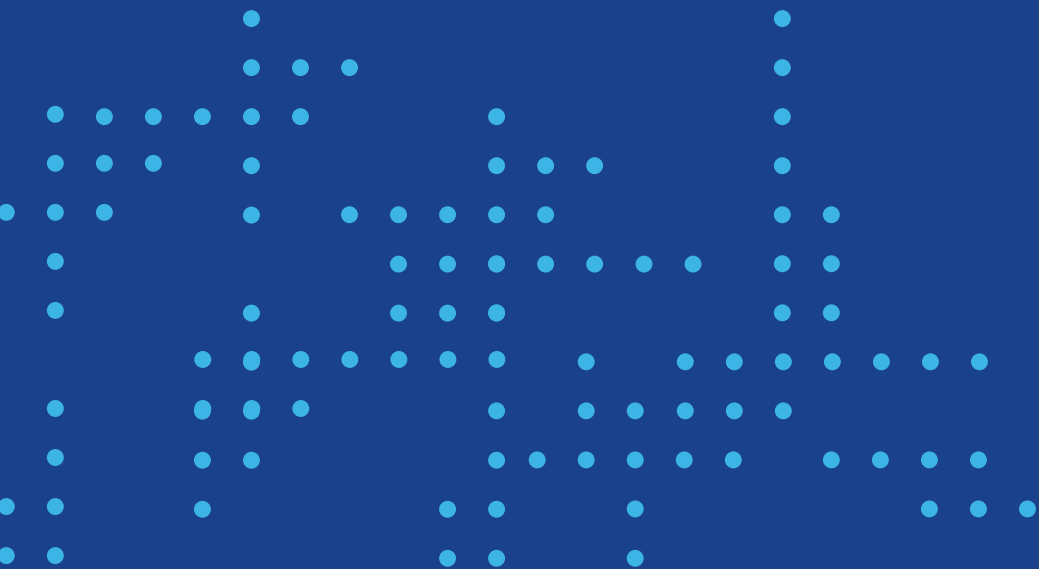
Los Angeles County

- Became operative **September 3, 2024**
- **Covered Employers:** employers with 5 or more employees and doing business in **unincorporated areas of Los Angeles County**
- Adds additional requirements if employer intends to deny an applicant a position because of the criminal history
 - Written individualized assessment (shared with applicant)
 - Employers only have 5 days to respond to an employee's appeal
 - Only a 7 year look back for criminal background checks

San Diego County

- Became operative **October 10, 2024**
- **Covered Employers:** employers with 5 or more employees and doing business in **unincorporated areas of San Diego County**
- Adds additional requirements to the State's Fair Chance Act:
 - Written individualized assessments (but not shared with applicant)

Questions!?



Thank you!

Seth Mehrten, Esq.

Shareholder

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